

## ASSET PURCHASE AGREEMENT

This Agreement, made and entered into as of this   15th   day of   July  , 2004 (the

“Effective Date”), by and among **TOMAR BROADCASTING COMPANY, INC.** (“Seller”),

**BRENT MOREY**, a shareholder and President of Seller (“Morey”), and **FORT WORTH**

**MEDIA GROUP GP, LLC** (Fort Worth Media Group GP, LLC, or its assignee, as applicable

“Purchaser”) (Seller, Morey, and Purchaser also shall be referred to herein individually as a

“Party” and collectively as the “Parties”).

WITNESSETH

**WHEREAS**, Seller is the licensee and operator of Radio Station KYBE-FM, Frederick, Oklahoma (the “Station”) pursuant to licenses and other authorizations granted to Seller by the

Federal Communications Commission (“FCC”) and other governmental authorities;

**WHEREAS**, Seller desires to sell the assets used and useful in the operation of the Station to Purchaser, and Purchaser desires to purchase all such assets;

**WHEREAS**, Seller desires to grant to Purchaser the first right of refusal to purchase KTAT-AM, Frederick, Oklahoma;

**WHEREAS**, Seller desires to assign all the licenses and other authorizations necessary for

operation of the Station to Purchaser upon obtaining all requisite governmental consents, and

Purchaser desires to be assigned all such licenses and other authorizations.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties, intending to be legally bound, agree as follows:

1. **DEFINITIONS**. As used in this Agreement, the following terms shall have the following meanings:

1.1. **Accounts Receivable** means the accounts receivable arising from the business of the Station prior to Closing.

1.2. **Applicable Laws** means all statutes, rules, regulations, ordinances, and other requirements imposed by a Governmental Authority that are applicable to the Transaction

and to the operation and business of the Station, including, but not limited to, zoning, environmental, labor, and other matters, and the Communications Act of 1934, as amended, and

the rules and regulations promulgated thereunder by the FCC.

1.3. **Assignment Application** means the application on FCC Form 314 that Seller and Purchaser will jointly file with the FCC requesting its consent to the assignment of the

Licenses from Seller to Purchaser.

1.4. **Business Day** means any day other than a Saturday, Sunday, recognized

federal legal holiday, or other day on which the FCC's offices are closed and are not reopened  
prior to 5:30 p.m. Washington, D.C. time.

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1.5. **Closing** means the consummation of the Transaction.

1.6. **Closing Date** means the date on which the Closing takes place, as determined pursuant to Section 7 hereof.

1.7. **Code** means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

1.8. **Encumbrances** means any liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances.

1.9. **Final Order** means any action by a Governmental Authority that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.

1.10. **Governmental Authority** means any national, state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions, including, but not limited to, the FCC.

1.11. **Licenses** means all licenses, construction permits, and other authorizations granted by the FCC that are necessary for the operation of the Station as contemplated hereunder.

1.12. **Permits** means all permits and other authorizations, other than Licenses, that are granted by a Governmental Authority and that are necessary for the operation of the Station as contemplated herein, including, but not limited to, zoning, labor, environmental and other matters.

1.13. **Sales Agreements** means agreements for the sale of time on the Station for cash.

1.14. **Tower** means the 62 meter tower and transmitter building located in Frederick, Oklahoma (the "Tower") more specifically described in Schedule 1.14 attached hereto and incorporated herein by reference.

1.15. **Trade Agreements** means agreements for the sale of time on the Station in exchange for merchandise or services.

1.16. **Transaction** means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of the Parties set forth herein.

1.17. **Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

1.18. **Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

**1.19. Headings and Cross-References.** The headings of the Sections hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections herein shall mean the Sections of this Agreement unless otherwise stated or clearly required by the context. All references to Schedules or Exhibits herein shall mean the Schedules or Exhibits to this Agreement.

Words such as “herein” and “hereof” shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

**2. ASSETS TO BE CONVEYED.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Purchaser, the following assets used and useful in the operation of the Station (the “Purchased Assets”):

**2.1. Tangible Personal Property.** The equipment, furniture, fixtures, office materials and supplies, inventories, spare parts, programs, programming material, record, tape and disc libraries, and other tangible personal property used in the operation of the Station, including the assets specifically listed on Schedule 2.1 attached hereto and incorporated herein by reference, and any additions, improvements, replacements and alterations thereto made between the Effective Date and the Closing Date (the “Tangible Personal Property”); provided, however, that the Purchased Assets shall not include such items of tangible personal property as are disposed of or consumed in the ordinary course of business of the Station or with the written consent of Purchaser between the Effective Date and the Closing Date.

