

ASSET PURCHASE AGREEMENT  
DATED AS OF MAY 22, 2003  
BY AND AMONG  
FIRST MEDIA RADIO, LLC  
and  
MAINQUAD COMMUNICATIONS,  
MAINQUAD BROADCASTING, INC.,  
MAINQUAD, INC.,  
WEQQ, INC.  
AND  
CAROLINA AIRWAVES, INC.

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT is dated as of May 22, 2003, by and among First Media Radio, LLC, a Delaware limited liability company (“Buyer”), and MainQuad Communications, Inc., a North Carolina corporation (“MQC”), MainQuad Broadcasting, Inc., a North Carolina corporation (“MQB”), MainQuad, Inc., a North Carolina corporation (“MQI”), WEQQ, Inc., a North Carolina corporation (“WEQQ”) and Carolina Airwaves, Inc., a North Carolina corporation (“Carolina Airwaves” and together with MQC, MQB, MQI and WEQQ sometimes hereinafter collectively referred to as the “Sellers” and individually as a “Seller”).

### RECITALS

A. MQC is the licensee of and owns and operates Radio Stations WLGQ(FM), Emporia, Virginia (“WLGQ(FM)”), WPTM(FM), Roanoke Rapids, North Carolina (“WPTM(FM)”), WSMY(AM), Weldon, North Carolina (“WSMY(AM)”) and WNVN-LP, Roanoke Rapids, North Carolina (“WNVN-LP”); MQB is the licensee of and owns and operates Radio Stations WSMY-FM, Alberta, Virginia (“WSMY-FM”) and WZAX(FM), Nashville, North Carolina (“WZAX(FM)”); MQI is the licensee of and owns and operates Radio Stations WCBT(AM), Roanoke Rapids, North Carolina (“WCBT(AM)”) and WYTT(FM), Gaston, North Carolina (“WYTT(FM)”); WEQQ is the licensee of and owns Radio Station WKTC(FM), Pinetops, North Carolina (“WKTC(FM)”); and Carolina Airwaves owns assets that are used or useful in the business and operations of WKTC(FM) and WZAX(FM), in each case pursuant to licenses and authorizations issued by the Federal Communications Commission. WLGQ(FM), WPTM(FM), WSMY(AM), WSMY-FM, WZAX(FM), WCBT(AM), WNVN-LP, WYTT(FM) and WKTC(FM) are sometimes hereinafter collectively referred to as the “Stations” and individually as a Station.

B. Sellers desire to sell, and Buyer wishes to buy, substantially all the assets that are used or useful in the business or operations of the Stations, for the price and on the terms and conditions set forth in this Agreement.

### AGREEMENTS

In consideration of the above recitals and of the mutual agreements and covenants contained in this Agreement, Buyer and Sellers, intending to be bound legally, agree as follows:

#### **SECTION 1. DEFINITIONS**

1.1 Defined Terms. The following terms, as used in this Agreement, shall have the meanings set forth in this Section:

“**Accounts Receivable**” means the rights of any Seller to payment for the sale of advertising or programming time run by such Seller on the Stations prior to the Adjustment Time.

“**Adjustment Time**” means 12:01 a.m., local North Carolina time, on the Closing Date.

“Affiliate” has the meaning set forth in Rule 12b-2 promulgated under the Securities and Exchange Act of 1934

“Assets” means the assets to be sold, transferred, or otherwise conveyed to Buyer under this Agreement, as specified in **Section 2.1**.

“Assumed Contracts” means (i) all Contracts listed in Schedule 3.7 that are specifically designated as Contracts to be assumed by Buyer upon its purchase of the Stations, (ii) Contracts with advertisers for the sale of advertising time on the Stations for cash at prevailing rates which have not been prepaid and which may be canceled by the Stations without penalty on not more than thirty (30) days’ notice, and (iii) any Contracts entered into by any Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume.

“Buyer Related Party” means Buyer or any member, partner, shareholder, officer, director, agent, employee, or Affiliate of Buyer or any lender to Buyer.

“Closing” means the consummation of the purchase and sale of the Assets pursuant to this Agreement in accordance with the provisions of **Section 8**.

“Closing Date” means the date on which the Closing occurs, as determined pursuant to **Section 8**.

“Compensation Arrangement” means any plan or compensation arrangement other than an Employee Plan, whether written or unwritten, that provides to employees, former employees, officers, managers or independent contractors of any Seller any compensation or other benefits, whether deferred or not, in excess of base salary or wages, including any bonus or incentive plan, stock rights plan, deferred compensation arrangement, life insurance, stock purchase plan, severance pay plan, change of control arrangements, and any other employee fringe benefit plan.

“Consents” means the consents, permits, or approvals of government authorities and other third parties necessary to transfer the Assets to Buyer or otherwise to consummate the transactions contemplated by this Agreement.

“Contracts” means all contracts, leases, non-governmental licenses, and other agreements (including leases for personal or real property and employment agreements), written or oral (including any amendments and other modifications thereto) to which any Seller is a party or which are binding upon any Seller and which relate to or affect the Assets or the business or operations of the Stations, and (i) which are in effect on the date of this Agreement or (ii) which are entered into by any Seller between the date of this Agreement and the Closing Date.

“Employee Plan” means any retirement or welfare plan or arrangement or any other employee benefit plan as defined in ERISA Section 3(3) that any Seller or any entity that is treated as a single employer with any Seller under Internal Revenue Code Section 414(b),(c),(m),(n) or (o) sponsors or maintains, or by which any Seller is bound or to which any Seller contributes or is required to contribute.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” means Union Bank of California, N.A.

“Escrow Agreement” means the Escrow Agreement, of even date herewith, by and among Buyer, Sellers and the Escrow Agent.

“FCC” means the Federal Communications Commission.

“FCC Consent” means action by the FCC granting its consent to the assignment of the FCC Licenses to Buyer as contemplated by this Agreement.

“FCC Licenses” means all Licenses issued by the FCC in connection with the business or operations of the Stations.

“Final Order” means an action by the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no requests are pending for administrative or judicial review, reconsideration, appeal, or stay, and the time for filing any such requests and the time for the FCC to set aside the action on its own motion have expired.

“Intangibles” means all copyrights, trademarks, trade names, service marks, service names, licenses, patents, permits, jingles, internet domain names, proprietary information, technical information and data, machinery and equipment warranties, and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) applied for, issued to, or owned by any Seller or under which any Seller is licensed or franchised and which are used or useful in the business and operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date.

“Licenses” means all licenses, permits, tower registrations and other authorizations issued by the FCC, the Federal Aviation Administration, or any other federal, state, or local governmental authorities to any Seller in connection with the conduct of the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date.

“North Carolina Stations” means WPTM(FM), WSMY(AM), WNVN-LP, WZAX(FM), WCBT(AM), WYTT(FM), and WKTC(FM) and all broadcast auxiliary radio stations and private radio stations associated therewith.

“Real Property” means all real property and interests in real property, including fee estates, leaseholds and subleaseholds, purchase options, easements, licenses, rights to access, and rights of way, and all buildings and other improvements thereon, and other real property interests which are used or useful in the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date.

“Tangible Personal Property” means all machinery, equipment, tools, vehicles, furniture, leasehold improvements, office equipment, plant, inventory, spare parts, and other tangible personal property which is used or useful in the conduct of the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date.

“TBA Agreements” means (i) the Time Brokerage Agreement dated January 21, 1998 between Carolina Airwaves and MQB relating to WZAX(FM); (ii) Asset Purchase Option dated January 21, 1998 between Carolina Airwaves and MQB relating to WZAX(FM); (iii) the Time Brokerage Agreement dated January 21, 1998 between Carolina Airwaves and WEQQ relating to WKTC(FM) and (iv) the Asset Purchase Option dated January 21, 1998 between Carolina Airwaves and WEQQ relating to WKTC (FM) (formerly WEQQ(FM)).

“Virginia Stations” means WLGQ(FM) and WSMY-FM and all broadcast auxiliary radio stations associated therewith.

1.2 [Terms Defined Elsewhere in this Agreement.](#) For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Auction	Section 2.3(b)
Buyer	Preamble
Carolina Airwaves	Preamble
Claimant	Section 10.4(a)
Cluster Stations	Section 9.1(c)
COBRA	Section 3.20(b)
Collection Period	Section 6.14
Communications Act	Section 3.4(c)
Escrow Amount	Section 2.7(c)
Escrow Deposit	Section 2.7
Estimated Adjustment	Section 2.3(c)(i)
Estimated Purchase Price	Section 2.4
Excluded Contracts	Section 2.2(f)
Facilities Modification	Section 2.3(a)
Facilities Modification Agreement	Section 2.3(a)
FCC Allocation Decision	Section 6.22
FCC Decision	Section 9.1(c)
Final Purchase Price	Section 2.4(b)(i)
Financial Statements	Section 3.10
Indemnifying Party	Section 10.4(a)
License Renewal Application	Section 6.19(a)
LMA	Section 6.20(e)
MQB	Preamble
MQC	Preamble
MQI	Preamble
Noncompetition Agreement	Section 6.16
North Carolina Assets	Section 6.20
North Carolina Closing	Section 6.20
North Carolina Purchase Price	Section 6.20(a)
Pending License Application	Section 6.19(b)
Post Closing Indemnification Escrow	Section 10.5
Prorations Statement	Section 2.3(c)(i)

Purchase Price	Section 2.3
Sellers	Preamble
Sellers' Plans	Section 6.15(e)
Stations	Recitals
Third Party	Section 6.22
Upset Date	Section 9.1(b)
Virginia Assets	Section 6.20
Virginia Closing	Section 6.20
Virginia Purchase Price	Section 6.20(a)
WCBT(AM)	Recitals
WEQQ	Preamble
WKTC(FM)	Recitals
WLGQ(FM)	Recitals
WNVN-LP	Recitals
WPTM(FM)	Recitals
WSMY(AM)	Recitals
WSMY-FM	Recitals
WYTT(FM)	Recitals
WZAX(FM)	Recitals

1.3 **Rules of Construction.** Except as specifically otherwise provided in this Agreement in a particular instance, a reference to a Section, Schedule or Exhibit is a reference to a Section of this Agreement or a Schedule or Exhibit hereto, and the terms “hereof,” “herein,” and other like terms refer to this Agreement as a whole, including the Schedules and Exhibits to this Agreement, and not solely to any particular part of this Agreement. The descriptive headings in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

## **SECTION 2. PURCHASE AND SALE OF ASSETS**

2.1 **Agreement to Sell and Buy.** Subject to the terms and conditions set forth in this Agreement, Sellers hereby agree to sell, transfer, and deliver to Buyer on the Closing Date, and Buyer agrees to purchase on the Closing Date, all of the tangible and intangible assets used or useful in connection with the conduct of the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date, but excluding the assets described in **Section 2.2**, free and clear of any claims, liabilities, security interests, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever (except for liens for current taxes not yet due and payable), including, without limitation, the following:

- (a) the Tangible Personal Property;
- (b) the Real Property;
- (c) the Licenses;
- (d) the Assumed Contracts;

(e) the Intangibles and all intangible assets of each Seller relating to the Stations that are not specifically included within the Intangibles;

(f) all of each Seller's proprietary information, technical information and data, machinery and equipment warranties, maps, computer discs and tapes, FCC logs, plans, diagrams, blueprints, and schematics, including filings with the FCC relating to the business and operation of the Stations;

(g) all choses in action for the benefit of each Seller relating to the Stations;

(h) all books and records relating to the business or operations of the Stations, including executed copies of the Assumed Contracts, and all records required by the FCC to be kept by the Stations provided that Sellers may retain copies; and

(i) all equipment warranties to the extent transferable by any Seller.

2.2 Excluded Assets. The Assets shall exclude the following assets:

(a) any Seller's cash on hand and cash equivalents such as certificates of deposit as of the Closing;

(b) any insurance policies, bonds, letters of credit, or other similar items, and any cash surrender value in regard thereto;

(c) any Employee Benefit Plan or Compensation Arrangement and any collective bargaining agreements;

(d) all books and records pertaining to internal corporate organizational matters of any Seller;

(e) the Accounts Receivable;

(f) all Contracts that are not Assumed Contracts and the Contracts described on Schedule 2.2 (the "Excluded Contracts"); and

(g) goodwill of the Stations, if any.

2.3 Purchase Price. The purchase price (the "Purchase Price") for the Assets shall be Eleven Million Three Hundred Fifty Thousand Dollars (\$11,350,000), subject to upward or downward adjustment, as the case may be, on and after the Closing Date pursuant to **Section 2.3(a) – (c)** below.

(a) Prorations and Adjustments. The Purchase Price shall be increased or decreased as required to effectuate the proration of revenues and expenses as provided for herein. All revenues and expenses arising from the operation of the Stations, including business and license fees, FCC annual regulatory fees, utility charges, real and personal property taxes and assessments levied against the Assets, property and equipment rentals, applicable copyright or other fees, sales and service charges, taxes (except for taxes arising from the transfer of the

Assets under this Agreement), and similar prepaid and deferred items shall be prorated between Buyer and Sellers to effect the principle that Sellers receive all revenues and shall be responsible for all expenses, costs, and liabilities allocable to any Station for the period prior to the Adjustment Time, and Buyer shall receive all revenues and shall be responsible for all expenses, costs, and obligations allocable to any Station for the period after the Adjustment Time. Notwithstanding the preceding sentence, there shall be no adjustment for, and Sellers shall remain solely liable with respect to, any Excluded Contracts and any other obligation or liability not being assumed by Buyer in accordance with **Section 2.5**. On the Closing Date, the Purchase Price shall be reduced by \$16,409 as agreed by the parties in connection with certain repairs and replacements to the Assets to be made by Buyer subsequent to Closing, which are anticipated to cost the Buyer approximately \$66,409, the first \$50,000 of which Buyer has agreed to pay to Sellers. To the extent that the cost to Buyer is less than \$66,409 but more than \$50,000, the Purchase Price shall be increased accordingly by the difference between the cost to Buyer and \$50,000 as reflected on the post-closing settlement statement to be delivered pursuant to **Section 2.3(c)(ii)** below. To the extent the facilities modification relating to WZAX(FM) (the "Facilities Modification") pursuant to the Facilities Modification Agreement referenced on Schedule 2.2 (the "Facilities Modification Agreement") has been completed such that MQB has received \$50,000 in connection therewith, the Purchase Price shall be decreased by \$50,000.

