

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of March 30, 2018, by and between **INGSTAD RADIO WASHINGTON, LLC**, a North Dakota limited liability company (“Seller”) and **STEPHENS FAMILY LIMITED PARTNERSHIP**, an Oklahoma limited partnership, by and through its wholly owned subsidiaries **SMG YAKIMA, LLC**, an Oklahoma limited liability company, and **SMG TRI-CITIES, LLC**, an Oklahoma limited liability company (collectively “Buyer” and individually “SFLP”, “SMG Yakima” and “SMG Tri-Cities”).

**RECITALS**

WHEREAS, Seller owns and operates the following radio broadcast stations pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”):

\*KALE(AM), Richland, WA (FCC ID No. 63359);  
KARY-FM, Grandview, WA (FCC ID No. 53674);  
KBBO(AM), Yakima, WA (FCC ID No. 49875);  
\*KEGX(FM), Richland, WA (FCC ID No. 53140);  
KHHK(FM), Yakima, WA (FCC ID No. 36031);  
\*KIOK(FM), Richland, WA (FCC ID No. 12455);  
\*KJOX(AM), Kennewick, WA (FCC ID No. 53139);  
\*KKSRR(FM), Walla Walla, WA (FCC ID No. 35717);  
KRSE(FM), Yakima, WA (FCC ID No. 49876);  
KTCR(AM), Selah, WA (FCC ID No. 7918);  
\*KUJ-FM, Burbank, WA (FCC ID No. 77777);  
KXDD(FM), Yakima, WA (FCC ID No. 7919);  
\*K291BS, Richland, WA (FCC ID No. 139173);  
\*K232CB, Pendleton, OR (FCC ID No. 12456);  
K295BT, Wapato, WA (FCC ID No. 156903);  
K291BV, Wapato, WA (FCC ID No. 156949); and  
K283BX, Wapato, WA (FCC ID No. 156894) (each a “Station” and together, the “Stations”; those appearing with asterisks the “Tri-Cities Stations” and those not appearing with asterisks the “Yakima Stations”);

WHEREAS, on the terms and conditions described herein and subject to the prior approval of the FCC, Seller desires to sell, and Buyer desires to purchase, the Stations in exchange for the consideration set forth herein; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, Seller and SFLP have entered into a Local Programming and Marketing Agreement (“LMA”) pursuant to which SFLP will provide programming for, and be entitled to receive the revenues from the sale of advertising time on, the Stations, consistent with the provisions of the Communications Act of 1934, as amended (“Communications Act”) and the rules, regulations and policies of the FCC (“FCC Rules”).

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE 1. SALE AND PURCHASE

1.1. Assets. On the Closing Date (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, the assets, properties, interests and rights of Seller of whatsoever kind and nature, which are owned by Seller and/or used or useful in connection with the operation of the Stations ("Assets"), except the Excluded Assets (defined below), including without limitation the following:

(a) Licenses and Authorizations. All of the licenses, construction permits and other authorizations issued by the FCC, the Federal Aviation Administration (the "FAA"), if any, and any other federal, state or local governmental authorities to Seller in connection with the conduct of the business and the full on-air operations of the Stations identified on Schedule 1.1(a), together with all applications therefor, including Seller's pending applications for (i) a construction permit for a new FM translator station to rebroadcast KJOX(AM) (FCC ID No. 200341; FCC File No. \*BNPFT-20171220AAG), (ii) a construction permit for a new FM translator station to rebroadcast KBBO(AM) (FCC ID No. 202157; FCC File No. BNPFT-20180129ACN, and (iii) a construction permit for a new FM translator station to rebroadcast KTCR(AM) (FCC ID No. 202158; FCC File No. BNPFT-20180129ACL) (the "New Translator Pending Applications"), and any renewals or extensions thereof (collectively the "FCC Authorizations").

(b) Tangible Property. Seller's equipment, cables, wiring, connectors, machinery, generators, spare or replacement parts, computers, software, furniture, furnishings, fixtures, office materials, prizes, give-aways, vehicles, registered and unregistered towers and any associated guy wires and anchors and other tangible personal property used or useful in the conduct of the business or operation of the Stations (the "Tangible Personal Property"), (together with such improvements and additions thereto and replacements thereof between the date hereof and the Closing Date, and any unexpired warranties), including without limitation those items identified on Schedule 1.1(b) ("Tangible Personal Property").

(c) Contracts. Seller's right, title and interest in and to all contracts, agreements and leases used in connection with the business and operation of the Stations, including any real property and/or transmitter site leases and programming agreements, as described on Schedule 1.1(c) hereto, and that certain Modification Agreement by and between Seller and Jodesha Broadcasting, Inc. dated January 10, 2017 (the "Modification Agreement") (collectively the "Contracts").

(d) Intangible Property. All intangible property, including the Stations' call letters, and all copyrights, trademarks, trade names, service marks, service names, Internet names/domains/websites/pages/social media accounts, logos, jingles, slogans, licenses, patents and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) issued to, claimed, or owned by the Seller and used solely in connection with

the Stations (but excluding any such rights or interests specifying or referencing Seller's corporate name or other stations or properties of Seller) that are described in **Schedule 1.1(d)** ("*Intangible Property*").

(e) **Real Property**. All of Seller's right, title and interest in and to the real property owned and used and/or useful in the operation of the Stations (including any appurtenant easements and improvements located thereon) as specifically described on **Schedule 1.1(d)** ("*Real Property*").

(f) **Files and Records**. All files, documents, records, and books of account (or copies thereof) relating to the business and operation of the Stations (but excluding, for the avoidance of doubt, any books and records pertaining to any other radio station owned or operated by Seller), including the Stations' FCC local public files and related access codes, programming information and studies, technical information and engineering data, marketing and demographic data, sales correspondence, credit and sales reports, accounts receivable/payable ledgers, aging and collection reports, trade accounts/balances, and logs.

(g) **Goodwill**. All of Seller's goodwill in, and going concern value of, the Stations, if any.

The Assets shall be transferred to Buyer free and clear of all liens, claims and encumbrances ("*Liens*") except for Assumed Obligations (defined below) and liens for taxes not yet due and payable and for which Seller receives a credit pursuant to Section 2.2 ("*Permitted Liens*").