**2.2. Contracts.** To the extent assignable: (i) the contracts listed on Schedule 2.2 attached hereto and incorporated herein by reference, (ii) a contract between Seller and Purchaser for the lease of office space in Frederick, Oklahoma, incorporated herein by reference as Exhibit C, (iii) a contract between Seller and Purchaser for the lease of space on the Tower and space in the building adjacent to Tower, incorporated herein by reference as Exhibit D, and (iv) the contracts with respect to the Station entered into between the Effective Date and the Closing Date in the ordinary course of business that Purchaser agrees in writing shall be added to

Schedule 2.2 and assigned from Seller to Purchaser (collectively, the “ Assumed Contracts”).

2.3. **Intangible Property.** All Seller’s right, title and interest in and to the call signs, slogans, logos, trademarks, tradenames, service marks, patents, franchises, jingles, copyrights, and other similar materials and rights, as more specifically listed on Schedule 2.3

attached hereto and incorporated herein by reference, and the goodwill and other intangible assets used in or arising from the operation or business of the Station (the “Intangible Property”).

2.4. **Business Records.** Originals or, if unavailable, photocopies of all files, records, studies, data, lists, filings, general accounting records, books of account, computer programs, and software and logs, of every kind, relating to the operation or business of the Station, including, but not limited to, the station files required under Applicable Law to be maintained at the Station, other than those specified in Section 4 below as Excluded Assets (the “Business Records”).

2.5. **Manufacturers’ Warranties and Vendors’ Warranties.** All Seller’s rights under manufacturers’ and vendors’ warranties relating to items listed in the Purchased Assets as of the Effective Date, and those acquired between the Effective Date and the Closing

4 Date, including but not limited to, those warranties listed on Schedule 2.5 attached hereto and incorporated herein by reference.

3. **LICENSES AND PERMITS.** On the Closing Date, Seller shall assign to Purchaser all the Licenses and Permits (collectively, the “Governmental Authorizations”) required for the operation of the Station, as more specifically listed on Schedule 3 attached hereto and incorporated herein by reference.

4. **EXCLUDED ASSETS.** Notwithstanding anything to the contrary in this Agreement, the following assets relating to the business and operation of the Station prior to the Closing Date shall be retained by Seller (or otherwise disposed of as indicated) and shall not be assigned, transferred, or conveyed to Purchaser (the “Excluded Assets”):

4.1. **Corporate, Tax and Accounting Records.** Seller’s corporate records and originals of Seller’s tax and accounting records.

4.2. **Cash.** All cash, cash equivalents, or similar types of investments of Seller.

4.3. **Employee Benefit Plans.** Any employee benefit plans of Seller.

4.4. **Accounts Receivable.** All accounts receivable of Seller relating to or

arising out of the operation of the Station prior to the Closing Date.

4.5. **Contracts.** Any contract used and useful in the operation of the Station other than the Assumed Contracts (the "Excluded Contracts").

5. **LIABILITIES** The Purchased Assets shall be transferred and conveyed to Purchaser free and clear of all Encumbrances. Purchaser does not and shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever except: (i) liabilities accruing after Closing under the Assumed Contracts, and (ii) prorated items that are to be paid by Purchaser after Closing.

6. **PURCHASE PRICE AND METHOD OF PAYMENT.** The total consideration for the Purchased Assets and assignment of the Governmental Authorizations (the "Purchase Price")

shall be Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), to be paid as follows:

6.1. **Escrow.** Simultaneously with the execution hereof, Purchaser will deposit with Texas Bank (the "Escrow Agent") the sum of Ten Thousand Dollars (\$10,000.00) as an earnest money deposit (the "Escrow Deposit") on the Transaction. The Escrow Agent shall hold and disburse the Escrow Deposit pursuant to an Escrow Agreement by and among Seller, Purchaser and Escrow Agent in a form substantially similar to the form attached hereto and incorporated herein by reference as Exhibit B.

6.2. **Cash at Closing.** At Closing, Purchaser shall pay to Seller the sum of Two-hundred Twenty-Five Thousand Dollars (\$225,000.00), including all or any part of the Escrow Deposit and interest earned thereon that is transferred to Seller at the Closing pursuant to

5 the terms of the Escrow Agreement. Such payment shall be in immediately available U.S. funds in accordance with instructions provided by Seller at least two (2) Business Days prior to Closing.

6.3. **Seller Financing.** At Closing, Purchaser and Seller shall execute a Promissory Note (the "Note") in the amount of One-Hundred Thousand Dollars (\$100,000.00).