(b) Trade Adjustment. In the event that the value of the advertising time remaining to be run by the Stations under trade or barter agreements as of the Adjustment Time exceeds by more than \$5,000 the value of the goods or services to be received by the Stations under such trade or barter agreements as of the Adjustment Time, the Purchase Price shall be reduced by an amount equal to such amount in excess of \$5,000. For purposes of this Section, the liability of the Stations for unperformed time as of the Adjustment Time shall be valued according to the fair market value of the goods or services received or to be received by the Stations for such time under such agreements. With respect to the auction to be held at WZAX(FM) and WKTC(FM) on June 28, 2003 (the "Auction"), the Purchase Price shall be increased such that Buyer receives all revenues arising from advertising time to be run by Buyer on and after the Adjustment Time based on the proportionate share of revenue received by Sellers for the related item at the Auction and the number of advertisements run by Sellers prior to Closing. For example, if a \$100 tennis racquet is given to WZAX(FM) in exchange for \$100 of advertising time (or 2 spots) and the tennis racquet sells at Auction for \$80, and if only one spot has been run prior to Closing, Buyer will receive a Purchase Price adjustment in favor of Buyer for \$40 and run the remaining spot.

(c) Manner of Determining Adjustments and Prorations. The adjustments and prorations to the Purchase Price pursuant to **Sections 2.3(a)** and **(b)** will be determined in accordance with the following procedures:

(i) Not later than five (5) days before the Closing Date, (A) Sellers shall prepare and deliver to Buyer a preliminary statement which shall set forth Sellers' good faith estimate of the adjustments to the Purchase Price under **Sections 2.3(a)** and **(b)** as of the Adjustment Time (the "Prorations Statement"). The Prorations Statement (A) shall contain all information reasonably necessary to determine the adjustments or prorations to the Purchase Price under **Sections 2.3(a)** and **(b)**, including appropriate supporting documentation, to the extent such adjustments can be determined

or estimated as of the date of such statement, and such other information as may be reasonably requested by Buyer, and (B) shall be certified by Sellers to be true and complete as of the date thereof. The adjustments to the Purchase Price to be made at Closing shall be based upon the Prorations Statement, except that any item disputed by Buyer shall be omitted therefrom (the "Estimated Adjustment").

(ii) Not later than ninety (90) days after the Closing Date, Buyer will deliver to Sellers a statement setting forth Buyer's determination of any changes to the adjustments and prorations to the Purchase Price pursuant to **Sections 2.3(a) and (b)**. If Sellers dispute the amount of the adjustments and prorations determined by Buyer, Sellers shall deliver to Buyer within twenty (20) days after its receipt of Buyer's statement a statement setting forth Sellers' determination of the amount of the adjustments and prorations to the Purchase Price. If Sellers notify Buyer of its acceptance of Buyer's statement, or if Sellers fail to deliver Sellers' statement within the twenty (20) day period specified in the preceding sentence, Buyer's determination of the adjustments and prorations to the Purchase Price shall be conclusive and binding on the parties as of the last day of the twenty (20) day period.

(iii) Buyer and Sellers shall use good faith efforts to resolve any dispute involving the determination of the adjustments and prorations to the Purchase Price under **Sections 2.3(a) and (b)**. If the parties are unable to resolve the dispute within fifteen (15) days following the delivery of Sellers' statement under **Section 2.3(c)(ii)**, Buyer and Sellers shall jointly designate an independent certified public accountant, who shall be knowledgeable and experienced in the operation of radio broadcasting stations, to resolve the dispute. If the parties are unable to agree on the designation of an independent certified public accountant, the selection of the accountant to resolve the dispute shall be submitted to arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. Any fees of this accountant shall be split equally between Sellers and Buyer.

2.4 [Payment of Purchase Price](#). The Purchase Price shall be paid by Buyer to Sellers as follows:

(a) [Payment of Purchase Price](#). At the Closing, Buyer shall pay Sellers an amount equal to the sum of (i) the Purchase Price plus or minus the Estimated Adjustment (the "Estimated Purchase Price"), minus (ii) the amount of the Escrow Deposit, which Escrow Deposit shall be converted into Post-Closing Indemnification Escrow pursuant to **Section 10.5** hereof. Buyer shall pay such amount in cash by federal wire transfer of same-day funds pursuant to wire instructions which shall be delivered by Sellers to Buyer at least two (2) business days prior to the Closing Date.

(b) [Payments to Reflect Final Adjustments](#).

(i) In the event that the Purchase Price as adjusted by the adjustments under **Sections 2.3(a) and (b)** and as finally determined pursuant to **Sections 2.3(c)(ii)**

and (iii) (the “Final Purchase Price”) exceeds the Estimated Purchase Price, Buyer shall pay to Sellers in immediately available funds within five (5) days after the date on which the Final Purchase Price is finally determined, the difference between the Final Purchase Price and the Estimated Purchase Price.

(ii) In the event that the Final Purchase Price is less than the Estimated Purchase Price, Sellers shall pay to Buyer in immediately available funds within five (5) days after the date on which the Final Purchase Price is finally determined, the difference between the Final Purchase Price and the Estimated Purchase Price.

2.5 [Assumption of Liabilities and Obligations](#). As of the Closing Date, Buyer shall assume and undertake to pay, discharge, and perform all obligations and liabilities of Sellers under the Licenses and the Assumed Contracts to the extent that either (1) the obligations and liabilities relate to the period after the Adjustment Time and arise out of events related to Buyer’s ownership of the Assets or its operation of the Stations on or after the Adjustment Time or (2) the Purchase Price was reduced pursuant to **Section 2.3(a)** as a result of the proration or adjustment of such obligations and liabilities. Buyer shall not assume any other obligations or liabilities of any Seller, including (i) any obligations or liabilities under any Excluded Contract, (ii) any obligations or liabilities under the Assumed Contracts relating to the period prior to the Adjustment Time except insofar as a proration or adjustment therefor is made in favor of Buyer under **Section 2.3(a)**, (iii) any obligations, liabilities, claims or litigation or proceedings relating to the ownership or operation of the Stations prior to the Closing, whether or not set forth in **Section 3.14**, (iv) any obligations or liabilities relating to indebtedness for borrowed money or arising under capitalized leases or other financing agreements, (v) any obligations or liabilities of any Seller under any employee pension, retirement, health and welfare or other benefit plans or collective bargaining agreements, (vi) any obligation to any employee of the Stations for wages, salaries, commissions, incentive compensation, severance benefits, vacation time, or sick leave accrued prior to or as of the Closing Date, (vii) any obligations or liabilities caused by, arising out of, or resulting from any action or omission of any Seller prior to the Closing (viii) any liabilities or claims relating to taxes; (ix) any obligations relating to dividends or accrued interest; (x) obligations relating to any business of any Seller other than any Station or any Affiliate of any Seller; (xi) obligations under any contract or commitment that does not constitute a Contract; (xii) obligations under any excluded assets under **Section 2.2**; (xiii) any liability or obligation of any Seller arising out of any Contract which cannot be fully and effectively conveyed to Buyer hereunder and for which Buyer does not accept the benefits thereof and (xiv) any obligations or liabilities of any Seller under any contract or otherwise which breach any representation or warranty of any Seller or which violate any covenant, agreement or condition contained in this Agreement or in any instrument delivered in connection therewith, and all such obligations and liabilities shall remain and be the obligations and liabilities solely of Sellers.

2.6 [Allocation of Purchase Price and Tax-Deferred Exchange](#). (a) The Purchase Price shall be allocated among the Stations as provided on [Schedule 2.6](#). Buyer and Sellers shall file all tax returns and statements in accordance with such allocation.

(b) Sellers intend that this transaction is one part of a tax-deferred exchange as recognized under Section 1031 of the Internal Revenue Code. Buyer agrees to execute such

documents as may reasonably be required to qualify the transaction for treatment under that section, provided that execution of such documents does not adversely affect Buyer.

2.7 **Escrow Deposit.** Buyer has deposited on the date hereof with the Escrow Agent the sum of Five Hundred Sixty Seven Thousand Five Hundred Dollars (\$567,500) (the “Escrow Deposit”) in accordance with the Escrow Agreement. All such funds deposited with the Escrow Agent shall be held and disbursed in accordance with the terms of the Escrow Agreement and the following provisions:

(a) At the Closing, Buyer and Sellers shall instruct the Escrow Agent to (i) convert the Escrow Deposit into the Post Closing Indemnification Escrow and (ii) release all interest and other proceeds from investment on the Escrow Deposit to Buyer.

(b) If Buyer shall fail to fulfill its obligations under this Agreement after all conditions precedent to its obligations hereunder have been satisfied and Sellers stand ready, willing and able to perform their obligations hereunder, Sellers may, by written notice to Buyer and Escrow Agent, terminate this Agreement and direct Escrow Agent, subject to the provisions of the Escrow Agreement, to pay the Escrow Deposit over to Sellers. In such event, Escrow Agent shall, subject to the terms of the Escrow Agreement, thereupon pay the Escrow Deposit over to Sellers, in consideration of Sellers’ time, effort, expenses and indeterminable losses under or in connection with this Agreement and pay the interest and other proceeds from investment of the Escrow Deposit to Buyer. The parties agree that the Escrow Deposit is a reasonable estimate of the damages that Sellers would suffer in the event of such failure by Buyer to fulfill its obligations and is not in the nature of a penalty. Any such payment to Sellers shall be deemed to constitute full liquidated damages and the exclusive remedy of Sellers (and any party claiming by, through or under any Seller) in respect of any breach by Buyer (or any Buyer Related Party) under or in connection with this Agreement and in lieu of any and all other damages, including without limitation all consequential, incidental and punitive damages, and Sellers (and any party claiming by, through or under any Seller) shall have no further recourse against Buyer (or any Buyer Related Party) under or in connection with this Agreement. As provided in **Section 9.3(b)**, the Buyer Related Parties shall be third party beneficiaries of this provision.

(c) If the Closing shall fail to take place for any reason other than as contemplated in the first sentence of **Section 9.3(b)**, Buyer may, by written notice to Sellers and Escrow Agent, terminate this Agreement and direct Escrow Agent, subject to the terms of the Escrow Agreement, to promptly pay the Escrow Deposit together with any interest or other proceeds from the investment thereof (the “Escrow Amount”) over to Buyer. Buyer shall retain all other rights and remedies as set forth in **Section 9.3(c)** hereof.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES OF SELLERS**

Each Seller (other than WEQQ and Carolina Airwaves) hereby jointly and severally represents and warrants to Buyer as follows; WEQQ hereby individually with respect to itself and with respect to WKTC(FM) represents and warrants to Buyer as follows; and Carolina Airwaves hereby individually represents and warrants to Buyer with respect to itself and with respect to WKTC(FM) and WZAX(FM) as follows:

3.1 [Organization, Standing, Authority, Ownership and Subsidiaries](#) . MQC is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina, and is duly qualified to conduct business as a foreign corporation and is in good standing under the laws of the Commonwealth of Virginia. MQB is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina, and is duly qualified to conduct business as a foreign corporation and is in good standing under the laws of the Commonwealth of Virginia. MQI is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. WEQQ is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Carolina Airwaves is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Each Seller has all requisite corporate power and authority (i) to own, lease, and use the Assets as now owned, leased, and used, (ii) to conduct the business and operations of the Stations as now conducted, and (iii) to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Sellers hereunder and thereunder. Except with respect to the TBA Agreements, no Seller is a participant in any joint venture or partnership with any other person or entity with respect to any part of the operations of the Stations or any of the Assets. Except as set forth on [Schedule 3.1](#), no Seller has any Subsidiary or any other direct or indirect equity interest (by way of stock ownership, partnership interest or otherwise) in any entity or person.

3.2 [Authorization and Binding Obligation](#). The execution, delivery, and performance of this Agreement and all of the documents contemplated hereby to which any Seller is a party and the consummation of the transactions contemplated hereby and thereby by such Seller have been duly authorized by all necessary corporate action on the part of such Seller and its stockholders and no further action or approval of any director, stockholder or partner of any Seller or any lender to any Seller is required. This Agreement has been, and the documents contemplated hereby to which any Seller is a party will be, duly executed and delivered by each Seller and constitute the legal, valid, and binding obligation of such Seller, enforceable against such Seller in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

3.3 [Absence of Conflicting Agreements](#). Subject to obtaining the FCC Consents and the Consents listed on [Schedule 3.3](#), the execution, delivery, and performance by each Seller of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with any provision of the organizational documents of any Seller; (iii) will not violate or conflict with, result in a breach of, or constitute a default under, any law, judgment, order, ordinance, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to any Seller or the Stations; (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which any Seller is a party or by which any Seller may be bound; and (v) will not create any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance of any nature whatsoever upon any of the Assets.

