

# AGREEMENT FOR PURCHASE AND SALE OF STOCK

THIS AGREEMENT entered into as of the 4<sup>th</sup> day of October, 2004, by and between HELEN B. HORTON ("Seller") and VERNON D. SMITH ("Buyer").

## WITNESSETH

WHEREAS, Seller is the owner of Two Thousand (2,000) shares of common stock of Horton Broadcasting Company, Inc., a Florida Corporation (hereinafter "HBC"), represented by Certificates Number V1 and V2, which constitutes twenty percent (20%) of the common stock and which is one hundred percent (100%) of the voting stock of HBC ("Stock"); and

WHEREAS, Seller desires to sell the Stock and Buyer desires to buy the Stock, in accordance with the terms of this agreement; and

WHEREAS, as a material inducement to this purchase and sale transaction, Seller agrees not to compete with Buyer or HBC, following the sale of stock, in accordance with the terms of this agreement; and

WHEREAS, HBC, is the licensee of radio station WHLG (FM), Port St. Lucie, Florida, and both parties acknowledge that before the purchase and sale of Stock can take place, the Federal Communications Commission ("FCC") must review this contract and give its approval; and

WHEREAS, the purchase and sale of the Stock shall not be consummated without prior FCC approval.

NOW THEREFORE, in consideration of the mutual undertakings herein, and other good and valuable consideration, the parties hereby agree as follows:

1. **Recitals.** The above recitals are true and correct, and are incorporated herein.

2. **Purchase and Sale/Non-Compete.** Seller agrees to sell the Stock to Buyer and Buyer agrees to buy the Stock from Seller; as a material inducement, Seller additionally agrees not to compete with Buyer or HBC, following the sale, all in accordance with the terms of this agreement. The total consideration which shall be paid to Seller for purchase of the Stock and for acquisition of the non-compete agreement shall be Nin: Hundred Fifty Thousand Dollars (\$950,000.00), allocated as follows: Eight Hundred Fifty Thousand Dollars (\$850,000.00) to be paid by Buyer as consideration for purchase of the Stock, and One Hundred Thousand Dollars (\$100,000.00) to be paid by HBC as consideration for the non-compete agreement. In addition, Two Hundred Fifty Thousand Dollars (\$250,000) shall be paid to Seller by HBC, as set forth in paragraph 4 below.

3. **Payment Terms:** The sum of Nine Hundred Fifty Thousand Dollars (\$950,000.00) shall be paid, as follows: One Hundred Thousand Dollars (\$100,000.00) deposit at signing of the contract, which amount shall be refundable if the transaction does not close for any reason, Two Hundred Fifty Thousand Dollars (\$250,000.00) in cash at closing, and Six Hundred Thousand Dollars (\$600,000.00) in semi-annual

principal and interest payments of Fifty Thousand Dollars (\$50,000.00) plus interest at the Wall Street Journal prime rate, which payments shall commence one year from the date of closing as evidenced by the Promissory Note attached hereto as Exhibit A. The One Hundred Thousand Dollar (\$100,000) deposit shall be held in escrow by a mutually acceptable escrow agent. If the closing does not occur for any reason, other than Buyer's breach of this agreement, such deposit immediately shall be returned to Buyer.

**4. Loan Expenses.** As a condition of closing, Buyer shall cause HBC to repay to Seller Two Hundred Fifty Thousand Dollars (\$250,000) which Seller represents is the total of loans and debts due from HBC to Seller. Said funds shall be payable from HBC to Seller at closing. Seller agrees and understands that Buyer shall fund HBC an amount necessary to accomplish this payoff and that if this sale does not close, then Seller shall return said funds to HBC, which shall then, in turn, return the funds to Buyer and the existing debts to Seller shall be reinstated. Nothing herein shall be construed as creating in Seller or HBC any right, title or possession to said funds absent the successful closing of this sale, and nothing herein shall be construed as an agreement by Buyer that Seller is in fact owed the sum of Two Hundred Fifty Thousand Dollars (\$250,000) by HBC.