The Note shall bear an interest rate of 5% accruing annually on the unpaid balance, and shall be paid ratably over a period of five (5) years, with the first payment due one year after the Closing Date, and additional payments due each year thereafter on the anniversary of the Closing Date,

until Note is paid in full. The Note shall be subject to other terms and conditions, incorporated herein by reference as Exhibit E.

**6.4. Allocation of Purchase Price.** Seller and Purchaser agree upon the allocation of the Purchase Price among the Purchased Assets as set forth on Schedule 6.4, which is attached hereto and incorporated herein by reference. Seller and Purchaser shall use such allocation, for all reporting purposes in connection with federal, state and local income and other tax laws.

**6.5. Adjustments.** Purchaser shall be entitled to all income earned and be responsible for all expenses incurred in connection with the operations and business of the Station on and after the Closing Date. Seller shall be entitled to all income earned and be responsible for all expenses incurred in connection with the operations and the business of the Station prior to the Closing Date. Pro rata allocations of income and expense, to the extent practicable, shall be calculated as of 11:59 p.m. on the day preceding the Closing Date. Such prorations and adjustments shall be made on the Closing Date. With respect to those prorations and adjustments not capable of being ascertained on the Closing Date, an adjustment and proration shall be made within 90 days after the Closing Date. In the event of any disputes between Seller and Purchaser as to such adjustments, the amounts not in dispute shall nonetheless be paid at the times required under this Section 6.4. Such disputes shall be resolved by an independent certified public accountant, mutually acceptable to the Seller and Purchaser, whose determination shall be final, and the fees and expenses of such accountant shall be borne equally by Seller and Purchaser.

**7. THE CLOSING** The closing (the “Closing”) of the Transaction shall be held at the offices of Luther King Capital Management, 301 Commerce Street, Suite 1600, Fort Worth, Texas, at 10:00 a.m. on a mutually agreed upon day within ten (10) Business Days after the FCC consent to the assignment of the Licenses shall have become a Final Order, or at such other time or place as shall be mutually agreed upon by the Parties (the “Closing Date”). At the Closing, each Party shall execute and deliver to the other Parties such instruments of conveyance and

assumption as shall in form and substance be satisfactory to such other Parties and their respective counsel as well as the other documents and instruments contemplated hereby.

**8. SELLER'S AND MOREY'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Seller and Morey hereby jointly and severally represent, warrant, and covenant to

Purchaser that the following are true and correct as of the Effective Date and that the following will be true and correct as of the Closing Date:

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**8.1. Existence and Power.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma, and has full power and authority to enter into this Agreement and other related documents and to consummate the transactions contemplated by this Agreement. All corporate and other proceedings required to be taken by or on the part of Seller to authorize the execution, delivery and carrying out of this Agreement, to authorize Seller to sell, assign, transfer, convey, and deliver the Purchased Assets, and to authorize Seller to assign the Governmental Authorizations, have been, or will be prior to Closing, duly and properly taken.

**8.2. Binding Effect.** This Agreement has been duly executed by Seller and Morey and duly delivered to Purchaser and constitutes a legal, valid, and binding obligation of Seller and Morey, enforceable in accordance with its terms.

**8.3. No Violation.** None of (i) the execution, delivery and performance of this Agreement by Seller or Morey, (ii) the consummation of the Transaction, or (iii) Seller's and Morey's compliance with the terms and conditions hereof, will, with or without the giving of notice or the lapse of time or both, conflict with, breach the terms and conditions of, constitute a default under, or violate Seller's organizational documents, any judgment, decree, order, agreement, lease or other instrument to which Seller or Morey is a party, or by which Seller or Morey is legally bound, result in the creation or imposition of any Encumbrance of any nature whatsoever on any of the Purchased Assets, or result in any violation of an Applicable Law.

**8.4. Citizenship.** Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Code. On the Closing Date, Seller will deliver to Purchaser an affidavit to that

effect, verified as true and sworn to under penalty of perjury. The affidavit shall also set forth

Seller's name, address, taxpayer identification number, and such additional information as may be

required to exempt this transaction from the withholding provisions of Section 1445 of the Code.

Purchaser shall have the right to furnish copies of the affidavit to the Internal Revenue Service.

**8.5. Conveyance of Purchased Assets.** At Closing, Seller shall convey to Purchaser good and marketable title to all the Purchased Assets, free and clear of all Encumbrances or other defects of title except the lien of any personal property taxes that will not

become due until after the Closing Date and that will be prorated between Seller and Purchaser.