3.4 [Governmental Licenses](#). (a) [Schedule 3.4](#) includes a true and complete list of the Licenses (and any amendments or modifications thereto) and their expiration date. Sellers have provided access to Buyer to true and complete copies of the Licenses (including any amendments and other modifications thereto). The Licenses have been validly issued pursuant to Final Orders, and Sellers are the authorized legal holders thereof. Except as described on [Schedule 3.4](#), the Licenses listed on [Schedule 3.4](#) comprise all of the licenses, permits, and other authorizations required from any governmental or regulatory authority for the lawful conduct of the business and operations of the Stations in the manner and to the full extent they are now conducted, and none of the Licenses is subject to any restriction or condition that would limit the full operation of the Stations as now operated. The Licenses are in full force and effect, and the conduct of the business and operations of the Stations are in accordance therewith. Sellers have no reason to believe that any of the Licenses would not be renewed for a full term with no materially adverse conditions by the FCC or other granting authority in the ordinary course or that the FCC Licenses will not be approved by the FCC for assignment to Buyer. Except as described on [Schedule 3.4](#), Sellers are not aware of any action which would adversely affect the FCC protected service area of any Station as such service area is presently authorized by the FCC. Except as described on [Schedule 3.4](#), (i) no complaints of interference to other broadcast stations have been received by Sellers, and (ii) the Stations are not causing interference to any other broadcast station.

(b) Sellers are legally, technically, financially and otherwise qualified under the Communications Act of 1934, as amended (the “Communications Act”) to assign the Licenses to Buyer. Except for any FCC rulemaking proceedings generally affecting the radio broadcasting industry, there are no facts known to any Seller relating to any Seller’s qualifications that would, under the Communications Act, disqualify or preclude any Seller from assigning the Licenses to Buyer. Except for any FCC rulemaking proceedings generally affecting the radio broadcasting industry, on the date of this Agreement there are no proceedings, complaints, notices of forfeiture, claims or investigations pending or to the knowledge of any Seller, threatened, against any Seller or any principal, officer, director or owner of any Seller that would materially impair the qualification of Sellers to assign the Licenses or which would materially impede any Seller’s ability to prosecute the applications filed with the FCC to assign the Licenses to Buyer or to seek the grant of the Consents.

3.5 [Title to and Condition of Real Property](#). [Schedule 3.5](#) contains a complete and accurate description of all the Real Property and each Seller’s interests therein (including the street address and legal description of such Real Property). The Real Property listed on [Schedule 3.5](#) comprises all real property interests necessary to conduct the business and operations of the Stations as now conducted, other than the lease listed on [Schedule 2.2](#). Sellers have good and marketable fee simple title, insurable at standard rates to all fee estates (including the improvements thereon), included in the Real Property, free and clear of all liens, mortgages, pledges, covenants, easements, restrictions, encroachments, leases, charges, and other claims and encumbrances of any nature whatsoever, and without reservation or exclusion of any mineral, timber, or other rights or interests, except for liens for real estate taxes not yet due and payable and disclosed on [Schedule 3.5](#). With respect to each leasehold or subleasehold interest included in the Real Property, so long as the applicable Seller fulfills its obligations under the lease therefor, such Seller has enforceable rights to nondisturbance and quiet enjoyment, and no third party holds any interest in the leased premises with the right to foreclose upon such Seller’s

leasehold or subleasehold interest. Schedule 3.5 sets forth the expiration date for each such leasehold or subleasehold interest and all rental and other payments due thereunder. The rental set forth in each of the leases listed on Schedule 3.5 is the actual rental being paid, and there are no separate agreements or understandings with respect to same. Sellers currently have the full right to exercise any renewal options contained in any of the leases listed on Schedule 3.5 that are being conveyed hereunder, on the terms and conditions contained therein and, upon due exercise, currently would be entitled to enjoy the use of each leased premises for the full term of such renewal options. The leased premises are occupied under a valid and current occupancy permit or the like to the extent required by law; there are no facts known to any Seller which would prevent any leased premises from being occupied after the Closing in substantially the same manner as before. All towers, guy anchors, and buildings and other improvements included in the Assets are located entirely on the Real Property listed in Schedule 3.5. Sellers have delivered to Buyer true and complete copies of all deeds, leases and easements pertaining to the Real Property and copies of all title policies and surveys in its possession pertaining to the Real Property. Except as described in Schedule 3.5, all Real Property (including the improvements thereon) (i) is in good condition and repair, (ii) is available for immediate use in the conduct of the business and operations of the Stations, and (iii) complies with all applicable building or zoning codes and the regulations of any governmental authority having jurisdiction. Sellers have full legal and practical access to the Real Property, including to the towers located on the Real Property. Except as described in Schedule 3.5, all easements, rights-of-way, and real property licenses included in the Real Property have been properly recorded in the appropriate public recording offices.

3.6 Title to and Condition of Tangible Personal Property. Schedule 3.6 lists all material items of Tangible Personal Property. The Tangible Personal Property listed on Schedule 3.6 comprises all items of tangible personal property necessary to conduct the business and operations of the Stations as now conducted. Except as described in Schedule 3.6, Sellers own and have good title to each item of Tangible Personal Property, and none of the Tangible Personal Property owned by Sellers is subject to any security interest, mortgage, pledge, conditional sales agreement, or other lien or encumbrance, except for liens for current taxes not yet due and payable. Except as described on Schedule 3.6, each item of Tangible Personal Property is available for immediate use in the business and operations of the Stations and is in good condition and repair. Except as described in Schedule 3.6, all items of transmitting and studio equipment included in the Tangible Personal Property (i) have been maintained in a manner consistent with generally accepted standards of good engineering practice, and (ii) will permit the Stations and any associated auxiliary broadcast Stations to operate in accordance with the terms of the FCC Licenses and the rules and regulations of the FCC, and with all other applicable federal, state, and local statutes, ordinances, rules, and regulations.

3.7 Contracts. Schedule 3.7 is a true and complete (i) list of all Contracts except Contracts entered into in the ordinary course of business with advertisers for the sale of advertising time on the Stations for cash at prevailing rates which have not been prepaid and which may be canceled by the Stations without penalty on not more than thirty (30) days' notice, and (ii) summary of each Seller's rights and obligations as of the date hereof under trade and barter agreements relating to the Stations. Sellers have delivered to Buyer true and complete copies of all written Contracts, and true and complete memoranda of all oral Contracts (including any amendments and other modifications to such Contracts). Other than the Contracts listed on

Schedule 3.7, Sellers require no contract, lease, or other agreement to enable it to carry on its business as now conducted. All of the Assumed Contracts are in full force and effect, and are valid, binding, and enforceable by Sellers (and, to the knowledge of Sellers, by the other parties thereto) in accordance with their terms, and Sellers have good, valid and indefeasible title to such Contracts, free and clear of any liens or encumbrances except as set forth in Schedule 3.7. There is not under any Assumed Contract any default by any party thereto or any event that, after notice or lapse of time or both, could constitute a default. Sellers are not aware of any intention by any party to any Assumed Contract (i) to terminate such Assumed Contract or amend the terms thereof, (ii) to refuse to renew such Assumed Contract upon expiration of its term, or (iii) to renew such Assumed Contract upon expiration only on terms and conditions which are more onerous than those now existing. Except for the need to obtain the Consents listed in Schedule 3.3, Sellers have full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability, or continuation of any of the Assumed Contracts.

3.8 Consents. Except for the FCC Consents provided for in **Section 6.1** and the other Consents described in Schedule 3.3, no consent, approval, permit, or authorization of, or declaration to or filing with any governmental or regulatory authority, or any other third party is required (i) to consummate this Agreement and the transactions contemplated hereby, (ii) to permit Sellers to assign or transfer the Assets to Buyer, or (iii) to enable Buyer to conduct the business and operations of the Stations in essentially the same manner as such business and operations are now conducted.

3.9 Intangibles. Schedule 3.9 is a true and complete list of all material Intangibles (exclusive of those listed in Schedule 3.4), all of which are valid and in good standing and uncontested. Sellers have delivered to Buyer copies of all documents establishing or evidencing all Intangibles listed on Schedule 3.9. Sellers are not infringing upon or otherwise acting adversely to any trademarks, trade names, service marks, service names, copyrights, patents, patent applications, internet domain names, know-how, methods, or processes owned by any other person or persons, and there is no claim or action pending, or to the knowledge of Sellers threatened, with respect thereto. The Intangibles listed on Schedule 3.9 comprise all material intangible property interests necessary to conduct the business and operations of the Stations as now conducted.

3.10 Financial Statements. Sellers (other than WEQQ) have furnished Buyer with true and complete copies of (i) unaudited financial statements of the Stations containing a balance sheet, statement of income and statement of cash flows as at and for each year ending December 31, 2000, 2001 and 2002 and (ii) an unaudited balance sheet, statement of income and statement of cash flow on and for the four month period ending April 30, 2003 (“Financial Statements”). The Financial Statements are attached hereto as Schedule 3.10. Except as set forth on Schedule 3.10, the Financial Statements have been prepared from the books and records of each Seller, accurately reflect the books, records, and accounts of the Stations (which books, records, and accounts are complete and correct), are complete and correct in all material respects, and present fairly the financial condition of the Stations as at their respective dates and the results of operations for the periods then ended. None of the Financial Statements understates the true costs and expenses of conducting the business or operations of the Stations, fails to disclose any material contingent liabilities, or inflates the revenues of the Stations.

3.11 [Insurance](#). [Schedule 3.11](#) is a true and complete list of all insurance policies of Sellers that insure any part of the Assets or the business of the Stations. All policies of insurance listed in [Schedule 3.11](#) are in full force and effect. The insurance policies listed in [Schedule 3.11](#) are adequate in amount with respect to, and for the full replacement value (subject to customary deductibles) of, the Assets, and insure the Assets and the business of the Stations against all customary and foreseeable risks. No insurance policy of any Seller on the Assets or the Stations has been canceled by the insurer and no application of any Seller for insurance has been rejected by any insurer.

3.12 [Reports](#). All returns, reports, and statements which the Stations are currently required to file with the FCC or with any other governmental agency have been filed, and all reporting requirements of the FCC and other governmental authorities having jurisdiction over Sellers and the Stations have been complied with. All of the Stations' towers have been registered with the FCC if registration is required. All of such returns, reports, and statements are substantially complete and correct as filed. Sellers have timely paid to the FCC all annual regulatory fees payable with respect to the FCC Licenses.

3.13 [Taxes](#). Sellers have filed, or caused to be filed, all federal income tax returns and all other federal, state, county, local, or city tax returns which are required to be filed by it, and Sellers have paid or caused to be paid all taxes shown on those returns or on any tax assessment received by any Seller to the extent that such taxes have become due. There are no governmental investigations or other legal, administrative, or tax proceedings pursuant to which Sellers are or could be made liable for any taxes, penalties, interest, or other charges, the liability for which could extend to Buyer as transferee of the business of the Stations, and no event has occurred that could impose on Buyer any transferee liability for any taxes, penalties, or interest due or to become due from any Seller.

3.14 [Claims and Legal Actions](#). Except for any FCC rulemaking proceedings generally affecting the radio broadcasting industry, there is no claim, legal action, counterclaim, suit, arbitration, governmental investigation or other legal, administrative (including FCC-related), or tax proceeding, nor any order, decree or judgment, in progress or pending, or to the knowledge of any Seller threatened, against or affecting any Seller or any Station or relating to the Assets or the business or operations of the Stations, nor does any Seller know or have reason to be aware of any basis for the same. In particular, but without limiting the generality of the foregoing, except as disclosed on [Schedule 3.14](#), there are no applications, complaints or proceedings pending or, to any Seller's knowledge, threatened (i) before the FCC relating to the business or operations of the Stations other than rule making proceedings which affect the radio industry generally, (ii) before any federal or state agency relating to the business or operations of the Stations involving charges of illegal discrimination under any federal or state employment laws or regulations, or (iii) before any federal, state, or local agency relating to the business or operations of the Stations involving zoning issues under any federal, state, or local zoning law, rule, or regulation.

3.15 [Environmental Matters](#). Except as set forth in [Schedule 3.15](#):

(a) Sellers have complied with all laws, rules, and regulations of all federal, state, and local governments (and all agencies thereof) concerning the environment, public health

and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against any Seller in connection with any Seller's ownership or operation of the Stations alleging any failure to comply with any such law, rule, or regulation.

(b) No Seller has any liability relating to any Seller's ownership and operation of the Stations (and there is no basis related to the past or present operations, properties, or facilities of any Seller for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand against any Seller giving rise to any such liability) under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Refuse Act, or the Emergency Planning and Community Right-to-Know Act (each as amended) or any other law, rule, or regulation of any federal, state, or local government (or agency thereof) concerning release or threatened release of hazardous substances, public health and safety, or pollution or protection of the environment.

(c) No Seller has any liability relating to any Seller's ownership and operation of the Stations (and there is no basis for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim, or demand against any Seller giving rise to any such liability) under the Occupational Safety and Health Act, as amended, or under any other law, rule, or regulation of any federal, state, or local government (or agency thereof) concerning employee health and safety.

(d) In connection with its ownership and operation of the Stations, Sellers have obtained and been in material compliance with all of the terms and conditions of all permits, licenses, and other authorizations which are required under, and have materially complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all federal, state, and local laws, rules, and regulations (including all codes, plans, judgments, orders, decrees, stipulations, injunctions, and charges thereunder) relating to public health and safety, worker health and safety, and pollution or protection of the environment, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes.

(e) All properties and equipment used in the business of the Stations are and have been free of asbestos and asbestos-related products, PCB's, methylene chloride, trichloroethylene, 1, 2-trans-dichloroethylene, dioxins, dibenzofurans, and Extremely Hazardous Substances (as defined in Section 302 of the Emergency Planning and Community Right-to-Know Act). There are no above ground or underground storage tanks located on the Real Property.

(f) No pollutant, contaminant, or chemical, industrial, hazardous, or toxic material or waste has ever been manufactured, buried, stored, spilled, leaked, discharged, emitted, or released by any Seller or any other party on any Real Property.

(g) Sellers have provided Buyer with copies of all environmental studies in each Seller's possession relating to any Real Property.