1.2. **Excluded Assets**. Notwithstanding anything to the contrary contained herein, the Assets shall not include the following ("*Excluded Assets*"):

(a) **Cash**. Cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, Treasury bills, and other marketable securities on hand or in banks;

(b) **Accounts Receivable**. Subject to the terms of the LMA, all accounts receivable, notes receivable and other monies due to Seller for performance of services by Seller in connection with the operation of the Stations attributable to the period prior to the Adjustment Time (defined below) ("*Seller Receivables*");

(c) **Contracts**. Any contracts or obligations not specifically assumed herein by Buyer and listed on **Schedule 1.2(c)** hereto;

(d) **Refund and Deposits**. Any claims, rights, and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits or prepaid expenses, which in each case relate solely to the period prior to the Adjustment Time;

(e) **Shared Assets**. Assets shared with any of Seller's radio stations other than the Stations, unless otherwise expressly provided in this Agreement or a Schedule hereto;

(f) **Claims Against Third Parties**. Any rights and claims of Seller, whether mature, contingent, or otherwise, against third parties with respect to the Stations and the Assets,

to the extent arising during or attributable to any period prior to the Adjustment Time;

(g) Other. All insurance policies, coverages and proceeds thereunder and all rights in connection therewith, records pertaining to Seller's corporate organization, and pension, profit sharing and all other employee benefit plans; and

(h) Retained Liabilities. Any other assets, rights, claims, obligations or liabilities of Seller listed on **Schedule 1.2(h)**.

1.3. Assumption of Obligations. Subject to the terms and conditions hereof, on the Closing Date (defined below), Buyer shall assume all liabilities, obligations, and commitments of any kind of Seller arising from the business or operation of the Stations after the Closing Date (defined below) or otherwise relating to the Contracts, the Stations or their operation ("Assumed Obligations"). The Assumed Obligations shall include trade balances as specified in Schedule 1.3. Except for the Assumed Obligations, Buyer does not assume or agree to discharge or perform, and will not be deemed by reason of the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, to have assumed or to have agreed to discharge or perform, any liability, obligation, or commitment of Seller arising from the business or operation of the Stations before the Closing Date ("Retained Liabilities").

1.4 Employees. Upon Closing, Buyer shall assume the employment contracts listed in Schedule 1.4, subject to the employee's consent, and may, but shall not be obligated to, interview and hire other current employees of the Stations, with Seller's cooperation and assistance as may be reasonably requested by Buyer.

## ARTICLE 2. PURCHASE PRICE

2.1. Purchase Price. Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, Buyer shall pay to Seller the sum of Ten Million Seven Hundred Twenty-five Thousand Dollars and No Cents (\$10,725,000.00), subject to adjustments pursuant to Section 2.2 ("Purchase Price"). The Purchase Price shall be paid by wire transfer of immediately available funds by Buyer to Seller, pursuant to wire instructions to be provided to Buyer prior to Closing, as follows:

(a) Concurrently with the execution of this Agreement, Buyer has delivered to WashingtonFirst Bank (the "Escrow Agent"), the sum of Five Hundred Thousand Dollars (\$500,000.00) to be held as an earnest money deposit, which shall be credited toward the Purchase Price at Closing (the "Earnest Money Deposit"), pursuant to an Escrow Agreement of even date herewith, a form of which is attached hereto as **Exhibit 1**.

(b) On the Closing Date, the remaining balance of the Purchase Price, subject to the prorations and adjustments provided in Section 2.2 hereof.

2.2. Prorations and Adjustments. Except as provided in the LMA, the business and operation of the Stations until 12:01 a.m. on the day of Closing ("Adjustment Time") shall be for the account of Seller and thereafter for the account of Buyer. Except for Seller's Nielsen contract, which shall be fully paid by Seller for the remainder of the contract term, or as otherwise specified herein, all of the Stations' expenses shall be prorated between Seller and Buyer as of the

Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly. Such prorations may include, but are not limited to, real and personal property taxes (except for transfer taxes) upon the basis of the most recent tax bills and information available, business and license fees, music and other license fees, utility expenses, and other amounts under the Contracts and similar prepaid and deferred items. On the Closing Date, the prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date. The Purchase Price may also be adjusted as provided in **Schedule 2.2** hereof.

2.3. **Allocations.** The parties hereby agree to the valuation of the Assets as described on **Schedule 2.3.** Such allocation shall be binding on the parties and used for all tax filings and other related purposes.

### **ARTICLE 3. FCC APPLICATIONS; CLOSING**

3.1. **FCC Application.** Buyer and Seller shall jointly file one or more applications with the FCC ("**FCC Applications**") requesting the FCC's written consent to the assignment of the FCC Authorizations from Seller to Buyer within five (5) business days from the execution of the Agreement. The proposed assignee of the Yakima Stations will be SMG Yakima, and the proposed assignee of the Tri-Cities Stations will be SMG Tri-Cities. The parties shall diligently take all steps necessary, proper, or desirable to expedite the prosecution of the FCC Applications to a favorable conclusion (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps that would have a material adverse effect on the results of operations of such party, unless a failure to take such action would constitute or perpetuate a breach of such party's representations, warranties or covenants herein). The written consent to an FCC Application by initial order of the FCC is referred to herein as the "**FCC Consent**." In the event any objections or challenges to the FCC Applications or any requests for reconsideration or review of the FCC Consent are filed at the FCC, the parties shall cooperate with respect to any responses thereto. Each party shall promptly provide the other with a copy of any pleading, order, or other document served on it relating to the FCC Applications. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Applications; however, the fee to be paid to the FCC in conjunction with the filing of the FCC Applications ("**FCC Fee**") will be shared equally between Seller and Buyer.

3.2. **Closing.** The consummation of the transactions contemplated herein shall take place on a mutually acceptable date no later than ten (10) calendar days following the date on which the FCC Consent on the last of the FCC Applications to be granted shall have become a Final Order (as hereinafter defined) (the "**Closing**"); **provided, however,** that Buyer may elect, in its sole discretion, to proceed to Closing upon written notice to Seller upon the release of public notice of the grant of such FCC Consent, in which event the Closing shall be held on the fifth (5th) business day after the date of Buyer's notice to Seller. For purposes of this Agreement, the term "**Final Order**" means action by the FCC consenting to an application which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The date on which the Closing is to occur is referred to herein as the "**Closing Date**."

## ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby makes the following representations and warranties to Buyer which shall be true as of the date hereof and on the Closing Date:

4.1. Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of North Dakota. Seller has the requisite power and authority to own and operate the Stations, to conduct the business of the Stations as is now conducted, and to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto.

4.2. Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Seller enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3. No Conflicts, Defaults. The execution, delivery and performance of this Agreement by Seller and the documents to be made pursuant hereto does not or will not: (a) conflict with any organizational documents of Seller, law, judgment, order, or decree to which Seller, the Stations or the Assets are subject; (b) require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent and counter-party consent to assign certain Contracts; (c) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; or (d) result in the creation or imposition of any Lien against the Stations or the Assets.

4.4. FCC Authorizations. Seller is the authorized legal holder of the FCC Authorizations as set forth on **Schedule 1.1(a)**. The FCC Authorizations constitute all of the licenses and authorizations required under the Communications Act and FCC Rules for, and used in the operation of, the Stations. The FCC Authorizations are in full force and effect and have not been revoked, suspended, cancelled, rescinded or terminated and have not expired. Except as noted on **Schedule 1.1(a)**, the Stations are operated in material compliance with the FCC Authorizations, all governmental authority including the Communications Act, and all applicable FCC Rules. There is not now pending or threatened, any action by or before the FCC or any other body to revoke, cancel, rescind, modify or refuse to renew any of the FCC Authorizations or other permits, and Seller has not received any notice of any pending, issued or outstanding order by or before the FCC or any other body, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against any of the Stations or Seller. To the best of Seller's knowledge and except as otherwise disclosed herein: a) Seller has not received any complaints that the Stations are causing objectionable interference to any other station and has

not waived any interference rights; b) all material reports and filings required to be filed with the FCC by Seller with respect to the Stations have been filed, and all such reports and filings are accurate and complete in all material respects; c) the ground systems, as described in the AM Station FCC Authorizations, are intact, remain buried, and are located entirely within the owned or leased real property where the Stations are located; d) the locations of any monitoring points described in any AM Station FCC Authorizations are accurate as described and specified therein; and e) each such monitoring point is accessible using public roads and no rights of access or other agreement for access to the monitoring points exist or are necessary.

4.5. **Tangible Personal Property.** **Schedule 1.1(b)** contains a list of all material items of Tangible Personal Property included in the Assets and necessary for the current, licensed operation of the Stations. Seller has good and marketable title to, or a valid leasehold interest in, each item of Tangible Personal Property set forth on **Schedule 1.1(b)**, free and clear of all Liens, except Permitted Liens. The Tangible Personal Property is in good operating condition and repair, ordinary wear and tear excepted, is functioning in the manner and purposes for which it was intended, and has been maintained in accordance with industry standards.

4.6. **Contracts.** **Schedule 1.1(c)** is a list of all of the Contracts used in the operation of the Stations. Each of the Contracts is in effect and is binding upon Seller, and to Seller's knowledge, the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Contracts to which it is a party in all material respects, and is not in material default thereunder, and to Seller's knowledge, no other party to any of the Contracts is in default thereunder in any material respect.

4.7. **Intangible Property.** **Schedule 1.1(d)** is a complete list of all material Intangible Property used exclusively in the operation of the Stations. Seller owns or possesses, has valid licenses for, or is an authorized user of all the Intangible Property. No Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use. Seller has not received any notice of infringement or conflict, nor does Seller have any knowledge of any basis for any such claim, with asserted rights of others with respect to any of the Intangible Property. To the knowledge of Seller, no third party infringes the Intangible Property.

4.8. **Real Property.** **Schedule 1.1(e)** contains a description of all Real Property owned by Seller and used or held for use in the business or operation of the Stations. Seller owns fee simple title to the Real Property free and clear of Liens other than Permitted Liens. No part of any Real Property is subject to any pending or, to Seller's knowledge, threatened suit for condemnation or other taking by any public authority. All buildings and other improvements included in the Real Property are in good operating condition and repair, and to Seller's knowledge, are free from material defect or damage, and comply in all material respects with applicable zoning, health and safety laws and codes. The Stations' towers, guy wires and anchors, ground systems and other facilities and improvements do not encroach upon any adjacent premises, and no facilities from adjacent premises encroach upon any of the Stations' properties. Seller has delivered to Buyer true and complete copies of all deeds, title insurance policies, title insurance commitments and surveys in its possession that are applicable to any owned Real Property.

4.9. Environmental. To Seller's knowledge, without investigation or inquiry,: (i) except as consistent with applicable Environmental Laws, no Hazardous Substances are present on or below the surface of any owned or leased Real Property and such property has not previously been used for the manufacture, refining, treatment, storage, or disposal of any Hazardous Substances; (ii) none of the soil, ground water, or surface water of the owned or leased Real Property is contaminated by any Hazardous Substance and there is no reasonable potential for such contamination from neighboring real estate; and (iii) no Hazardous Substances have been omitted, discharged or released by Seller from the owned or leased Real Property, directly or indirectly, into the atmosphere or any body of ground water. To Seller's knowledge, neither Seller nor any present or former owner or user of the owned or leased Real Property is liable for clean up or response costs with respect to the admission, discharge or release of any Hazardous Substance or for any other matter arising under the Environmental Laws due to its use of the Leased Premises. To Seller's knowledge, no "underground storage tanks" as that term is defined in regulations promulgated by the EPA are used in the operation of the Stations or are located, to Seller's knowledge, on the owned or leased Real Property. As used herein, the term "Environmental Laws" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) the Hazardous Materials Transportation Act (42 U.S.C. §1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §260-1 et seq.), the Clean Air Act (42 U.S.C. §7901 et seq.), the National Environmental Policy Act (42 U.S.C. §4231, et seq.), the Refuse Act (33 U.S.C. §407, et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), and all rules, regulations, codes, ordinances and guidance documents promulgated or published thereunder, and the provisions of any licenses, permits, orders and decrees issued pursuant to any of the foregoing. The term "Hazardous Substance" as used herein means any pollutant, contaminant, or hazardous or toxic substance, waste or material as those or similar terms are defined in the Environmental Laws or listed as such by the EPA.