**5. Pledge of Stock/Security Agreement:** At closing, Buyer shall pledge, and grant to Seller a security interest in the Stock, as collateral to secure the payment of all post-closing obligations of Buyer herein, as set forth in the Stock Pledge Agreement, attached hereto as Exhibit B. Without limitation, the Stock, together with an executed stock power, shall be delivered to a mutually acceptable escrow agent who shall hold the Stock pending completion of all of Buyer's post-closing obligations. Possession by the escrow agent shall be deemed sufficient possession for perfection of the security interest. During the escrow period, so long as Buyer is not in default of its post-closing obligations, Seller shall relinquish and waive all rights and privileges of ownership of the Stock including, without limitation, voting rights and the right to receive dividends, and Buyer shall be entitled to exercise all of such rights and privileges of ownership of the stock. Upon completion by Buyer of all of Buyer's post-closing obligations, the escrow agent shall deliver the stock certificate and stock power to Buyer, and the escrow shall be terminated.

**6. Seller's Representations, Covenants and Warranties.** Seller hereby represents covenants and warrants, as follows:

a. Seller is authorized to sell the Stock, as contemplated herein;

b. Seller owns all right, title and interest in and to the Stock, free and clear of any lien, encumbrance or other right, title or interest of any other person or entity. Seller will transfer to Buyer at closing all right, title and interest in and to the Stock, free and clear of any lien, encumbrance or other right, title or interest of any other person or entity;

c. To the best of Seller's knowledge, information and belief, the financial condition of HBC is truly and accurately reflected in HBC's income tax returns and periodic financial statements, income and expense statements, balance sheets, and other such financial records;

d. To the best of Seller's knowledge, information and belief, the operations of HBC have been conducted in accordance with all applicable local, state and federal rules, regulations and applicable laws. Seller is not aware of any written or verbal notices, complaints, charges or other such assertions of illegal conduct by HBC.



7. **Operations Pending Closing.** Pending closing, Seller will not cause or permit HBC to enter any new contracts, to terminate any existing contracts, to default under any existing contracts, to incur any new indebtedness, to transfer or acquire any new assets having a value in excess of Five Hundred Dollars (\$500.00), to make any distribution of funds or assets to Seller (except salary in accordance with prior practice) or undertake any other act which is not consistent with the ongoing practice and operations of HBC. In addition, Seller shall provide copies of any existing written contracts (or memoranda of all material terms, if an oral agreement) or other HBC obligations within seven (7) days of the date hereof. Buyer shall have ten (10) days from the date of receipt of the last disclosure to provide written notice of cancellation of this Agreement.

8. **FCC Approval.** This agreement shall be contingent upon approval by the FCC of the transactions contemplated herein. If such approval has not been obtained in writing within three hundred sixty five (365) days from the date of this agreement, this agreement shall automatically terminate, and all parties shall be relieved of any further obligations, except the obligation to return the One Hundred Thousand Dollars (\$100,000.00) deposit made by Buyer at the signing of this contract; provided, however, that Buyer shall have the right to extend the period for FCC approval up to an additional ninety (90) days, by written notice to Seller.

Buyer and Seller shall use reasonable efforts to pursue the necessary FCC approval, permits and other necessary authorizations required to close this agreement. Seller shall fully cooperate in such process and specifically acknowledge that Buyer is entitled to specific performance of this term. If Buyer pursues specific performance of this term the closing shall be extended accordingly.

9. **Closing.** Closing shall take place within ten (10) days of receipt of written FCC approval, as set forth above. At closing, Seller shall resign as an employee, officer, and director of HBC. The parties shall execute at closing such other documents as are necessary to implement the terms of this agreement.