3.16 Compliance with Laws . Each Seller has complied, and the operations of each Station is in compliance, in all material respects with (i) the Licenses, and (ii) all federal, state, and local laws, rules, regulations, and ordinances applicable or relating to the ownership and operation of the Stations. Neither the ownership or use of the properties of the Stations nor the conduct of the business or operations of the Stations conflicts with the rights of any other person or entity.

3.17 Conduct of Business in Ordinary Course. Since March 31, 2003, each Seller has conducted the business and operations of the Stations only in the ordinary course and has not:

(a) suffered any material adverse change in the business, operations, assets or financial condition of the Stations, including any damage, destruction, or loss affecting any assets used or useful in the conduct of the business or operations of the Stations; or

(b) made any sale, assignment, lease, or other transfer of the Stations' properties other than in the normal and usual course of business with suitable replacements being obtained therefor; or

(c) canceled any debts owed to or claims or liabilities held by any Seller with respect to the Stations, except in the normal and usual course of business; or

(d) suffered any material write-down of the value of any Assets or any material write-off as uncollectible of any accounts receivable of the Stations; or

(e) transferred or granted any right under, or entered into any settlement regarding the breach or infringement of, any license, patent, copyright, trademark, trade name, franchise, or similar right, or modified any existing right relating to the Stations; or

(f) incurred any obligation or liability (fixed, accrued, contingent or otherwise) except normal trade or business obligations and liabilities incurred in the ordinary course of business, none of which is materially adverse; or

(g) mortgaged, pledged or subjected to any other lien any of the Assets, tangible or intangible, other than in the ordinary course of business; or

(h) waived or released any rights of value or modified any material agreement, whether or not in the ordinary course of business; or

(i) entered into or renewed any employment contracts or compensation agreements or made, agreed to make or announced any change in employment policies or procedures, wages, compensation or employee benefits for any Station employee, except as may

be required by an existing employment agreement, as required by law, or as otherwise expressly provided herein; or

(j) suffered any material casualty losses or damages (whether or not any such loss or damage shall have been covered by insurance); or

(k) revalued any of the Assets (whether tangible or intangible) or changed any of its accounting records or practices or changed its depreciation or amortization policies or rates; or

(l) entered into any agreement to do any of the foregoing.

3.18 Transactions with Affiliates. Except with respect to the TBAs and as otherwise disclosed in Schedule 3.18, no Seller has been involved in any business arrangement or relationship relating to the Stations with any Affiliate of any Seller, and no Affiliate of any Seller owns any property or right, tangible or intangible, which is used in the business of the Stations.

3.19 Broker. No Seller nor any person or entity acting on any Seller's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

3.20 Employee Benefits.

(a) No Seller (i) is contributing to, nor is required to contribute to, nor has contributed within the last seven years to, any defined benefit pension plan, multiemployer plan (as defined in ERISA Section 3(37)), multiple employer plan (as defined in ERISA Section 4063(a)), or employee pension benefit plan, as defined under ERISA Section 3(2), that was subject to Title IV of ERISA, (ii) has incurred within the last seven years, or reasonably expects to incur, any "withdrawal liability," as defined under ERISA Section 4201 *et seq.*, or (iii) has ever engaged in a transaction to evade liability, as described under ERISA Section 4069.

(b) None of the Sellers sponsors, maintains, or contributes to any Employee Plan or Compensation Arrangement that provides medical or death benefit coverage to former employees of any Seller, except to the extent required by Internal Revenue Code Section 4980B ("COBRA").

(c) Except as disclosed in Schedule 3.20, there are no Employee Plans or Compensation Arrangements. Sellers have furnished to Buyer complete and accurate copies of any written Employee Plans and Compensation Arrangements (or related insurance policies), complete descriptions of any unwritten Employee Plans or Compensation Arrangements, and all employee handbooks, summary descriptions or similar documents describing such Employee Plans and Compensation Arrangements. Except as disclosed in Schedule 3.20, no Seller is a party to any plan, arrangement, or other scheme that will become an Employee Plan or Compensation Arrangement, or any amendment to an Employee Plan or Compensation Arrangement.

(d) Each Employee Plan and Compensation Arrangement has been administered in compliance with its terms and in material compliance with the provisions of

ERISA, the Internal Revenue Code, the Age Discrimination in Employment Act, and any other applicable COBRA federal or state laws. Each Employee Plan or Compensation Arrangement that is a “group health plan,” as defined under ERISA Section 601 *et seq.* and COBRA has provided “continuation coverage” to each “covered employee” and “qualified beneficiary” entitled thereto (with each term defined under COBRA).

(e) No Seller is aware of the existence of any governmental inspection, investigation, audit, or examination of any Employee Plan or Compensation Arrangement or of any facts that would lead it to believe that any such governmental inspection, investigation, audit, or examination is pending or threatened. There exists no action, suit, or claim (other than routine claims for benefits) with respect to any Employee Plan or Compensation Arrangement pending or, to the knowledge of any Seller, threatened against any such plan or arrangement, and no Seller is aware of any facts that could give rise to any such action, suit, or claim.

### 3.21 Employees and Labor Relations.

(a) Schedule 3.20 contains a correct and complete list of (i) the names, positions and date of hire of each of the employees, independent contractors and officers of each Seller who are employed at the Stations, (ii) the annual salary or hourly wage of each such person, and (iii) any oral or written contracts or agreements that provide for employment of any individual as an employee or independent contractor of any Seller.

(b) Except for oral agreements, terminable at will, no Seller has any employment agreement of any kind oral or written, express or implied, that would require Buyer to employ any employee of any Seller after the Closing, or that would otherwise confer any obligation on the Buyer.

(c) No employees of any Seller who work at the Stations are members of any collective bargaining unit with respect to their employment with any Seller. There are no collective bargaining agreements and no contracts or agreements with labor unions, relating to, involving, or affecting the employees of any Seller, and no Seller has any obligation to bargain with any labor organization with respect to any such persons. No Seller is currently, nor during the past three years has it been, the subject of any certification or decertification drive, and, to the knowledge of any Seller, no such organizing activity is threatened. To the knowledge of each Seller, no union or other collective bargaining representative claims to represent, has been certified as representing, or has requested that any Seller recognizes such union or collective bargaining representative as representing any of the employees of any Seller for collective bargaining purposes. No Seller has recognized or agreed to recognize or is required to recognize any union as the collective bargaining representative for any employee of any Seller.

(d) There are no unfair labor practice charges pending against any Seller and, to the knowledge of each Seller, there are neither any demands for recognition or any other requests or demands from a labor organization for representative status with respect to any persons employed by any Seller, and no such activity is threatened. No Seller nor the Stations are currently, or during the past three years has been, the subject of any strike, work stoppage, picketing or work slowdown, or other labor dispute, controversy, or proceeding, and to the knowledge of each Seller no such activity is threatened. Each Seller has complied in all material

respects with all laws relating to the employment and safety of labor, including provisions relating to wages, hours, benefits, collective bargaining, discrimination, the payment of social security and other payroll expenses, and all applicable occupational safety and health acts, laws, and regulations. No Seller is subject to any investigation, complaint, claim or other challenge relating to the misclassification of employees as independent contractors. All independent contractors engaged by any Seller have been properly classified as such. No Seller is obligated to comply with any government contractor affirmative action obligations.

3.22 [Full Disclosure](#). No representation or warranty made by any Seller in this Agreement or in any certificate, document, or other instrument furnished or to be furnished by any Seller pursuant hereto contains or will contain any untrue statement of a material fact, or willfully omits or willfully will omit to state any material fact necessary in order to make any statement made herein or therein not misleading.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers as follows:

4.1 [Organization, Standing, and Authority](#). Buyer is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Delaware and on or before the Closing Date will be qualified to conduct business as a foreign limited liability company under the laws of the North Carolina and Virginia. Buyer has all requisite limited liability power and authority to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Buyer hereunder and thereunder.

4.2 [Authorization and Binding Obligation](#). The execution, delivery, and performance of this Agreement and all of the documents contemplated hereby to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby by Buyer have been duly authorized by all necessary limited liability company actions on the part of Buyer and no further action or approval of any member of Buyer, or on the date of this Agreement, any lender to Buyer is required (and provided that Buyer's failure to obtain any such consent of any future lender shall not excuse Buyer's obligations hereunder). This Agreement has been, and the documents contemplated hereby to which Buyer is a party will be, duly executed and delivered by Buyer and constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

4.3 [Absence of Conflicting Agreements](#). Subject to obtaining the FCC Consents, the execution, delivery, and performance by Buyer of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with the organizational documents of Buyer; (ii) will not violate or conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to Buyer; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms

of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire or operate the Assets.

4.4 [Broker](#). Neither Buyer nor any person or entity acting on Buyer's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

4.5 [Full Disclosure](#). No representation or warranty made by Buyer in this Agreement or in any certificate, document or other instrument furnished or to be furnished by Buyer pursuant hereto contains or will contain any untrue statement of a material fact, or willfully omits or willfully will omit to state any material fact necessary in order to make any statement made herein or therein not misleading.

4.6 [Buyer Qualifications](#). Buyer is legally, technically, financially and otherwise qualified under the Communications Act to acquire the Licenses and own and operate the Stations, subject to [Schedule 4.6](#). Except for any FCC rulemaking proceedings generally affecting the radio broadcasting industry and as noted on [Schedule 4.6](#), there are no facts known to Buyer relating to Buyer's qualifications that would, under the Communications Act, disqualify or preclude Buyer from being approved as an assignee of the Licenses. Except for any FCC rulemaking proceedings generally affecting the radio broadcasting industry, on the date of this Agreement, there are no proceedings, complaints, notices of forfeiture, claims or investigations pending or to the knowledge of Buyer, threatened, against Buyer or any principal, officer, director or owner of Buyer that would materially impair the qualifications of Buyer to assume the Licenses or which would materially impede Buyer's ability to prosecute the applications filed with the FCC to assign the Licenses to Buyer or to seek the grant of the Consents.

## **SECTION 5. OPERATIONS OF THE STATIONS PRIOR TO CLOSING**

5.1 [Generally](#). Between the date of this Agreement and the Closing Date, Sellers shall operate the Stations diligently in the ordinary course of business in accordance with its past practices (except where such conduct would conflict with Sellers' obligations under this Agreement), and in accordance with the other covenants in this **Section 5**.

5.2 [Contracts](#). Sellers will not, without the prior written consent of Buyer or telephonic consent of Alex Kolobielski or William E. Prettyman, enter into any contract, commitment or obligation relating to the Stations or the Assets, or amend or terminate any Contract (or waive any material right thereunder), or incur any obligation (including obligations relating to the borrowing of money or the guaranteeing of indebtedness) that will be binding on Buyer after Closing except that Sellers may enter into Contracts with advertisers in the ordinary course of business for the sale of advertising time on the Stations for cash or for trade for specific use of the Auction at prevailing rates which have not been prepaid and which may be cancelled by the Stations on thirty (30) days prior notice without penalty. Prior to the Closing Date, Sellers shall deliver to Buyer a list of all Contracts entered into between the date of this Agreement and the Closing Date, together with copies of such Contracts. Promptly upon execution of this Agreement, Sellers shall notify Accu-Weather, Inc. that WKTC(FM) is exercising its right to terminate the Radio Service Agreement, dated September 10, 1998, by and between Accu-Weather, Inc. and Curtis Media (WKTC-FM) with 150 days notice.

5.3 [Disposition of Assets](#). Sellers shall not sell, assign, lease, or otherwise transfer or dispose of any of the Assets, except in connection with the acquisition of replacement property of equivalent kind and value.

5.4 [Encumbrances](#). Sellers shall not create, assume or permit to exist any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance of any nature whatsoever upon the Assets, except for (i) liens disclosed on [Schedule 3.5](#) and [Schedule 3.6](#), (ii) liens for current taxes not yet due and payable, and (iii) mechanics' liens and other similar liens, and all of which liens in (i) and (iii) shall be removed prior to the Closing Date.

5.5 [Licenses](#). Sellers shall not knowingly or willfully cause or permit, by any act or failure to act, any of the Licenses to expire or to be revoked, suspended, or modified, or take any action that could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of any of the Licenses. Sellers shall not fail to prosecute with due diligence any applications to any governmental authority in connection with the operation of the Stations.

5.6 [Rights](#). Sellers shall not waive any material right relating to the Stations or any of the Assets.

5.7 [No Inconsistent Action](#). Sellers shall not take any action that is inconsistent with its obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement.

5.8 [Access to Information](#). Sellers shall give Buyer and its counsel, accountants, engineers, and other authorized representatives reasonable access to the Assets and to all other properties, equipment, books, records, Contracts, and documents relating to the Stations for the purpose of audit and inspection, including inspections incident to the environmental survey described in **Section 6.5** and the engineering report described in **Section 6.6**, and will furnish or cause to be furnished to Buyer or its authorized representatives all information with respect to the affairs and business of the Stations that Buyer may reasonably request.

5.9 [Maintenance of Assets](#). Sellers shall maintain all of the Assets in good condition and repair (ordinary wear and tear excepted), and use, operate, and maintain all of the Assets in a reasonable manner. Sellers shall maintain inventories of spare parts and expendable supplies at levels consistent with past practices. If any loss, damage, impairment, confiscation, or condemnation of or to any of the Assets occurs, Sellers shall repair, replace, or restore the Assets to their prior condition as represented in this Agreement as soon thereafter as possible, and Sellers shall use the proceeds of any claim under any insurance policy solely to repair, replace, or restore any of the Assets that are lost, damaged, impaired, or destroyed.

5.10 [Insurance](#). Sellers shall maintain the existing insurance policies on the Stations and the Assets.

5.11 [Consents](#). Sellers shall use commercially reasonable efforts to obtain the Consents and the estoppel certificates described in **Section 8.2(b)** without any change in the terms or conditions of any Contract or License that could be less advantageous to any Station than those pertaining under the Contract or License as in effect on the date of this Agreement.