4.10. Taxes. Seller has filed all federal, state, local or foreign income, franchise, sales, use, property and other tax returns and forms pertaining to the Assets to be transferred hereunder. There is no pending or threatened investigation or claims against Seller for or relating to any liability in respect of taxes.

4.11. Brokers. Other than MVP Capital, there is no broker, finder or other person entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action by Seller. Payment of MVP Capital shall be Seller's sole cost and expense.

4.12. No Litigation. Except for proceedings affecting segments of the broadcasting industry in general, to Seller's knowledge: (a) Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting the Stations or the Assets; (b) there is no third party claim, litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against Seller with respect to any of the Stations in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes; (c) there is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller with respect to any of the Stations, which is reasonably likely to have a material adverse effect upon the business, assets or condition, financial



or otherwise, of the Stations or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

4.13. Bankruptcy. No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Seller or the Assets, are pending or threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

4.14. Insurance. All of the Assets that are insurable in character are insured against loss, injury or damage to the full extent of their replacement value. Seller maintains fire, casualty and liability insurance with respect to the Assets and the business and operations of the Stations. In the event of any loss or damage to the Assets prior to Closing, any shortfall between insurance proceeds and replacement value will not excuse Seller's obligation to replace or repair the Assets with comparable assets to the extent required to meet its delivery obligations to Buyer.

4.15 Employees. True and correct copies of all contracts for employment between Seller and employees of the Stations have been provided to Buyer. Seller is not aware of any action, omission or behavior of such contract employees that warrants termination for cause, and has not taken any actions to terminate such contracts for cause or for any other reason. Seller is not a party or subject to any labor union or collective bargaining agreements. Seller, in the operations of the Stations, has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination, and the payment of social security and other payroll-related taxes, and has not received any notice alleging that Seller has failed to comply in any material respect with any such laws, rules or regulations. No labor union or other collective bargaining representative represents or, to the knowledge of Seller, claims to represent any of the employees of the Stations. To the knowledge of Seller, there is no effort being made to organize the employees or any group of employees of the Stations for purposes of collective bargaining.

4.16 Towers. To Seller's knowledge, the leased towers used in the operation of the Stations are properly registered, painted, lighted, fenced, and maintained in compliance with the FCC and FAA guidelines applicable to each. The towers owned by Seller used in the operation of the Stations (i) are properly registered, painted, lighted, fenced, and maintained in compliance with the FCC and FAA guidelines applicable to each, (ii) do not cause human exposure to levels of radiofrequency radiation in excess of the limits set by the FCC, based upon the current placement and operation of the towers or equipment mounted thereon, (iii) to Seller's knowledge, are not located in an officially designated wilderness area or wildlife preserve, do not affect threatened or endangered species or designated critical habitats listed on the U.S. Government's list of endangered and threatened species or identified by the U.S. Fish and Wildlife Service, are not located on or are themselves Historic Property listed in or eligible for listing in the National Register of Historic Places, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the National Register of Historic Places' criteria, do not affect districts, sites, buildings, structures or objects significant in American history, architecture, archeology, engineering or culture that are listed in the National Register of Historic Places, do not affect Indian religious sites, and are not located in a flood plain, (iv) are not now and have not been in the past the subject of a pending environmental review or related proceeding

before the FCC involving compliance with Section 106 of the National Historic Preservation Act (“Section 106”), or otherwise undergone or been the subject of a Section 106 review, and (v) have not previously been determined by the FCC to have an effect on one or more historic properties. Seller is not now in receipt of and has not previously received a written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a Washington Historical Preservation Officer, Tribal Historical Preservation Officer, or the Advisory Council on Historic Preservation, that the Seller-owned towers or any antenna for an FCC-licensed operation affixed to the Seller-owned towers have an adverse effect on one or more historic properties.

4.17 No Untrue Statements or Omission. No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer.

## **ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

5.1. Organization. Buyer is a limited partnership duly organized, validly existing and in good standing under the laws of the state of Oklahoma and is, or at Closing will be, authorized to transact business in the states of Washington. Buyer has the requisite power and authority to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto.

5.2. Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. The Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.3. FCC Qualification. Buyer is legally, financially, and otherwise qualified under the Communications Act and FCC Rules to hold the FCC Authorizations. Acquisition of the FCC Authorizations by Buyer complies with the Communications Act and FCC Rules with respect to multiple ownership as they exist on the date of this Agreement. Buyer has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to pay the Purchase Price and any other amounts to be paid by it in accordance with the terms of this Agreement and the LMA. Buyer acknowledges and agrees that its failure to have such funds at Closing shall constitute a breach of this Agreement.

5.4. No Conflicts. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto does not or will not: (a) conflict with any organizational documents of Buyer, law, judgment, order, or decree to which Buyer is subject; or (b) require the

consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent.

5.5. Brokers. There is no broker or finder or other person entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action by Buyer.

5.6. No Litigation. There is no litigation, proceeding or governmental investigation pending or to the knowledge of Buyer, threatened, in any court, arbitration board, administrative agency, or tribunal against or relating to Buyer that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement.

5.7. Bankruptcy. No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Buyer, are pending or threatened, and Buyer has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

5.8. No Untrue Statements or Omission. No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller.

## **ARTICLE 6. COVENANTS OF SELLER**

Seller covenants and agrees that from the date hereof until the completion of Closing it shall act in accordance with the following:

### **6.1. Operation of the Business.**

(a) Seller shall operate the Stations only in the ordinary course of business, consistent with past practice, and keep all books and accounts, records, and files in the usual and ordinary manner. Seller shall pay all March 2018 expenses as they become due and shall book revenue in March only for advertising that will air in the month of March.

(b) Seller shall continue to operate the Stations in material compliance with the terms of the FCC Authorizations and in compliance with the Communications Act, FCC Rules, and all other applicable laws, rules and regulations and in accordance with good engineering practices, except as noted on Schedule 1.1(a). Seller shall maintain the FCC Authorizations in full force and effect without adverse modification.