**8.6. Taxes.** Seller has filed, or caused to be filed, all federal, state, and local tax returns required to be filed by Seller with respect to the Station. Seller has paid, or made provisions for payment, of all taxes due for periods covered by such returns.

**8.7. Tangible Personal Property.** The Tangible Personal Property listed on Schedule 2.1 will, at Closing, be all the tangible personal property used in the operation of the

Station or necessary for the lawful operation of the Station as presently operated by Seller. The

Tangible Personal Property listed on Schedule 2.1, except as specifically indicated therein, is in

good operating condition and is not in need of imminent repair or replacement.

**8.8. Contracts.** The Assumed Contracts listed on Schedule 2.2 are in full force and effect and are unimpaired by any acts or omissions of Seller, Seller's employees or agents, or

Seller's officers, directors or shareholders. There has not occurred as to any Assumed Contract

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any default by Seller or any event that, with the lapse of time or otherwise, could become a

default by Seller. There has not occurred as to any Assumed Contract any default by any other

party thereto or any event that, with the lapse of time or at the election of any person other than

Seller, could become a default by such party. Those Assumed Contracts whose stated duration

extends beyond the Closing Date will, at Closing, be in full force and effect, unimpaired by any

acts, or omissions of Seller, Seller's employees or agents, or Seller's officers, directors or shareholders. If any Assumed Contract requires the consent of any third party in order for Seller

to assign that Assumed Contract to Purchaser, Seller shall obtain such consent prior to Closing,

which consent shall not result in any terms or conditions of the Assumed Contract being more adverse to Purchaser. In the event Seller is unable or unwilling to obtain the consent of any such third party to the assignment of an Assumed Contract, such failure may be deemed a material breach of Seller's obligations under this Agreement.

**8.9. Intangible Personal Property.** Schedule 8.9 sets forth a correct and complete list of all trademarks, tradenames, service marks, and other Intangible Personal Property used in the operations or business of the Station. No infringement or unlawful or unauthorized use of such Intangible Personal Property has occurred in connection with operation of the Station.

**8.10. Insurance.** Schedule 8.10 lists all property, casualty and insurance policies held by Seller with respect to the Purchased Assets and the Station. Such insurance policies shall be kept in full force and effect until the Closing Date.

**8.11. Financial Statements.** Seller has furnished Purchaser with the financial statements listed or described in Schedule 8.11 (the "Financial Statements"). The Financial Statements are true, complete, and correct in all material respects and fairly present the financial condition and the results of operations of the Station as of the dates and for the periods indicated. Without limiting the foregoing, none of the Financial Statements overstates the revenues or understates the expenses of the Station for the periods covered. The Financial Statements were consistently prepared for each period, in accordance with generally accepted accounting principles. Except for those liabilities and obligations incurred in the ordinary course of business consistent with prior practices since the date of the Financial Statements, the Financial Statement reflect all liabilities and obligations of Seller, accrued, contingent or otherwise (known or unknown and asserted or unasserted) arising out of transactions effected or events occurring on or prior to the Closing Date.

**8.12. Employees.** No employee of the Station is represented by a union or other collective bargaining unit, no application for recognition as a collective bargaining unit has been filed with the National Labor Relations Board, and there has been no concerted effort to unionize any of the Stations' employees. Seller has no written employment agreement with any employee of the Station. Seller has no written or oral retirement, pension, bonus, termination pay,

hospitalization, vacation, or other employee benefit plan, practice, agreement, or understanding with any employee of the Station. Seller shall deliver to Purchaser, within fifteen (15) days after the Effective Date, an accurate list of all persons currently employed by the Station, together with a description of the terms and conditions of their respective employment, including salaries, as of the date of such list. Seller promptly will notify Purchaser of any changes that occur prior to Closing with respect to such information. On or prior to the Closing Date, Seller shall terminate the employment of all employees of the Station and shall pay any and all salary, benefit, severance

8 or other obligations owed to such employees prior to the Closing Date. Seller shall indemnify Buyer from and against any and all losses, liabilities, damages, costs or expenses relating to the Seller's termination of such employees and any amounts owed to such employees by Seller prior to the Closing Date (it being expressly agreed and understood by the parties hereto that Buyer shall have no obligation or liability whatsoever with respect to such employees). All employees of Seller who are employed by Buyer on or after the Closing Date shall be new employees of Buyer and any prior employment by Seller of such employees shall not affect entitlement to, or the amount of, salary or other cash compensation which Buyer may make available to its employees.

8.13. **Utilities.** All utilities that are necessary for Seller's present operation of the Station are in good working order. None of those utility lines cross the lands of other parties except where appropriate easements or licenses have been obtained.