Sellers shall promptly advise Buyer of any difficulties experienced in obtaining any of the Consents or estoppel certificates and of any conditions proposed, considered, or requested for any of the Consents or estoppel certificates. Sellers agree that Buyer shall not be required to accept or honor changes, modifications or conditions to Contracts required by the party from whom consent or agreement is sought as a condition to obtaining a consent or agreement.

5.12 [Books and Records](#). Sellers shall maintain the books and records relating to the Stations in accordance with past practices.

5.13 [Notification](#). Sellers shall promptly notify Buyer in writing of any unusual or material developments with respect to the business or operations of the Stations, and of any material change in any of the information contained in any Seller's representations and warranties contained in **Section 3** of this Agreement. Sellers will give prompt notice to Buyer of (i) any notice of, or other communication relating to, any default by any Seller subsequent to the date of this Agreement and prior to the Closing Date under any instrument or agreement to which any Seller is a party or by which any Seller, any Station or the Assets are bound and (ii) any notice or other communications from any third party alleging that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement.

5.14 [Compliance with Laws](#). Sellers shall comply in all material respects with all laws, rules, and regulations applicable or relating to the ownership and operation of the Stations.

5.15 [Financing Leases](#). Sellers will satisfy at or prior to Closing all outstanding obligations under capital or financing leases, if any, with respect to any of the Assets and obtain good title to the Assets leased by Sellers pursuant to those leases so that those Assets shall be transferred to Buyer at Closing free of any interest of the lessors.

5.16 [Programming](#). Sellers shall not make any material changes in the broadcast hours or in the types of programming broadcast by the Stations except such changes as in the good faith judgment of Sellers are required by the public interest.

5.17 [Preservation of Business](#). Sellers shall use their best efforts to preserve the business and organization of the Stations, to preserve the audience of the Stations and the Stations' present relationships with suppliers, advertisers, and others having business relations with the Stations, to the end that the business, operations, and prospects of the Stations shall be unimpaired at the Closing Date.

5.18 [Personnel Recommendations](#). Sellers shall promptly notify Buyer as personnel vacancies occur at the Stations and consider for employment all personnel recommended by Buyer for such vacant positions.

5.19 [Employee Benefits](#). Sellers shall not increase the compensation, retirement or other employee benefits payable or to become payable to any employees of the Stations, except as may be required by law or pursuant to any contract in effect on the date hereof, and except that Sellers may offer employees "stay" bonuses or enter into similar retention agreements that will not be binding on Buyer, provided Sellers disclose such retention agreements to Buyer on or prior to Closing.

5.20 FCC Filings and Correspondence. Sellers will provide Buyer within (5) five days with (a) copies of all reports, applications, filings, statements or other documents filed with FCC that relate to the Stations and (b) copies of all letters, authorizations, correspondence, or other documents received from the FCC that relate to the Stations.

## **SECTION 6. SPECIAL COVENANTS AND AGREEMENTS**

### 6.1 Governmental Approvals.

(a) The assignment of the FCC Licenses in connection with the purchase and sale of the Assets pursuant to this Agreement shall be subject to the prior receipt of the FCC Consents.

(b) Sellers and Buyer shall promptly prepare (1) an application for the FCC Consent to the assignment of WLGQ(FM), (2) an application for the FCC Consent to the assignment of WPTM(FM) and WSMY(AM), (3) an application for the FCC Consent to the assignment of WNVN-LP, (4) an application for the FCC Consent to the assignment of WPOR861 and WPNN654, (5) an application for the FCC Consent to the assignment of WSMY-FM, (6) an application for the FCC Consent to the assignment of WZAX(FM), (7) an application for the FCC Consent to the assignment of WCBT(AM) and WYTT(FM), and (8) an application for the FCC Consent to the assignment of WKTC(FM). Sellers and Buyer shall file these eight applications with the FCC within five (5) business days of the date hereof. The parties shall prosecute the applications with all reasonable diligence and otherwise use their commercially reasonable efforts to obtain a grant of the applications as expeditiously as practicable. Each party agrees to comply with any condition imposed on it by the FCC Consents except such condition which would have a material adverse effect upon it or any of its affiliates and which did not result from a breach by such party of its representations hereunder. Buyer and Sellers shall oppose any requests for administrative or judicial review of the FCC Consents. If the Closing shall not have occurred for any reason within the original effective period of the FCC Consents, and no party shall have terminated this Agreement under **Section 9**, the parties shall jointly request an extension of the effective period of the FCC Consents. No extension of the FCC Consents shall limit the exercise by any party of its rights under **Section 9**.

6.2 Control of the Stations. Prior to Closing, Buyer shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct, the operations of the Stations, and all such operations, including complete control and supervision of all of the Stations' programs, employees, and policies, shall be the sole responsibility of Sellers until the Closing.

### 6.3 Risk of Loss.

(a) The risk of any loss, damage, impairment, confiscation, or condemnation of any of the Assets from any cause whatsoever shall be borne by Sellers at all times prior to the Closing.

(b) If any damage or destruction of the Assets or any other event occurs which (i) causes any Station to cease broadcasting operations or (ii) prevents in any material respect signal transmission by any Station in the normal and usual manner and in the case of (i) or (ii)

Sellers fail to restore or replace the Assets so that normal and usual transmission is resumed within seven days of the damage, destruction or other event, Sellers shall promptly notify Buyer of such event and Buyer, in its sole discretion, may (x) terminate this Agreement within five (5) business days after the normal and usual transmission has been restored without any further obligations hereunder upon written notice to Sellers or (y) proceed to consummate the transaction contemplated by this Agreement and complete the restoration and replacement of the Assets after the Closing Date, in which event (i) Sellers shall deliver to Buyer all insurance proceeds received in connection with such damage, destruction or other event and (ii) the Purchase Price shall be reduced by the estimated costs not covered by insurance proceeds to be paid by Buyer to repair or replace such damaged or destroyed assets.

6.4 [Confidentiality](#). Except as necessary for the consummation of the transaction contemplated by this Agreement and except as and to the extent required by law, each party will keep confidential any information of a confidential nature obtained from the other party in connection with the transactions contemplated by this Agreement. If this Agreement is terminated, each party will return to the other party upon request all information obtained by such party from the other party in connection with the transactions contemplated by this Agreement.

6.5 [Environmental Surveys](#). Buyer may at its option and expense obtain new environmental Phase I surveys with respect to each owned and leased parcel included in the Real Property.

6.6 [Engineering Report](#). Buyer may, at its option and expense, retain an engineering firm to conduct a proof of performance study of the Stations and to prepare a report on the Stations' compliance with applicable windloading and building codes, customary engineering practices and all applicable FCC rules, regulations, prescribed practices, and technical standards.

6.7 [Cooperation](#). Buyer and Sellers shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and Buyer and Sellers shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement, and otherwise use their commercially reasonable efforts to consummate the transactions contemplated hereby and to fulfill their obligations under this Agreement. Notwithstanding the foregoing, Buyer shall have no obligation (i) to expend funds or deliver any other consideration to obtain any of the Consents or (ii) to agree to any adverse change in any License or Assumed Contract to obtain a Consent required with respect thereto.

6.8 [Bulk Sales Law](#). If applicable, the bulk sales laws of North Carolina and Virginia shall be complied with by Sellers. Any loss, liability, obligation, or cost suffered by Sellers or Buyer as the result of the failure of Sellers or Buyer to comply with the provisions of any bulk sales law applicable to the transfer of the Assets as contemplated by this Agreement shall be borne by Sellers.

6.9 [Title Insurance and Surveys](#).

(a) Title Insurance on Real Property. With respect to any owned Real Property, Sellers shall deliver at least thirty (30) days prior to Closing to Buyer an ALTA Owner's title commitment issued by a title insurer reasonably satisfactory to Buyer, in an amount equal to the fair market value of the property and any improvements thereon (as reasonably determined by Buyer), proposing to insure title to such parcel in the name of Buyer as of the Closing, subject only to defects in title or liens expressly permitted by this Agreement.

(b) Surveys. With respect to each parcel of Real Property, as to which a title insurance policy is to be procured pursuant to this Agreement, Buyer may obtain, at or prior to Closing a current survey of the parcel, prepared by a licensed surveyor and conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, disclosing the location of all improvements, easements, party walls, sidewalks, roadways, utility lines, and other matters customarily shown on such surveys, and showing access affirmatively to public streets and roads.

(c) Cooperation. Sellers shall cooperate with Buyer in obtaining the title policies, commitments and surveys described above and to the extent requested by Buyer, Sellers shall provide Buyer or Buyer's title company with an owner's affidavit and similar affidavits executed by Sellers in a form reasonably acceptable to Buyer and Buyer's title insurance company and transfer tax forms and similar forms executed by Sellers where required.

(d) Title Insurance Expenses. Sellers shall pay the costs of obtaining the title commitments contemplated hereunder and Buyer shall pay the costs of any insurance premiums payable with respect to any title policy that Buyer elects to purchase. Sellers on the one hand and Buyer on the other hand shall each pay one-half of the costs of obtaining the surveys contemplated hereby and such costs shall be set forth on the Prorations Statement pursuant to **Section 2.3(c)(i)**; it being understood and agreed by the parties that the Sellers shall have no obligation to pay for the costs of obtaining the surveys contemplated hereby to the extent Closing does not occur hereunder.

6.10 Sales Tax Filings. Prior to Closing, Sellers shall continue to file North Carolina and Virginia sales tax returns with respect to the Stations in accordance with Sellers' past practices and shall concurrently deliver copies of all such returns to Buyer.

6.11 Access to Books and Records. Sellers shall provide Buyer access and the right to copy for a period of three (3) years from the Closing Date any books and records relating to the Assets but not included in the Assets. Buyer shall provide Sellers access and the right to copy for a period of three (3) years from the Closing Date any books and records relating to the Assets that are included in the Assets.

6.12 Financial Information. Sellers (other than WEQQ) shall furnish to Buyer within twenty (20) days after the end of each month ending between the date of this Agreement and the Closing Date financial statements for the Stations for the month just ended in the same form as the Financial Statements attached hereto as Schedule 3.10 and such other financial information (including information on payables and receivables) relating to the Stations as Buyer may reasonably request. All financial information delivered by Sellers to Buyer pursuant to this Section shall be prepared from the books and records of Sellers, shall accurately reflect the

books, records, and accounts of the Stations, shall be complete and correct in all material respects, and shall present fairly the financial condition of the Stations as at their respective dates and the results of operations for the periods then ended.

6.13 Fees and Expenses. Sellers shall pay all transfer taxes, recordation taxes, sales taxes, document stamps, and other charges levied by any governmental entity on account of the transfer of the Assets from Sellers to Buyer, except that Sellers on the one hand, and Buyer on the other hand, each shall pay one-half of the filing fees payable upon filing of the applications for the FCC Consents. Except as otherwise provided in this Agreement, each party shall pay its own expenses incurred in connection with the authorization, preparation, execution, and performance of this Agreement, including all fees and expenses of counsel, accountants, agents, and representatives.

6.14 Collection of Accounts Receivable. Sellers shall deliver to Buyer not later than five (5) days after the Closing Date a complete and detailed statement of all Accounts Receivable as of the Closing Date, showing the name, amount and age of each account. For a period of 120 days following the Closing Date (the "Collection Period"), with respect to the Accounts Receivable, (i) Buyer will collect the Accounts Receivable with the same care and diligence as Buyer uses with respect to its own accounts receivable except that Buyer shall not be obligated to use any extraordinary efforts to collect any of the Accounts Receivable, including without limitation, institution of litigation, (ii) Buyer shall not make any referral or compromise of any of the Accounts Receivable to any collection agency or attorney for collections and shall not settle or adjust the amount of any of such Accounts Receivable without the prior written authorization of Sellers, and (iii) Buyer shall remit to Sellers, on or before the fifth business day after the 60th, 90th and 120th day following the Closing Date, all amounts collected by Buyer with respect to the Accounts Receivable that have not previously been remitted to Sellers, net of any commissions paid or payable with respect thereto. If Buyer receives any payment from an account debtor that is liable under any of the Accounts Receivable, Buyer shall credit the payment to the oldest account due unless the account debtor indicates otherwise or there is a dispute with respect to any Account Receivable, in which case such payment shall be applied as directed by the account debtor or to the oldest undisputed account, as applicable.

6.15 Employee Matters.

(a) Immediately prior to the Closing, Sellers shall terminate the employment of all employees working in connection with the Stations. Sellers shall be solely responsible for compliance with, and shall indemnify and hold Buyer harmless from any liability arising under the Worker Adjustment and Retraining Notification Act, on or prior to the Closing Date, including, without limitation, any liability arising out of the termination of any employees of Sellers in connection with the transactions contemplated by this Agreement. Sellers will retain and Buyer will not assume any liability or obligation of any Seller to or in connection with any employee or former employee of any Seller. Without limiting the generality of the foregoing, Sellers will remain solely responsible for any obligations and liabilities, including those pursuant to the Internal Revenue Code, ERISA, and any and all federal, state, and local discrimination laws, in respect of all employees and former employees of any Seller, and their respective beneficiaries and dependants, relating to or arising in connection with, during the course of, or as a result of (i) the employment or the actual or constructive termination of employment of any

such employee by any Seller (including in connection with the consummation of the transactions contemplated by this Agreement); (ii) the participation in or accrual of benefits or compensation under, or the failure to participate in or to accrue compensation or benefits under, any Employee Plan or Compensation Arrangement of any Seller; (iii) accrued but unpaid salaries, wages, bonuses, incentive compensation, vacation or sick pay, severance benefits or other compensation or payroll items (including deferred compensation); and (iv) the provisions of health continuation coverage for such employees required by COBRA including any liability imposed upon Buyer as a successor employer to any Seller.