(c) Seller shall maintain the Tangible Personal Property in good operating condition (ordinary wear and tear excepted) and repair and maintain adequate and usual supplies, spare parts and other materials as have been customarily maintained in the past, and otherwise preserve intact the Assets and maintain in effect current insurance policies with respect to the Stations and Assets.

(d) Prior to the Closing Date, Seller shall not, without Buyer's prior written consent:

- (i) Modify any of the FCC Authorizations;
- (ii) Sell, lease, transfer, or agree to sell, lease or transfer, any of the Assets except for non-material sales or leases in the ordinary course of business of items which are replaced by assets of comparable or superior kind, condition and value;
- (iii) Renew, amend, or terminate any Contract, or enter into any new contract with respect to any of the Stations in any manner that will be binding upon Buyer or the Station after Closing;
- (iv) Make any change in the Stations' buildings, leasehold improvements or fixtures except in the ordinary course of business;
- (v) Consent to the execution, placement, creation or amendment of easements, restrictions, rights-of-way or other matters adversely affecting title to the Real Property; or
- (vi) Create, suffer, or permit the creation of any Lien on the Assets, except for Permitted Liens.

6.2. Consents/Estoppel. Seller shall use commercially reasonable efforts to obtain any third-party consents necessary to assign the Contracts to Buyer, and with respect to any leases, estoppel certificates setting forth the current rent amount, term expiration, existence of any defaults and other matters in a form reasonably acceptable to Buyer's counsel. If any such consent is not obtained prior to the Closing Date, Seller shall use commercially reasonable efforts to (i) obtain such consent as soon as possible after the Closing Date, (ii) provide to Buyer the financial and business benefits of any such Contract and (iii) enforce, at the request of Buyer, for the account of Buyer, any rights of such Seller arising from any such Contract. In the event Buyer receives the business benefit of a Contract, then Buyer agrees to assume the obligations under such Contract in accordance with this Agreement.

6.3 Access. Between the date hereof and the Closing Date, Seller will afford Buyer reasonable access to the facilities, properties, books and records of Seller relating to the Stations. Buyer, at its sole expense, shall be entitled to make such engineering and other inspections of the Assets as Buyer may desire, so long as such inspection would not unreasonably interfere with the operation of the Stations.

6.4 New Translator Pending Applications. Seller shall continue to diligently prosecute the New Translator Pending Applications, taking all actions required to maintain the validity of such applications and, except as otherwise provided in this Section 6.4, obtain a grant thereof. In the event that any such application results in the issuance of a construction permit, Seller shall prepare and file, either before or after Closing, one or more assignment applications seeking FCC approval for an assignment to the Buyer entity that is the proposed assignee or license holder of the applicable AM primary station specified on the construction permit, provided however that the cost of such filing fees shall be borne equally between Buyer and Seller. Whether before or

after Closing, in the event that any New Translator Pending Application is determined by the FCC to be mutually exclusive with any other application, or becomes the subject of a petition to deny, informal objection or interference complaint, Seller shall consult with Buyer on how or whether to proceed with respect to such application. Except as expressly stated herein, all actions taken pursuant to this Section 6.4 shall be at Buyer's sole cost and expense.

6.5 Modification Agreement. If Seller should receive the modification notice referred to in paragraph 1(c) of the Modification Agreement before the Closing Date, it shall notify Buyer and keep Buyer advised of, and perform, all such actions required of Seller under the Modification Agreement. Seller shall consult with and obtain Buyer's consent with respect to any choice of new transmission site made in furtherance of Seller's obligations under the Modification Agreement. Any funds received by Seller pursuant to the Modification Agreement between the date hereof and the Closing Date shall be held by Seller for the account of Buyer and transferred to Buyer on the Closing Date.

## ARTICLE 7. JOINT COVENANTS

7.1. Confidentiality. Subject to requirements of applicable law, Seller and Buyer shall each keep confidential all information obtained by it with respect to the other parties hereto in connection with this Agreement and the negotiations preceding this Agreement ("Confidential Information"); provided that, either party hereto may furnish such Confidential Information to its employees, agents, and representatives who need to know such Confidential Information (including its, tax, financial, and legal advisers, its banks and other lenders) ("Representatives"); provided however, the disclosing party shall be responsible for all actions or omissions of such Representatives with regard to Representatives' breach of this Section. Each party hereto shall, and shall cause each of such party's Representatives to, use the Confidential Information solely in connection with the transactions contemplated by this Agreement, and not for any competitive purpose or advantage detrimental to the other party hereto or any of its affiliates.

7.2. Control. Consistent with FCC Rules, control, supervision and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the FCC Authorizations.

7.3. Announcements. Prior to Closing, neither party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law.

7.4. Receivables. Within five (5) business days after the commencement of the LMA, Seller shall deliver to Buyer a complete list of all outstanding Receivables from the Stations' broadcasts arising prior to the commencement of the LMA ("Seller Receivables"). For a period of One Hundred Fifty (150) days from the commencement of the LMA, Buyer shall collect such Seller Receivables on behalf of Seller (the "Collection Period"). Subject to Schedule 2.2, if applicable, Buyer shall collect such Seller Receivables without commission or compensation, and remit such Seller Receivables to Licensee beginning on the tenth (10<sup>th</sup>) day of the calendar month following the commencement of the LMA, and every thirty (30) days thereafter for the remainder of the Collection Period, applying the collections to the oldest outstanding Receivables first. Upon the

expiration of the Collection Period, all remaining uncollected Seller Receivables shall be assumed by and become the property of Buyer. Buyer shall not incur any liability as the result of failure to collect said Receivables and shall not be required to institute suit to collect, but Buyer will exercise commercially reasonable efforts to collect said Receivables. Within ten (10) business days after the expiration of the Collection Period, Buyer will deliver to Seller a statement of all uncollected Seller Receivables, and Buyer's responsibility shall cease, except to cooperate with any subsequent, commercially reasonable request for information by Seller. Nothing in this Paragraph 7.4 shall limit or prohibit Seller from collecting the Seller Receivables. Seller shall be responsible for payment commissions due, if any, on the collected Seller Receivables.