10. **Non-Compete/Non-Solicitation/Non-Disclosure.** Seller agrees that for a period of four (4) years after closing, Seller will not, directly or indirectly (a) own any interest in, be employed by, as an employee, agent or independent contractor, serve as an officer, director, partner, manager or other similar capacity in, operate, join in, participate or otherwise be involved in any way in any radio station located within one hundred (100) miles of any radio station then operated by Buyer or HBC, (b) solicit any of HBC's present or future employees, officers, customers, or advertisers, or (c) disclose or use any confidential, proprietary, trade secret, customer information, advertiser information or other information with respect to the operation and affairs of HBC, which information is not generally known by the public at large. Seller acknowledges that any breach of the provisions of this paragraph shall cause immediate and irreparable harm to Buyer and/or HBC, that Buyer and/or HBC will not have an adequate remedy at law, and that Buyer and/or HBC shall be entitled to an immediate temporary and permanent injunction prohibiting any further violations. The parties acknowledge that the four (4) year term of this agreement is presumed to be reasonable under section 542.335 Florida Statutes, and the parties agree that such term is reasonable under the circumstances of the contemplated transaction, and is necessary to enable Buyer and HBC to make the required payments during the same time period.

11. **Default.** In the event of default by Seller, Buyer shall be entitled to specific performance. Seller acknowledges that the Stock is a special and unique asset, and Buyer will not otherwise have an adequate remedy at law with respect to said breach. Notwithstanding any other provisions to the contrary, neither

party shall be in default regarding any breach of this Agreement unless such party fails to correct such violation within thirty (30) days of receipt of written notice from the other party.

**12. Other Sale.**

**a. Representation and Warranty.** Seller represents and warrants to Buyer that she has not (i) entered into a contract with any third party in which Seller has agreed to sell the Stock, or (ii) caused HBC to enter into any contract with any third party in which HBC has agreed to sell all, or substantially all, of its assets. This representation and warranty shall apply to any contract in any form whatsoever, and regardless of any contingencies, conditions, due diligence periods, etc., which may exist with respect to the binding nature of said contract

**b. Other Contract.** During the pendency of this contract, Seller shall not, without the express written consent of Buyer, (i) enter into a contract with any third party in which Seller agrees to sell the Stock, or (ii) causes HBC to enter into any contract with any third party in which HBC agrees to sell all, or substantially all, of its assets. If Seller enters into either of such contracts with the express written consent of Buyer, such contract shall be referred to herein as the "Other Contract."

**c. Closing of Other Contract.** If Seller enters into an Other Contract, and the Other Contract closes prior to the scheduled closing on this contract, then the parties shall complete the closing with respect to the Other Contract, and this contract shall be terminated, except that the One Hundred Thousand and No/100 Dollars (\$100,000.00) deposit which Buyer paid to Seller at the signing of this contract shall immediately be returned to Buyer.

**d. Closing of this Contract First.** If this contract is scheduled to close prior to the closing of the Other Contract, then this contract shall close as scheduled. Buyer agrees to exercise reasonable diligence thereafter to close the Other Contract, or to cause HBC to close the Other Contract. If the Other Contract closes within three hundred sixty-five (365) days from the date of closing of this contract, then Buyer shall pay to Seller an amount calculated, as follows: The amount of net proceeds which Seller would have received from or as a result of the closing of the Other Contract (estimated at twenty percent (20%) of such net proceeds), minus One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00) paid by Buyer and HBC to Seller (by cash and promissory note) at the closing of this contract. If the Other Contract closes more than three hundred sixty-five (365) days from the date of closing of this contract, then Buyer shall have no obligation to Seller with respect to the Other Contract

**e. Buyer's Right of First Refusal.** Nothing herein shall terminate or restrict in any way, Buyer's existing right of first refusal to buy the Stock.