(b) Buyer may, but shall not be obligated to offer employment, effective as of the Closing, to any employee of any Seller who is employed in connection with the Stations. Buyer may, at such times as will be arranged by it with Sellers, meet with the employees of Sellers prior to Closing. The terms and conditions of employment offered by Buyer to any such employee will be established by Buyer in its discretion.

(c) At Closing, Sellers will deliver to Buyer a complete and accurate list of all covered employees and qualified beneficiaries, as such terms are defined under COBRA, as of the date thereof (including covered employees and qualified beneficiaries who are in the election period for continuation coverage but who have not yet elected continuation coverage), the date of the applicable qualifying event, and the expected duration of such coverage.

(d) At Buyer's request, Sellers will use their commercially reasonable efforts to assist Buyer in obtaining from Sellers' current insurance carriers insurance to provide medical, death, and disability benefits to the former employees of Sellers who are hired by Buyer immediately following the Closing that are substantially identical to the benefits such carriers currently provide to employees of Sellers. Notwithstanding the above, Buyer is not obligated to duplicate Sellers' group health plan coverage or premium payments.

(e) On or prior to the Closing Date, each employee of Sellers whose services relate primarily to the Stations and participates in Sellers' tax-qualified retirement plans ("Sellers' Plans") shall be fully vested in his or her account balance under Sellers' Plans. Sellers shall furnish to the Buyer, as soon as practicable prior to the Closing, but not later than ten (10) days prior to the Closing, a list, calculated as of the Closing Date, estimating the amounts of compensation deferred by each employee of Sellers under Sellers' Plans during the calendar year in which the Closing occurs.

(f) This **Section 6.15** will operate exclusively for the benefit of the parties to this Agreement and not for the benefit of any other person or entity, including any employee or former employee of Sellers who performs or performed services in connection with the Stations.

6.16 [Noncompetition Agreement](#). At Closing, Sellers, Daniel Berman, Donald W. Curtis and William McCutchen shall each enter into a Noncompetition Agreement in the form of [Exhibit 6.16](#) in favor of Buyer (individually a "Noncompetition Agreement" and collectively, the "Noncompetition Agreements").

6.17 [Repairs and Replacements](#). Buyer shall take the actions with respect to the Stations as indicated on [Schedule 6.17](#).

6.18 [WPTM\(FM\) and WNVN-LP FCC Applications](#). Sellers shall promptly file with the FCC (1) applications for construction permit on FCC Form 301 for WPTM(FM) and FCC Form 346 for WNVN-LP changing their licensed geographic coordinates, (2) applications for a modified license on FCC Form 302 for WPTM(FM) and FCC Form 347 for WNVN-LP to reflect the modified coordinates, (3) an application to modify the FCC antenna structure registration for the tower on which WPTM(FM)'s and WNVN-LP's antennas are located reflecting the modified coordinates and (4) an application to notify the FCC of completion of construction for the antenna structure registration for the tower on which WPTM(FM)'s and WNVN-LP's antennas are located reflecting the modified coordinates, all as described on [Schedule 3.4](#).

6.19 [License Renewal Applications](#).

(a) Sellers shall file with the FCC no later than June 2, 2003, an application for the renewal of the license on FCC Form 303-S (a "License Renewal Application") for WSMY-FM.

(b) (i) If the FCC grants the pending application for license for WLGQ(FM) (FCC BLH-20030115ABF) ("Pending License Application") before June 2, 2003, Sellers shall file with the FCC no later than June 2, 2003, a License Renewal Application for WLGQ(FM).

(ii) If the FCC has not granted the Pending License Application by June 2, 2003, Sellers shall not prosecute the Pending License Application between the period of June 2, 2003 and October 1, 2003 but, notwithstanding the foregoing, Sellers shall cooperate with the FCC to respond to any inquiries.

(iii) If the FCC grants the Pending License Application for WLGQ(FM) during the period between June 2, 2003 and October 1, 2003 and provides for a license term for WLGQ(FM) that expires on October 1, 2003, Sellers shall file a License Renewal Application as soon as possible and take any and all other steps that are necessary to ensure that the license for WLGQ(FM) is renewed for a term expiring on October 1, 2011.

(c) (i) If the North Carolina Closing, as defined in **Section 6.20**, has not occurred on or before July 31, 2003, Sellers shall file with the FCC no later than August 1, 2003 a License Renewal Application for WPTM(FM), a License Renewal Application for WSMY(AM), a License Renewal Application for WZAX(FM), a License Renewal Application for WCBT(AM), a License Renewal Application for WYTT(FM), and a License Renewal Application for WKTC(FM). Sellers shall prosecute with due diligence each of these License Renewal Applications.

(ii) If Buyer anticipates that the North Carolina Closing, as defined in **Section 6.20**, will occur on or before July 31, 2003, Sellers shall cooperate with and assist Buyer in its preparation of the License Renewal Applications for WPTM(FM), WSMY(AM), WZAX(FM), WCBT(AM), WYTT(FM), and WKTC(FM) for filing by the August 1, 2003 filing deadline.

6.20 Bifurcation. Notwithstanding anything to the contrary in this Agreement, if on or before July 31, 2003, the FCC Consents have been granted for the North Carolina Stations, in Buyer's sole discretion, Buyer may at anytime thereafter elect to purchase all of the Assets that do not relate exclusively to the Virginia Stations (the "North Carolina Assets") on a date set by Buyer on at least one (1) business day written notice to Sellers and to purchase later all of the Assets that relate exclusively to the Virginia Stations (the "Virginia Assets"). If Buyer elects to purchase the North Carolina Assets pursuant to this **Section 6.20**, Buyer may later set a Closing Date for the Virginia Stations at any time after the first business day following the date that the FCC Consents for both of the Virginia Stations are effective and not later than ten (10) business days following the date upon which the FCC Consents for both of the Virginia Stations have become a Final Order and as otherwise as set forth in **Section 8.1**. For purposes of this **Section 6.20**, the "North Carolina Closing" means the consummation of the purchase and sale of the North Carolina Assets pursuant to this Agreement in accordance with **Section 8** and this **Section 6.20**, and the "Virginia Closing" means the consummation of the purchase and sale of the Virginia Assets pursuant to this Agreement in accordance with **Section 8** and this **Section 6.20**.

(a) Purchase Price and Related Amounts. The purchase price relating to the North Carolina Assets (the "North Carolina Purchase Price") shall be \$10,050,000 as adjusted pursuant to **Section 2.3(a)-(c)** with respect to the North Carolina Assets, and the purchase price relating to the Virginia Assets (the "Virginia Purchase Price") shall be \$1,300,000 as adjusted pursuant to **Section 2.3(a)-(c)**. If the North Carolina Closing occurs on or before July 31, 2003, the purchase price shall be adjusted downward to reflect the FCC filing fees for the license renewal applications for the North Carolina Stations.

(b) Steps Prior to North Carolina Closing. In connection with consummating the North Carolina Closing and promptly after Buyer gives notice pursuant to **Section 6.20(a)** above, Buyer and Sellers agree that (i) Buyer and Sellers shall agree on which of the Assets are North Carolina Assets and which of the Assets are Virginia Assets provided that any Assets used or useful in connection with both the North Carolina Stations and the Virginia Stations shall be deemed North Carolina Assets unless Buyer so designates otherwise and that to the extent Buyer so designates, any Assumed Contracts relating to the Virginia Stations may be acquired and assumed by Buyer at the North Carolina Closing, without payment of additional consideration and as contemplated under the LMA; (ii) they will modify the Escrow Agreement to reflect the provisions of this Agreement (including that the Escrow Deposit shall be applied to the Purchase Price for the North Carolina Assets and that the Escrow Agent shall release any amount remaining in the Post Closing Indemnification Escrow (including any interest accrued thereon on the date which is thirteen (13) months following the Virginia Closing)) and (iii) they will modify the Non-Competition Agreements to provide that the ownership and operations of the Virginia Stations are excluded from the restrictions set forth therein prior to ownership of the Virginia Stations by Buyer.

(c) Deliveries. At each of the North Carolina Closing and the Virginia Closing, the certificates and other documents contemplated by this Agreement shall be delivered in the form and substance provided for in this Agreement, with the conveyancing documents to be delivered under **Sections 8.2(a)** and **8.3(b)** modified as necessary or appropriate to reflect the provisions of this **Section 6.20** and to relate only to the Stations being sold at such Closing.

(d) Conditions Precedent. At the North Carolina Closing, each of the conditions precedent set forth in **Section 7** shall apply as if all Stations were being sold at such Closing, but modified as necessary or appropriate to reflect the provisions of this **Section 6.20**; it being understood, without limiting the generality of the foregoing, that **Section 7.1(d)** and **Section 7.2(d)** shall apply at the North Carolina Closing only to the FCC Consents relating to the North Carolina Stations that **Section 7.1(q)** shall apply at the North Carolina Closing only to the extent that the conditions relate to the North Carolina Stations and that **Sections 7.1(n), 7.1(o), and 7.1(p)**, shall not apply to the North Carolina Closing.

At the Virginia Closing, with respect to Sellers, each of the conditions precedent set forth in **Section 7** shall apply as if all Stations were being sold at Closing, but modified as necessary or appropriate to reflect the provisions of this **Section 6.20**; it being understood, without limiting the generality of the foregoing, that **Section 7.1(d)** and **Section 7.2(d)** shall apply at the Virginia Closing only to the FCC Consents relating to the Virginia Stations, that **Section 7.1(q)** shall apply at the Virginia Closing only to the extent that the conditions relate to the Virginia Stations and that **Sections 7.1(m) and 7.1(o)** shall not apply to the Virginia Closing.

(e) Period Between North Carolina Closing and Virginia Closing. It is understood and agreed that during the period between the North Carolina Closing and the Virginia Closing, Sellers shall comply with the covenants and agreements set forth in **Sections 5 and 6**. At the North Carolina Closing, Sellers and Buyers shall enter into a Local Marketing Agreement for the Virginia Stations in the form of Exhibit 6.20 (the “LMA”) for a term commencing as of the North Carolina Closing and terminating on the date of the Virginia Closing.

(f) Further Assurances. The parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this **Section 6.20**, including, in the case of Sellers, any additional bills of sale, deeds or other transfer documents that, in the reasonable opinion of Buyer, may be necessary to assure, complete and evidence the full and effective transfer of the relevant Assets at the relevant Closing to Buyer pursuant to this Agreement.

6.21 Broadcast Auxiliary Applications. Sellers shall promptly file with the FCC (1) applications on FCC Form 601 to modify the licenses for broadcast auxiliaries set forth on Schedule 3.4 and (2) applications on FCC Form 601 requesting licenses for new broadcast auxiliaries set forth on Schedule 3.4. Upon the FCC’s grant of each of these applications and upon completion of construction of or modifications to the applicable broadcast auxiliary, Sellers shall promptly file with the FCC via its Universal Licensing System electronic filing database an electronic notification of completion of construction for the broadcast auxiliary.

6.22 WZAX(FM) Facilities Modification. MQB and Curtis Media Group, Inc. have entered into the Facilities Modification Agreement with the parties listed on Schedule 2.2 (collectively, the “Third Party”). To the extent the Purchase Price has not been adjusted pursuant to the last sentence of **Section 2.3(a)** in connection with the Facilities Modification and the Facilities Modification is to occur after the Closing Date, Sellers will pay Buyer \$50,000 in immediately available funds within one (1) business day of the earlier of the following

conditions: (1) the FCC issues a decision ordering that WZAX(FM) change its channel or make any other modifications for the benefit of the Third Party or its successor in interest as a result of the petition for rulemaking filed on March 3, 2003, including any amendments thereto, or any refiling of the petition for rulemaking (the "FCC Allocation Decision") and the FCC Allocation Decision becomes a Final Order or (2) the Third Party or its successor in interest files an FCC application for a construction permit to effectuate the FCC Allocation Decision. This obligation shall survive the Closing until such obligation is satisfied in full and is not subject to any of the limitations on indemnification set forth in **Section 10.6**. If WZAX(FM) does not in fact change channel or make other modifications for the benefit of the Third Party pursuant to the FCC Allocation Decision, the sum of \$50,000 will be returned to Sellers or, if such sum was paid to Buyer pursuant to the guarantee of Daniel Berman set forth below, to Daniel Berman.

6.23 Rocky Mount Studio Lease. Sellers acknowledge that Buyer is not assuming the Lease Agreement, dated June 29, 1999, by and between RBD Investments, Inc. and Carolina Airwaves, Inc. and agree that Buyer may have exclusive use, and have all rights to, the Rocky Mount studio leased thereunder for a period of thirty (30) days following the Closing. Buyer shall pay the monthly rent of \$1,630 to Sellers in connection therewith.

## **SECTION 7. CONDITIONS TO OBLIGATIONS OF BUYER AND SELLERS AT CLOSING**

7.1 Conditions to Obligations of Buyer. All obligations of Buyer at the Closing are subject at Buyer's option to the fulfillment prior to or at the Closing Date of each of the following conditions:

(a) Representations and Warranties. Except for any representations and warranties that are rendered untrue as a result of action in FCC rulemaking proceedings generally affecting the radio broadcasting industry, all representations and warranties of Sellers contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time except for any representation and warranty that is stated as of a specified earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such date.

(b) Covenants and Conditions. Sellers shall have performed and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Sellers prior to or on the Closing Date.

(c) Consents. All Consents shall have been obtained and delivered to Buyer without any adverse change in the terms or conditions of any agreement or any governmental license, permit, or other authorization.

(d) FCC Consents. The FCC Consents shall have been granted without the imposition on Buyer of any conditions that need not be complied with by Buyer under **Section 6.1** hereof, Sellers shall have complied with any conditions imposed on Sellers by the FCC Consents, and the FCC Consents shall have become a Final Order, which may be waived by Buyer in its sole discretion as set forth in **Section 8.1(a)** below.