7.5. Representations and Warranties. Each party shall render accurate at and as of the Closing Date the representations and warranties made by it in this Agreement.

7.6. Cure of Impediment to Closing. If any event should occur which would prevent the consummation by one party of the transactions contemplated hereunder (other than an event proximately caused by the other party), that party shall use its best efforts to cure such event as expeditiously as possible.

## **ARTICLE 8. CONDITIONS TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are, at its option, subject to the fulfillment or waiver of the following conditions prior to or on the Closing Date:

8.1. Representations, Warranties, and Covenants. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing except for changes permitted by the terms of this Agreement. The obligations to be performed by Seller at or prior to Closing shall have been performed in all material respects. Seller shall have furnished Buyer with a certificate, dated as of the Closing Date and duly executed by the sole member of Seller, to the effect that such conditions have been satisfied.

8.2. FCC Consent. The FCC Consent on the last of the FCC Applications to be granted shall have become a Final Order.

8.3. Liens. Other than Liens to be discharged by Seller on or before the Closing Date there shall not be any Liens on the Assets or any financing statements of record related to the Assets. Buyer may, at Buyer's sole expense, obtain any UCC, judgment, fixture and tax lien search reports as appropriate to confirm that no Liens are filed or recorded against the Assets in the public records of any applicable jurisdiction.

8.4. Consents. Subject to Section 6.2 above, Seller shall have obtained any third-party consents required for the assignment of any Contracts by Seller to Buyer.

8.5. Proceedings. No suit, action, claim or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against any party hereto which: (a) would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (b) questions the validity or legality of any transaction contemplated hereby; or (c) seeks to enjoin any

transaction contemplated hereby.

8.6. No Material Adverse Change. There shall have been no material adverse effect upon any of the Assets or the business of the Stations.

8.7. Deliveries. Seller shall have complied with its obligations set forth in Section 10.1.

8.8. Title Insurance Commitment. At or prior to the Closing, at Buyer's expense, Seller shall have caused to be delivered to Buyer: (i) the commitment of a title insurance company reasonably satisfactory to Buyer (the "Title Company") agreeing to issue to Buyer, a customary owner's title insurance policy insuring Buyer's title to the Real Property and (ii) a customary affidavit or indemnification agreement that shall be reasonably sufficient to cause the Title Company to affirmatively insure against the existence of outstanding rights that could form the basis for mechanic's, materialman's or similar liens, unrecorded documents, claims of parties in possession, and judgments or bankruptcies. Seller shall request such commitment within twenty (20) days after the execution of this Agreement. If a survey is required in order to obtain a title insurance commitment without a survey exception and Buyer wants to purchase title insurance without such an exception, the cost of such survey shall be borne by Buyer. If a Title Company will not agree to issue an owner's title insurance policy, Buyer shall have the option to terminate this Agreement by written notice to Seller.

8.9 Environmental Assessment. Buyer shall have the opportunity to obtain an environmental assessment of the Real Property, provided that within twenty (20) days of the date of this Agreement, Buyer retains the services of a qualified environmental professional to perform the assessment, the scope of which shall: (i) be consistent with all appropriate inquiry into the previous ownership and uses of the Real Property consistent with good commercial and customary practice and (ii) expressly require the environmental professional to issue, no later than twenty (20) days prior to Closing, a report certified by the environmental professional (the "Report") to include findings and conclusions of whether the environmental assessment has revealed any recognized environmental conditions on or affecting any of the Real Property that would either (i) materially impair the use of the Real Property for the operation of the Stations, or (ii) require remedial action. If Buyer retains the environmental professional as described in the preceding sentence, Buyer shall, upon receipt and prior to Closing, provide a copy of the Report to Seller, which shall include conclusions stating in substance that the environmental assessment did not reveal any recognized environmental conditions on or affecting the Real Property that would either: (i) materially impair the use of that Real Property for the operation of the Stations, or (ii) require remedial action; *provided, however*, if the conclusions of the Report state in substance that the environmental assessment has identified a recognized environmental condition on or affecting the Real Property that would require remedial action, then Seller shall have the option to satisfy the condition of this Section 8.9 by electing, pursuant to written notice to Seller prior to Closing, to retain responsibility for and to cure such environmental condition before Closing by performing all remedial action required by applicable Environmental Laws consistent with the commercial use of such Real Property to operate the Stations, at Seller's expense and with Buyer's reasonable cooperation. Absent such written election, Buyer may terminate this Agreement.

8.10 Lease Extensions. Seller shall have obtained extensions of each of the real property leases designated by an asterisk on **Schedule 1.1(c)** attached hereto, for extension terms acceptable to Buyer.

8.11 AM Station Repairs. As of the Closing Date, the repairs to Station KALE shall have been completed and the station restored to licensed parameters.

8.12 Yakima Studio Lease Amendment. Seller shall have entered into an amendment to the Yakima Studio Lease between JBI Properties, LLC and IRW setting forth the rights of the tenant to parking spaces during the term of the lease and tenant's obligation to pay for the parking spaces and the condominium association fees and abatement of the rent for a period of twelve months from the Closing Date.

## **ARTICLE 9. CONDITIONS TO THE OBLIGATIONS OF SELLER**

The obligations of Seller to consummate the transactions contemplated by this Agreement are, at its option, subject to the fulfillment or waiver of the following conditions prior to or on the Closing Date:

9.1. Representations, Warranties, and Covenants. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing except for changes permitted by the terms of this Agreement. The obligations to be performed by Buyer at or prior to Closing shall have been performed in all material respects. Buyer shall have furnished Seller with a certificate, dated as of the Closing Date and duly executed by a person authorized on behalf of Buyer to give such a certificate, to the effect that such conditions have been satisfied.

9.2. FCC Consent. The FCC Consent on the last of the FCC Applications to be granted shall have been issued.

9.3. Proceedings. No suit, action, claim or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against any party hereto which: (a) would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (b) questions the validity or legality of any transaction contemplated hereby; or (c) seeks to enjoin any transaction contemplated hereby.