**13. Due Diligence.** For a period of thirty (30) days following the execution of this agreement by all parties ("Due Diligence Period"), Buyer shall have an opportunity to review all information relating to HBC, including its assets, activities and operations ("Business"). Seller shall provide, or cause HBC to provide, to Buyer all information reasonably requested by Buyer relating to the Business. At any time during the Due Diligence Period, Buyer shall have the right to terminate this agreement, without the necessity of stating any reason or basis for such termination. If Buyer executes this right of termination, this agreement shall be null and void for all purposes, Buyer's deposit shall be returned to Buyer, and each party shall be relieved from any further obligations to the other under this agreement, except that Buyer agrees that it will not disclose or use for any purpose whatsoever, any non-public information disclosed to Buyer during the Due Diligence

Period. If Buyer does not exercise the right of termination prior to the expiration of the Due Diligence Period, then Buyer's right to terminate pursuant to this paragraph shall be extinguished, and the parties shall proceed to close the transaction in accordance with the terms and conditions of this agreement. Seller represents and warrants that all financial and other information submitted by Seller or HBC to Buyer during the Due Diligence Period is true, correct, accurate and complete.

**14. Validity of Agreement.** It is intended that each provision of this agreement shall be viewed as separate and divisible. In the event that any portion shall be held invalid, the remaining portions shall continue in full force and effect, unless the portion held invalid goes to the essence of this agreement, such that in the absence of such portion, the entire agreement of the parties is materially altered.

**15. Attorney's Fees.** In the event of any litigation hereunder, the prevailing party shall recover from the non-prevailing party, all fees, costs and expenses of such litigation, including, without limitation, reasonable attorney's fees at the investigative, pre-suit, trial, appellate and collection levels.

**16. Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**17. Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES THE RIGHT TO A JURY TRIAL TO DETERMINE ANY ISSUE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT. EACH PARTY AGREES THAT ANY SUCH ISSUES SHALL BE DETERMINED ON A NON-JURY BASIS.

**18. Jurisdiction and Venue.** Jurisdiction for any legal proceedings arising out of or relating in any way to this agreement shall be in the county or circuit court, as the case may be, in and for the State of Florida. Venue for any such proceedings shall be St. Lucie County, Florida.

**19. Interpretation.** This agreement has been submitted to the scrutiny of each party, and each has had the opportunity to have it reviewed by legal counsel. The agreement shall be given a fair and reasonable interpretation in accordance with the terms used, without consideration or weight being given to its having been drafted by any particular party, or by his legal counsel.

**20. Legal Counsel.** Each party acknowledges that this agreement was prepared by Alan S. Polackwich, Sr., of the law firm of Clem, Polackwich, Vocelle & Berg, L.L.P., 3333 20<sup>th</sup> Street, Vero Beach, Florida. Each party acknowledges that Mr. Polackwich prepared said document in his capacity as legal counsel for Buyer, and not as legal counsel for Seller. Seller acknowledges that she has had the right to have this agreement reviewed by legal counsel acting solely on behalf of Seller.

**21. Form of Notice.** Any notice required hereunder shall be in writing and shall be delivered by hand delivery, overnight delivery service, or certified mail, return receipt requested. If the party to whom certified mail is addressed fails or refuses to claim such mail, the notice contained in such mail shall be deemed to have been received, and therefore notice fully given, five (5) days after the date that such mail was delivered to the U.S. Postal Service.

**22. Sole Agreement.** This document and its attachments constitutes the sole agreement of the parties with respect to the matters set forth herein. Any prior agreements, promises, negotiations, or representations concerning the matters set forth in this agreement, shall be of no force or effect.

23. **Amendment.** This agreement may be amended only by unanimous consent of all parties, and only by subsequent written agreement signed by all parties.

24. **Successors and Assigns.** This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors, and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the date stated above.

Signed, sealed and delivered in the presence of:

  
Print Name → THOMAS J. WATERMAN

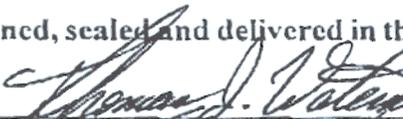
Print Name →: \_\_\_\_\_

**"Seller"**

**HELEN B. HORTON**

Sign Here → 

Signed, sealed and delivered in the presence of:

  
Print Name →: THOMAS J. WATERMAN

Print Name →: \_\_\_\_\_

**"Buyer"**

**VERNON D. SMITH**

Sign Here →: 