(e) Governmental Authorizations. Sellers shall be the holder of all Licenses necessary for the operations of the Stations and there shall not have been any modification of any License that could have an adverse effect on any Station or the conduct of the business and operations of any Station. No proceeding shall be pending the effect of which could be to revoke, cancel, fail to renew, suspend, or modify adversely any License.

(f) Deliveries. Sellers shall have made or stand willing to make all the deliveries to Buyer set forth in **Section 8.2**.

(g) Adverse Change. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the business, operations, assets or financial condition of any Station.

(h) Legal Proceedings. No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Buyer from consummating the transactions contemplated by this Agreement.

(i) Repairs and Replacements. Each of the actions set forth on Schedule 6.17 shall have been performed to the satisfaction of Buyer.

(j) Title Insurance. With respect to any owned Real Property, Buyer shall have received marked title insurance binders or pro-forma policies evidencing the irrevocable commitment of a national title insurance company to insure good and marketable title thereto at standard rates, subject only to any easements, restrictions or other matters that do not adversely affect the value, operation or continued use of the Real Property as currently used by Sellers and any other defects in title or liens expressly permitted by this Agreement in an amount equal to the fair market value of the property.

(k) Surveys. With respect to each parcel of Real Property as to which a title insurance policy is to be procured pursuant to this Agreement, Buyer shall have received a current survey meeting the requirements of **Section 6.9(b)** which reflects no defects or matters except as expressly permitted in this Agreement.

(l) Environmental Reports. With respect to each parcel of owned or leased Real Property, Buyer shall have received a Phase 1 environmental report that does not reveal (i) any violation or suspected violation of any law, rule or regulation of any state, federal or local government (or agencies thereof) concerning the environment or public health and safety and (ii) any breach or inaccuracy in any of the representations contained in this Agreement.

(m) WPTM(FM) and WNVN-LP FCC Applications. The FCC applications described in **Section 6.18** shall have been granted without any adverse conditions.

(n) WSMY License Renewal. The License Renewal Application for WSMY-FM described in **Section 6.19(a)** shall have been granted for a full eight-year term ending on October 1, 2011 without any adverse conditions and FCC grant of this application shall have become a Final Order, which may be waived by Buyer in its sole discretion as set forth in **Section 8.1(a)** below.

(o) License Renewal Applications. The License Renewal Applications for WPTM(FM), WSMY(AM), WZAX(FM), WCBT(AM), WYTT(FM), and WKTC(FM) described in **Section 6.19(c)(1)** shall have been granted for a full eight-year term ending on December 1, 2011 without any adverse conditions and FCC grant of these applications shall have become a Final Order, which may be waived by Buyer in its sole discretion as set forth in **Section 8.1(a)** below.

(p) WLGQ(FM). Pursuant to the provisions in **Section 6.19(b)**, the license for WLGQ(FM) shall have been granted for a full eight-year term ending on October 1, 2011 without any adverse conditions and FCC grant of the license shall have become a Final Order.

(q) Broadcast Auxiliary Applications. The FCC applications described in **Section 6.21** shall have been granted without any conditions adverse to the operation of the auxiliaries or the Stations, provided, however, that it shall not be a condition to Closing that the remote pickup unit applications described in **Section 6.21** of this Agreement shall have been granted if Buyer may operate such remote pickup facilities for an indefinite period pursuant to Section 74.25 of the FCC's rules, and Sellers provide Buyer with such certifications as may be necessary to demonstrate the eligibility of such remote pickup facilities for operation under Section 74.25 of the Commission's rules.

7.2 Conditions to Obligations of Sellers. All obligations of Sellers at the Closing are subject at Sellers' option to the fulfillment prior to or at the Closing Date of each of the following conditions:

(a) Representations and Warranties. Except for any representations and warranties that are rendered untrue as a result of action in FCC rulemaking proceedings generally affecting the radio broadcasting industry, all representations and warranties of Buyer contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time except for any representation and warranty that is stated as of a specified earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such date.

(b) Covenants and Conditions. Buyer shall have performed and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date.

(c) Deliveries. Buyer shall have made or stand willing to make all the deliveries set forth in **Section 8.3**.

(d) FCC Consents. The FCC Consents shall have been granted without the imposition on Sellers of any conditions that need not be complied with by Sellers under **Section 6.1** hereof and Buyer shall have complied with any conditions imposed on it by the FCC Consents.

(e) Legal Proceedings. No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Sellers from consummating the transactions contemplated by this Agreement.

## **SECTION 8. CLOSING AND CLOSING DELIVERIES**

### 8.1 Closing.

(a) Closing Date. Subject to (i) satisfaction or waiver (by the party for whose benefit the Closing Condition is imposed) of all of the conditions precedent to the holding of the Closing described in **Section 7** hereof and (ii) the provisions of **Section 9** hereof, the parties shall be obligated to consummate the transactions contemplated hereby at the Closing of this Agreement, which shall take place at 10:00 a.m., Washington, D.C. time, on a date set by Buyer on at least five (5) business days' written notice to Sellers, that is (i) not earlier than the first business day after the FCC Consents are effective, and (ii) not later than ten (10) business days following the date upon which the FCC Consents have become a Final Order. If Buyer fails to specify the date for Closing pursuant to the preceding sentence prior to the fifth business day after the date upon which the FCC Consents become a Final Order, the Closing shall take place on the tenth business day after the date upon which the FCC Consents become a Final Order subject to satisfaction or waiver of all of the conditions precedent to the holding of the Closing. If the date of Closing determined in accordance with the requirements of this **Section 8.1(a)** falls on a date that is not a business day, the Closing shall occur on the next business day.

(b) Notwithstanding the foregoing, if on the date otherwise scheduled for Closing pursuant to the preceding paragraph, the conditions precedent set forth in **Sections 7.1(h)** or **7.2(e)** hereof have not been satisfied, the party for whose benefit such condition has been imposed may elect to postpone the Closing, and the Closing shall thereafter take place on a date specified by written notice from such party, which date shall be not less than ten (10) days nor more than fifteen (15) days after the satisfaction or waiver of such conditions precedent. The parties shall seek extensions of the FCC Consents that may be required for any such postponement of the Closing.

(c) Closing Place. The Closing shall be held at the offices of Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Ave., N.W., Suite 800, Washington, D.C. 20036, or any other place that is agreed upon by Buyer and Sellers.

8.2 Deliveries by Sellers. Prior to or on the Closing Date, Sellers shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

(a) Transfer Documents. Duly executed warranty bills of sale, general warranty deeds, motor vehicle titles, assignments, and other transfer documents which shall be sufficient to vest good and marketable title to the Assets in the name of Buyer, free and clear of all claims, liabilities, security interests, mortgages, liens, pledges, conditions, charges and encumbrances, except for liens for current taxes not yet due and payable;

(b) Estoppel Certificates. Estoppel certificates of the lessors of all leasehold and subleasehold interests included in the Real Property;

(c) Consents. A manually executed copy of any instrument evidencing receipt of any Consent;

(d) Officers' Certificates. A certificate, dated as of the Closing Date, executed on behalf of Sellers by a duly authorized officer of each Seller certifying (1) that the representations and warranties of **Sellers** contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date except for any representation and warranty that is stated as of a specified earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such date and (2) that **Sellers** have in all material respects performed and complied with all of the obligations, covenants, and agreements set forth in this Agreement to be performed and complied with by **Sellers** on or prior to the Closing Date;

(e) UCC, Tax, Lien, and Judgment Searches. Results of a search for UCC, tax, lien, and judgment filings in the Secretary of State's records of the States of North Carolina and Virginia and in the records of the county or counties in which the Stations' studio and transmission plants are located, such searches having been made no earlier than fifteen (15) days prior to the Closing Date;

(f) Licenses, Contracts, Business Records, Etc. Copies of all Licenses, Assumed Contracts, blueprints, schematics, working drawings, plans, projections, engineering records, and all files and records used by **Sellers** in connection with the business and operation of the Stations;

(g) Authorizing Resolutions. Certified copies of the resolutions of each Seller's board of directors and the stockholders approving the transactions contemplated by this Agreement;

(h) Opinion of Sellers' Counsel. Opinions of Sellers' corporate and FCC counsel substantially in the form of Exhibit 8.2(h) hereto; and

(i) Noncompetition Agreements. The Noncompetition Agreements duly executed by each of Sellers and Daniel Berman, Donald D. Curtis and William McCutchen.

8.3 Deliveries by Buyer. Prior to or on the Closing Date, Buyer shall deliver to Sellers the following, in form and substance reasonably satisfactory to Sellers and their counsel:

(a) Purchase Price. The Purchase Price as adjusted under **Section 2.3**.

(b) Assumption Agreements. Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Sellers' obligations under the Licenses and Assumed Contracts in accordance with **Section 2.5**;

(c) Officer's Certificate. A certificate, dated as of the Closing Date, executed on behalf of Buyer by a duly authorized officer of such entity, certifying (1) that the representations and warranties of Buyer contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date except for any representation and warranty that is stated as of a specified earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such date, and (2) that Buyer has in all material respects performed and complied with all of the

obligations, covenants, and agreements set forth in this Agreement to be performed and complied with by Buyer on or prior to the Closing Date; and

(d) Authorizing Resolutions. Certified copies of the resolutions of the management committee of Buyer approving the transactions contemplated by this Agreement.

## **SECTION 9. TERMINATION**

9.1 Termination by Sellers. This Agreement may be terminated by Sellers and the purchase and sale of the Stations abandoned, if Sellers are not then in default in any material respect of its representations, warranties, covenants and agreements under this Agreement upon written notice to Buyer, upon the occurrence of any of the following:

(a) Conditions. If on the date scheduled for Closing pursuant to **Section 8.1** any of the conditions precedent to the obligations of Sellers set forth in this Agreement have not been satisfied or waived in writing by Sellers.

(b) Upset Date. If the Closing shall not have occurred on or before May 21, 2004 (the "Upset Date").

(c) FCC Decision. On the thirtieth business day after the FCC releases to the public the full text of its *Report and Order* or other written decision in the proceeding including MM Docket Nos. 01-317, 00-244, 01-235, and MB Docket No. 02-277 concerning media ownership (not including any news or other releases providing less than the full text of its decision) (the "FCC Decision"), if subsequent to the date of execution of this Agreement, the Communications Act or the FCC's rules, regulations or policies concerning media ownership are modified such that, in Sellers' judgment, (i) Buyer is prohibited from owning or acquiring one or more of the Stations (in addition to the radio stations Buyer currently owns in North Carolina, which together with the Stations are hereinafter collectively referred to as the "Cluster Stations") or (ii) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations is adversely affected, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

(d) June 6, 2003. On June 6, 2003, if, as a result of the FCC's open meeting now scheduled to occur before June 6, 2003,

(i) the FCC has taken action that modifies or will modify its rules, regulations or policies concerning media ownership such that, in Sellers' judgment, (A) Buyer is prohibited from owning or acquiring one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations is adversely affected, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof, or

(ii) Sellers, in their judgment, cannot determine whether the FCC's rules, regulations or policies concerning media ownership permit (A) the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

(e) August 1, 2003. On August 1, 2003, if by July 31, 2003,

(i) the FCC has not released to the public the FCC Decision, or

(ii) the FCC has released the FCC Decision but the language in the FCC Decision relating to market definition, local ownership caps, or transferability is unclear or the FCC Decision has deferred or postponed decision on the definition of radio markets and/or the transferability of radio broadcast station clusters not complying with ownership caps under any modified definition of radio markets such that Sellers, in their judgment, cannot determine whether such future proceedings could cause the FCC's rules, regulations or policies concerning media ownership to be modified in such a manner as to affect (A) the ability of the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof, or

(iii) Congress has modified the Communications Act in such a manner as to affect, in Sellers' judgment, (A) the ability of the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

9.2 Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Stations abandoned, if Buyer is not then in default in any material respect of its representations, warranties, covenants and agreements under this Agreement, upon written notice to Sellers, upon the occurrence of any of the following:

(a) Conditions. If on the date scheduled for Closing pursuant to **Section 8.1** any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(b) Upset Date. If the Closing shall not have occurred on or before the Upset Date.

(c) Interruption of Service. If any event shall have occurred that prevented signal transmission by any Station in the normal and usual manner for a continuous period of seven (7) days; provided that Sellers must provide notice of termination within five (5) business days as specified in **Section 2.3(b)**.

(d) FCC Decision. On the thirtieth business day after the FCC releases to the public the full text of the "FCC Decision", if subsequent to the date of execution of this Agreement, the Communications Act or the FCC's rules, regulations or policies concerning media ownership are modified such that, in Buyer's judgment, (i) Buyer is prohibited from owning or acquiring one or more of the Cluster Stations or (ii) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations is adversely affected, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

(e) June 6, 2003. On June 6, 2003, if, as a result of the FCC's open meeting now scheduled to occur before June 6, 2003,

(i) the FCC has taken action that modifies or will modify its rules, regulations or policies concerning media ownership such that, in Buyer's judgment, (A) Buyer is prohibited from owning or acquiring one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations is adversely affected, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof, or

(ii) Buyer, in its judgment, cannot determine whether the FCC's rules, regulations or policies concerning media ownership permit (A) the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

(f) August 1, 2003. On August 1, 2003, if by July 31, 2003,

(i) the FCC has not released to the public the FCC Decision, or

(ii) the FCC has released the FCC Decision but the language in the FCC Decision relating to market definition, local ownership caps, or transferability is unclear or the FCC Decision has deferred or postponed decision on the definition of radio

markets and/or the transferability of radio broadcast station clusters not complying with ownership caps under any modified definition of radio markets such that Buyer, in its judgment, cannot determine whether such future proceedings could cause the FCC's rules, regulations or policies concerning media ownership to be modified in such a manner as to affect (A) the ability of the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof, or

(iii) Congress has modified the Communications Act in such a manner as to affect, in Buyer's judgment, (A) the ability of the Buyer to own or acquire one or more of the Cluster Stations or (B) the free transferability of any of the Cluster Stations individually, together, or any subset thereof, from Buyer or from any subsequent assignees or transferees of the Stations, including, but not limited to, any restrictions on the sizes or classes of buyers that could acquire any of the Cluster Stations individually, together, or any subset thereof, or the number of future transfers of any of the Cluster Stations individually, together, or any subset thereof.