9.4. Deliveries. Buyer shall have complied with its obligations set forth in Section 10.2.

## **ARTICLE 10. CLOSING DELIVERIES**

10.1. Deliveries by Seller. At the Closing, Seller shall deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel, specifying SMG Yakima or SMG Tri-Cities as assignee, owner, title holder or recipient thereof as determined by Buyer:

(a) An Assignment and Assumption of FCC Authorizations assigning the FCC Authorizations to Buyer;



## Execution

- (b) A Bill of Sale transferring title to the Tangible Personal Property and Intangible Property to Buyer;
- (c) An Assignment and Assumption of Contracts assigning the Contracts to Buyer;
- (d) An Assignment and Assumption of each Real Property lease included among the Assets;
- (e) Third-party consents necessary for the assignment and assumption of the Contracts, subject to the provisions of section 6.2;
- (f) Warranty Deeds conveying fee simple title to the owned Real Property;
- (g) A certificate, dated the Closing Date, certifying the fulfillment of the conditions set forth in Section 8.1 by Seller;
- (h) A good standing certificate issued by the Secretary of State of North Dakota;
- (i) Certified resolutions of Seller authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;
- (j) A joint notice to the Escrow Agent directing the release of the Earnest Money Deposit to Seller as payment of a portion of the Purchase Price; and
- (k) Such other documents and instruments of conveyance, assignment and transfer that may be reasonably necessary to sell, assign, transfer, convey, or otherwise provide good and marketable title in and to the Assets to Buyer free and clear of Liens, except for Permitted Liens.

10.2. Deliveries by Buyer. At the Closing, Buyer, in the name of SMG Yakima or SMG Tri-Cities as applicable, shall deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

- (a) An Assignment and Assumption of FCC Authorizations assuming the FCC Authorizations from Seller;
- (b) An Assignment and Assumption of Contracts assuming the obligations under the Contracts from Seller;
- (c) An Assignment and Assumption of each Real Property lease included among the Assets;
- (d) A certificate, dated the Closing Date, certifying the fulfillment of the conditions set forth in in Section 9.1 by Buyer;
- (e) A good standing certificate issued by the Secretary of State of Oklahoma;

(f) Certified resolutions of Buyer authorizing and approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby;

(g) A joint notice to the Escrow Agent directing the release of the Earnest Money Deposit to Seller as payment of a portion of the Purchase Price due from Buyer;

(h) The balance of the Purchase Price in immediately available wire transferred funds as provided in Section 2.1; and

(i) Any other documents and instruments of assumption that may be reasonably necessary to purchase and acquire the Assets and to assume the Assumed Obligations.

## **ARTICLE 11. SURVIVAL**

The representations and warranties in this Agreement shall expire one (1) year after the Closing ("Survival Period"), except as otherwise expressly stated herein. The covenants and agreements in this Agreement, and indemnification obligations with respect to such provisions, shall survive Closing until performed. No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the earlier of the last day of the Survival Period or expiration of the applicable statute of limitations. In the event such notice is given, the right to indemnification with respect thereto shall survive the Survival Period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

## **ARTICLE 12. TERMINATION AND REMEDIES**

12.1. Termination. This Agreement may be terminated at any time prior to the Closing Date as follows:

(a) By mutual written consent of both parties;

(b) By written notice of Buyer (provided it is not in material default hereunder) to Seller if Seller fails to perform the obligations to be performed by it, or otherwise breaches in any material respect any of its representations or warranties, under this Agreement and such failure or breach is not cured within thirty (30) calendar days ("Cure Period") after Seller receives notice of such breach or default from Buyer; or

(c) By written notice of Seller (provided it is not in material default hereunder) to Buyer if Buyer fails to perform the obligations to be performed by it, or otherwise breaches in any material respect any of its representations or warranties, under this Agreement or the LMA and such breach or default is not cured within the Cure Period after Buyer receives notice of such breach or default from Seller, provided however that the Cure Period shall not apply in the event that Buyer's material breach is the result of failure to pay the Purchase Price on the Closing Date; or

(d) By written notice of one party to the other if the FCC denies the FCC Application or designates it for a trial-type hearing, provided, however, that the right to terminate this Agreement under this Section 12.1(d) shall not apply to any party whose action or inaction shall have been a cause for such denial or designation; or

(e) By written notice of one party to the other if Closing does not occur within one (1) year after the date of this Agreement.

Termination of this Agreement shall not relieve any party of any liability it would otherwise have for a breach or default under this Agreement. In the event of a termination of this Agreement in accordance with Sections 12.1(a), (b), (d) or (e), the Earnest Money Deposit shall be returned to Buyer.

12.2. Specific Performance. Seller acknowledges that the Stations are unique assets not readily available on the open market and that in the event Seller fails to perform its obligation to consummate the transaction contemplated hereby, irreparable harm may occur to Buyer as to which money damages alone will not be adequate to compensate Buyer for its injury. Seller therefore agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

12.3. Liquidated Damages. In the event that this Agreement is terminated by Seller pursuant to Section 12.1(c), Seller shall be entitled to the Earnest Money Deposit and all Station revenues retained by Buyer during the Term of the LMA in accordance with Schedule A thereof. Seller hereby waives all other legal and equitable remedies it may otherwise have as a result of any breach or default by Buyer under this Agreement.

12.4. Indemnification.

(a) Subject to the limitations set forth herein, following the Closing, Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations, warranties or certifications made in or pursuant to, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement or any other transaction documents or the LMA; or (ii) the Retained Liabilities.

(b) Subject to the limitations set forth herein, following the Closing, Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations, warranties or certifications made in or pursuant to, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in, this Agreement or any other transaction documents or the LMA; or (ii) any

and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Stations subsequent to the Closing and the Assumed Obligations.

(c) If any party (the “*Indemnitee*”) receives notice or otherwise obtains knowledge of any matter with respect to which another Party (the “*Indemnifying Party*”) may be obligated to indemnify the Indemnitee under this Section 12.4, then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith; provided that no failure or delay in the giving of such notice shall affect the Indemnitee’s rights under this Section 12.4 except to the extent that such failure or delay has materially prejudiced the Indemnifying Party’s ability to defend the matter in question.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) neither party shall have any liability to the other under Section 12.1 or 12.2, as applicable, until such party’s aggregate Damages exceeds Twenty Thousand Dollars (\$20,000.00) (the “*Threshold Amount*”), and (ii) the maximum aggregate liability of a party to the other, under Section 12.4(a) or (b), as applicable, shall be Five Hundred Thousand Dollars (\$500,000.00) (the “*Cap Amount*”).

(e) If the Indemnifying Party is entitled to and does elect to assume the defense of any matter pursuant to Section 12.4(c) and conducts such defense in a reasonably vigorous manner, then (i) the Indemnitee, at the Indemnifying Party’s expense, shall fully cooperate as reasonably requested by the Indemnifying Party in the defense of such matter, (ii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, (iii) the Indemnitee shall have the right to participate, at its own expense, in the defense of such matter, and (iv) except with the prior written consent of the Indemnitee, the Indemnifying Party will not, in the defense of such matter, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost), or enter into any settlement, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnitee of a release from all Damages in respect of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(f) Any representation, warranty or certification that is specifically identified in a written claim for indemnification delivered within the period herein provided shall survive until the claim in question is either settled or finally adjudicated.

(g) The parties agree that any indemnity payments made pursuant to this Section 12.4 will be treated by the parties on all applicable tax returns as an adjustment to the Purchase Price.

## **ARTICLE 13. GENERAL PROVISIONS**

13.1. Risk of Loss. The risk of loss of or damage to any of the Assets shall remain with Seller at all times until 12:01 a.m. local time on the day of Closing, and Buyer shall bear such risk on and after the Closing Date. In the event of any casualty loss or similar damage to any Asset (“*Damaged Asset*”) existing as of the date hereof or occurring prior to the Closing Date that

remains unrepaired or has not been replaced (other than a Damaged Asset that was obsolete and unnecessary for the continued operation of the Stations) by the date on which the Closing would otherwise occur under this Agreement, then the proceeds in respect of such loss or damage under any insurance covering such Damaged Asset ("Proceeds") shall be assigned to Buyer at Closing. In the event that the Proceeds are insufficient to fully repair or replace a Damaged Asset, then Buyer will be entitled, but not obligated, to accept the Damaged Assets in their then-current conditions and will receive a reduction in the Purchase Price in an amount equal to the difference between the reasonably estimated amount necessary to repair or replace the Damaged Assets to a reasonable operating condition and the amount of any unused Proceeds and payment of any related deductible amount. If Buyer elects to accept Damaged Assets at a reduced Purchase Price, then Buyer shall be deemed to have waived any breach of the representations, warranties or covenants set forth in this Agreement with respect to such loss or damage.

13.2. Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement, except that Seller shall bear any broker's fees. The FCC Fee under Section 3.2 of this Agreement shall be shared equally between Buyer and Seller.

13.3. Further Assurances. Each party shall execute all such instruments and take all such actions as any other party may reasonably request, without payment of further consideration, to effectuate the transactions contemplated by this Agreement, including without limitation the execution and delivery of confirmatory and other transfer documents in addition to those to be delivered at Closing.

13.4. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and permitted assigns. This Agreement and any rights or obligations hereunder may be assigned by Buyer or Seller only with the prior written consent of the other party, which shall not be unreasonably withheld.

13.5. Notices. Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery, confirmed facsimile transmission, confirmed delivery by a nationally recognized overnight courier service, or on the third (3<sup>rd</sup>) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be address as follows (or to such other address as any party may request by written notice):

if to Seller, then to:

Ingstad Radio Washington, LLC  
P.O. Box 9439  
Fargo, ND 58105  
Attn: Jim Ingstad  
Tel: (701) 277-4200  
Email: jingstadhomeoffice@gmail.com

With a copy (which shall not constitute notice) to:

Sciarrino & Shubert, PLLC  
4601 North Fairfax Dr.  
Suite 1200

Arlington, VA 22203  
Attn: Dawn M. Sciarrino, Esq.  
Tel: (202) 256-9551  
Facsimile: (703) 991-7120  
Email: [dawn@sciarrinolaw.com](mailto:dawn@sciarrinolaw.com)

If to Buyer, then to:

Stephens Family Limited Partnership  
2448 E. 81<sup>st</sup> Street, Suite 5500  
Tulsa, OK 74137  
Attn: David Stephens  
Tel: (918) 492-2660  
Email: david.stephens@smgok.com

With a copy (which shall not  
constitute notice) to:

Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471  
Attn: Joseph C. Chautin, III, Esq.  
Tel: (985) 629-0777  
Facsimile: (985) 629-0778  
Email: jachautin@hardycarey.com

13.6. Amendments and Waivers. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

13.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

13.8. Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal, or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal, or unenforceable provision deleted and the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

13.9. Governing Law; Venue. The construction and performance of this Agreement shall be governed by the laws of the state of Washington without giving effect to the choice of law provisions thereof.

13.10. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

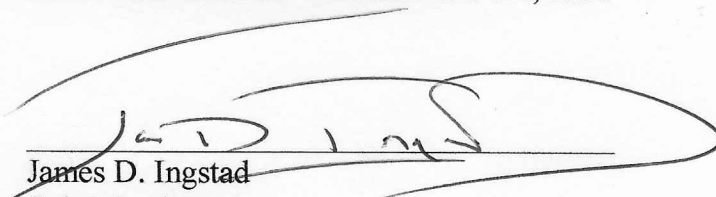


SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**SELLER:**

**INGSTAD RADIO WASHINGTON, LLC**

  
James D. Ingstad  
Sole Member

**BUYER:**

**SMG YAKIMA, LLC and SMG TRI-CITIES,  
LLC**

by their Managing Member

**STEPHENS FAMILY LIMITED  
PARTNERSHIP**

by its General Partner

The David P. Stephens Trust

\_\_\_\_\_  
David P. Stephens  
Trustee



SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**SELLER:**

**INGSTAD RADIO WASHINGTON, LLC**

\_\_\_\_\_  
James D. Ingstad  
Sole Member

**BUYER:**


**SMG YAKIMA, LLC and SMG TRI-CITIES,  
LLC**

by their Managing Member

**STEPHENS FAMILY LIMITED  
PARTNERSHIP**

by its General Partner

The David P. Stephens Trust

  
\_\_\_\_\_  
David P. Stephens  
Trustee