### 9.3 [Rights on Termination](#)

(a) If this Agreement is terminated pursuant to **Section 9.1** or **Section 9.2** and neither party is in breach in any material respect of its obligations under this Agreement, the parties hereto shall not have any further liability to each other with respect to the purchase and sale of the Assets and Buyer shall be entitled to the return of the Escrow Amount.

(b) If both (1) this Agreement is terminated pursuant to **Section 9.1** by any party for any reason and (2) Buyer shall be in breach in a material respect of its obligations under this Agreement after all conditions precedent to Buyer's obligations have been satisfied and Sellers stand ready, willing and able to perform Sellers' obligations under this Agreement, then and in that event, Sellers shall have the right to receive the Escrow Deposit as contemplated under **Section 2.7(b)** as liquidated damages and as the exclusive remedy of Sellers. Sellers and Buyer agree in advance that actual damages would be difficult to ascertain and that the amount of Five Hundred Sixty Seven Thousand Five Hundred Dollars (\$567,500) is a fair and equitable amount to reimburse Sellers for damages sustained due to Buyer's material breach of this Agreement. Notwithstanding anything in this Agreement to the contrary, except for the right to receive the Escrow Deposit in accordance with and subject to the provisions of this Agreement, neither Sellers (nor any person or entity claiming by, through or under Sellers) shall have any right against Buyer (or any Buyer Related Party) and neither Buyer nor any Buyer Related Party shall have any liability to the Sellers (or any person or entity claiming by, through or under any of them) for any breach of this Agreement by Buyer on or before consummation of the Closing. It is expressly understood and agreed by Sellers that each of the Buyer Related Parties shall be a third party beneficiary of this provision and shall be entitled to enforce the same as a defense or otherwise against Sellers or any party claiming by, through or under either of them.

(c) If both (1) this Agreement is terminated pursuant to **Sections 9.1** or **9.2** by any party for any reason and (2) if any Seller shall be in breach in a material respect of any of its representations and warranties made herein or in any document or instrument delivered pursuant hereto or any of the covenants or agreements made herein or in any document or instrument delivered pursuant hereto, then and in that event, the Escrow Amount shall be returned to Buyer, and Buyer shall have the right to seek all remedies available hereunder or at law or equity, including, without limitation, the right to seek specific performance and/or monetary damages. In recognition of the unique character of the property to be sold hereunder and the damages which Buyer will suffer in the event of a breach by Sellers, Sellers hereby waive any defense that Buyer has an adequate remedy at law for the breach of this Agreement by Sellers.

(d) If the Closing shall fail to take place for any reason other than as contemplated in the first sentence of **Section 9.3(b)**, Buyer may, by written notice to Sellers and Escrow Agent, terminate this Agreement and direct Escrow Agent, subject to the terms of the Escrow Agreement, to promptly pay the Escrow Amount over to Buyer. Buyer shall retain all other rights and remedies as set forth in **Section 9.3(c)** hereof.

## **SECTION 10. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; CERTAIN REMEDIES**

10.1 Representations and Warranties. All representations, warranties, covenants and agreements contained in this Agreement and in the documents delivered pursuant hereto shall survive the Closing; provided that all claims made by virtue of such representations, warranties, covenants and agreements shall be made within thirteen months following the Closing Date; provided that if a claim is made within such thirteen month period, the obligation to indemnify shall survive until resolution and payment (if applicable) of the claim. Notwithstanding the foregoing, Buyer shall be entitled to indemnification with respect to (i) claims based on willful misrepresentation for any and all claims hereunder as to which Buyer has given Sellers written notice thereof within the period allowed for presentation of claims under the applicable statute of limitations; provided that if a claim is made within the applicable statute of limitations period, the obligation to indemnify shall survive until resolution and payment (if applicable) of the claim and (ii) the obligation under **Section 6.22** until such obligation is satisfied in full, and this obligation to indemnify with respect thereto shall survive until resolution and payment of the amount owing thereunder. Any investigations by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained in this Agreement. No notice or information delivered by Sellers shall affect Buyer's right to rely on any representation or warranty made by Sellers or relieve Sellers of any obligations under this Agreement as the result of a breach of any of its representations and warranties.

10.2 Indemnification by Sellers. Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of Buyer or any information Buyer may have, Sellers (other than WEQQ and Carolina Airwaves) hereby agree to jointly and severally indemnify, and WEQQ and Carolina Airwaves hereby agree to individually indemnify, and hold Buyer harmless against and with respect to, and shall reimburse Buyer for:

(a) Any and all losses, liabilities, or damages resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant or agreement by any Seller contained in this Agreement or in any certificate, document, or instrument delivered to Buyer under this Agreement.

(b) Any and all obligations of any Seller or any Affiliate of any Seller not assumed by Buyer pursuant to this Agreement, including any liabilities arising at any time under any Excluded Contract.

(c) Any loss, liability, obligation, or cost resulting from the failure of the parties to comply with the provisions of any bulk sales law applicable to the transfer of the Assets.

(d) Any and all losses, liabilities, or damages resulting from the operation or ownership of the Stations prior to the Closing, including any liabilities arising under the Licenses or the Assumed Contracts which relate to events occurring prior to the Closing Date.

(e) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

10.3 [Indemnification by Buyer](#). Notwithstanding the Closing, and regardless of any investigation made at any time by or on behalf of any Seller or any information any Seller may have, Buyer hereby agrees to indemnify and hold Sellers harmless against and with respect to, and shall reimburse Sellers for:

(a) Any and all losses, liabilities, or damages resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant or agreement by Buyer contained in this Agreement or in any certificate, document, or instrument delivered to Sellers under this Agreement.

(b) Any and all obligations of Sellers assumed by Buyer pursuant to this Agreement.

(c) Any and all losses, liabilities, or damages resulting from the operation or ownership of the Stations on and after the Closing.

(d) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

10.4 [Procedure for Indemnification](#). The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "Claimant") shall promptly give notice to the party from which indemnification is claimed (the "Indemnifying Party") of any

claim, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant as promptly as practicable.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty (30) day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within the thirty (30) day period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate remedy at law or equity.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any third party claim, it shall be bound by the results obtained by the Claimant with respect to such claim. The Indemnifying Party shall not settle any claim without the Claimant's prior consent which shall not be unreasonably withheld.

(d) If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.

(e) The indemnification rights provided in **Sections 10.2 and 10.3** shall extend to the shareholders, directors, officers, employees, members, managers and representatives of any Claimant although for the purpose of the procedures set forth in this **Section 10.4**, any indemnification claims by such parties shall be made by and through the Claimant.

10.5 Post-Closing Indemnification Escrow. At Closing, Buyer and Sellers shall instruct the Escrow Agent to (a) convert Five Hundred Sixty Seven Thousand Five Hundred Dollars (\$567,500) of the Escrow Amount into a post closing indemnification escrow (the "Post Closing Indemnification Escrow") to fund claims by Buyer for indemnification under **Section 10.2** hereof and (b) release the interest earned on the Escrow Deposit to Buyer. On the date which is thirteen (13) months following the Closing, any amount remaining in the Post Closing Indemnification Escrow (including any interest accrued thereon) following indemnification payments to Buyer under **Section 10.2** hereof, less the amount of any unresolved pending indemnification claims by Buyer, shall be released to Sellers. The Post Closing Indemnification Escrow shall be held by the Escrow Agent in accordance with the Escrow Agreement. Except



Chapel Hill, NC 27517  
Attention: Daniel Berman  
Telecopier: (919) 968-8047  
Telephone: (919) 968-8041

WEQQ, Inc.  
3012 Highwoods Blvd., Suite 201  
Raleigh, NC 27604  
Attention: Donald Curtis  
Telecopier: (919) 790-6654  
Telephone: (919) 876-6464

Carolina Airwaves, Inc.  
10228 Governors Drive  
Chapel Hill, NC 27517  
Attention: Daniel Berman  
Telecopier: (919) 968-8047  
Telephone: (919) 968-8041

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

Garvey, Schubert & Barer, LLP  
Fifth Floor, Flour Mill Building  
Washington, DC 20007  
Attention: John Pelkey  
Telecopier: (202) 965-1729  
Telephone: (202) 298-2528

and

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP  
Suite 1600  
First Union Capital Center  
Raleigh, NC 27601  
Attention: Wade Hargrove  
Telecopier: (919) 839-0304  
Telephone: (919) 839-0300

If to Buyer:

First Media Radio, LLC  
306 Port Street  
Easton, MD 21601  
Attention: Alex Kolobielski  
Telecopier: (302) 422-2739  
Telephone: (410) 822-3301

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

William E. Prettyman, Jr.  
5393 Royal Mile Boulevard  
Salisbury, MD 21801  
Telecopier: (410) 546-9901  
Telephone: (410) 742-6026

and

First Media Radio Holdings, LLC  
11400 Skipwith Lane  
Potomac, Maryland 20854  
Attention: Ralph W. Hardy, Jr.  
Telecopier: (301) 983-2425  
Telephone: (301) 983-2424

and

Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N. W.  
Suite 800  
Washington, D.C. 20036-6802  
Attention: Patricia A. Francis  
Telecopier: (202) 776-2222  
Telephone: (202) 776-2509

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this **Section 11.1**.

11.2 [Benefit and Binding Effect](#). Neither party hereto may assign this Agreement without the prior written consent of the other party hereto except that Buyer shall have the right to assign its rights hereunder to its senior lender for security purposes. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.3 [Further Assurances](#). The parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement, including, in the case of Sellers, any additional bills of sale, deeds, or other transfer documents that, in the reasonable opinion of Buyer, may be necessary to ensure, complete, and evidence the full and effective transfer of the Assets to Buyer pursuant to this Agreement.

11.4 [Governing Law](#). This agreement shall be governed, construed, and enforced in accordance with the laws of the State of North Carolina (without regard to any choice of law or conflict of law provisions (whether of the State of North Carolina or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of North Carolina).

11.5 [Attorneys' Fees](#). In the event of a default by any party which results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses.

11.6 [Gender and Number](#). Words used in this Agreement, regardless of the gender and number specifically used, shall be deemed and construed to include any other gender, masculine, feminine, or neuter, and any other number, singular or plural, as the context requires.

11.7 [No Strict Construction](#). The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

11.8 [Entire Agreement](#). This Agreement, the schedules and exhibits hereto, and all documents, certificates, and other documents to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement among Buyer and Sellers with respect to the subject matter hereof. This Agreement supersedes all prior negotiations between the parties and the confidentiality letter agreement of February 4, 2003 among Buyer and MQC, MQB, MQI and Carolina Airwaves and cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.

11.9 [Waiver of Compliance; Consents](#). Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this **Section 11.9**.

11.10 [Counterparts](#). This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

11.11 [Press Releases](#). Buyer and Sellers shall jointly prepare and determine the timing of, any press release, or other announcement to the public or the news media (if any) relating to the execution of the Purchase Agreement. None of the parties hereto shall publish any press release, make any other public announcement or otherwise communicate with any news media concerning this Agreement or the transactions contemplated hereby without the prior written consent of each other party hereto; provided, however, that nothing contained herein shall prevent any party from promptly making all filings with governmental authorities as may, in its judgment, be required by law (including federal or state securities laws and the regulations of securities markets) or advisable in connection with the execution and delivery of this Agreement

or the consummation of the transactions contemplated hereby, in which case the other parties shall be first notified in writing.

**IN WITNESS WHEREOF**, this Agreement has been executed by Sellers and Buyer as of the date first written above.

**FIRST MEDIA RADIO, LLC**

By: \_\_\_\_\_  
Alex Kolobielski  
President and Chief Executive Officer

**MAINQUAD COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MAINQUAD BROADCASTING, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MAINQUAD, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**WEQQ, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CAROLINA AIRWAVES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Daniel Berman, an individual residing at 10228 Governors Drive, Chapel Hill, NC 27517 (the "Facilities Modification Guarantor"), do hereby unconditionally guaranty the due and punctual performance and payment in full, when due, of all obligations and liabilities of the Sellers under **Section 6.22** of the foregoing Asset Purchase Agreement, and waive any circumstances that might constitute a defense available to, or discharge of, the Facilities Modification Guarantor.

\_\_\_\_\_  
Daniel Berman

## **SCHEDULES**

Schedule 2.2	—	Excluded Assets
Schedule 2.6	—	Allocation of Purchase Price
Schedule 3.1	—	Ownership of Sellers
Schedule 3.3	—	Consents
Schedule 3.4	—	Licenses
Schedule 3.5	—	Real Property
Schedule 3.6	—	Tangible Personal Property
Schedule 3.7	—	Contracts
Schedule 3.9	—	Intangibles
Schedule 3.10	—	Financial Statements
Schedule 3.11	—	Insurance Matters
Schedule 3.14	—	Claims and Legal Actions
Schedule 3.15	—	Environmental Matters
Schedule 3.18	—	Transactions with Affiliates
Schedule 3.20	—	Personnel Matters
Schedule 4.6	—	Buyer Qualification
Schedule 6.17	—	Repairs and Replacements

## **EXHIBITS**

Exhibit 6.16	—	Noncompetition Agreement
Exhibit 6.20	-	Local Marketing Agreement
Exhibit 8.2(h)	—	Opinion of Sellers' Counsel