8.14. **Compliance with Applicable Laws.** There is no outstanding complaint, citation, or notice issued by any Governmental Authority asserting that Seller is in violation of any Applicable Law. Seller is in compliance with all Applicable Laws and the Station is operating in full compliance with all Governmental Authorizations. Seller has maintained all employee benefit plans and arrangements in accordance with all applicable laws, rules and regulations including the Code and the Employee Retirement Income Security Act of 1974, as amended, and has timely

filed with all applicable regulatory authorities all applicable reports and returns required to be filed

by it with respect to its employee benefit plans and arrangements.

**8.15. Governmental Authorizations.** Schedule 8.15 contains a true and complete list of (i) all Governmental Authorizations issued to, or held by, Seller with respect to the Station, (ii) all pending applications for Governmental Authorizations, and (iii) all pending applications by Seller for modification, extension, assignment, or renewal of any Governmental Authorization, or for the transfer of control over Seller. The Governmental Authorizations listed on Schedule 8.15 are all the Governmental Authorizations required to be issued to or held by Seller in order to allow Seller to operate the Station as currently conducted, and all such Governmental Authorizations are in full force and effect. The Station is in full compliance with all terms and conditions in each Governmental Authorization. On the Closing Date, all Governmental Authorizations will be in full force and effect for their respective full terms. All applications, reports and regulatory fees required to be filed with each Governmental Authority, including the FCC, have been duly and timely filed.

**8.16. Litigation.** There are no complaints, investigations, or proceedings pending or threatened before or by any Governmental Authority, or any other person or entity relating to the business or operations of the Station or relating to any Governmental Authorization. There is no other litigation, action, suit, investigation or proceeding pending or threatened that may give rise to any claim, against any of the Purchased Assets or adversely affect Seller's ability to consummate the Transaction as provided herein. Seller is not aware of any facts that could reasonably result in any such proceedings.

**8.17. Agreements.** There exists no contracts or agreements with any other party with respect to the license of KYBE-FM, including, but not limited to, downgrade agreements, or relocation agreements. KYBE-FM is not part of any pending rule making, upgrade, or substantially similar proceeding before the FCC. KTAT-AM, for which the Seller conveys to

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Buyer a first right of refusal to purchase, incorporated herein by reference as Exhibit F, is the subject of a pending application before the FCC for relocation to Smyer, Texas, and is subject to an agreement with \_\_\_\_\_, incorporated herein by reference as Exhibit G.

**8.18. No Misleading Statements.** All information furnished to Purchaser by either Seller or Morey, whether or not herein or any Exhibit or Schedule hereto, is true, correct, and complete. Such information states all material facts required to be stated therein or necessary to make the statements therein, in light of the circumstances under which such statements are made, true, correct and complete in all material respects. Seller and Morey have made due inquiry and investigation concerning the matters to which the representations and warranties of Seller and Morey under this Agreement pertain and they are unaware of any facts, events or circumstances which have not been disclosed to Purchaser which are material to the financial condition, results of operations, business or prospects for Purchaser's operation of the Station after the Closing.

**8.19. Covenant Not to Compete.** Seller agrees for a period of three years after the Closing Date, that it will not directly or indirectly, own, manage, operate, control or participate in the ownership, management, operation or control of any business, whether in corporate, proprietorship or partnership form or otherwise, which is engaged in the operation of any radio station whose principal community contours overlap the principal community contour of KYBE-FM, except that Seller may continue to own and operate KTAT-AM. In no instance will Seller operate KTAT-AM in a format (music or otherwise) competitive to the format of the FCC broadcast license conveyed to Buyer in this contract.

**9. PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Purchaser hereby represents, warrants, and covenants to Seller that the following are true and correct as of the Effective Date and that the following will be true and correct as of the Closing Date:

**9.1. Existence and Power.** Purchaser is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Texas, and has full power and authority to enter into this Agreement and other related documents and to consummate the transactions contemplated by this Agreement. All corporate and other proceedings required to be taken by or on the part of Purchaser to authorize the execution, delivery and carrying out of this Agreement and to authorize Purchaser to purchase the Purchased

Assets and be assigned the Governmental Authorizations have been, or will be prior to Closing, duly and properly taken. In the event Purchaser assigns all or any portion of its rights hereunder, such assignee will, at Closing, be duly organized, validly existing and in good standing under the laws of the State of Texas, with full power under its organizational documents to enter into and perform this Agreement.

9.2. **Binding Effect.** The execution, delivery, and performance of this Agreement by Purchaser have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Purchaser and constitutes a legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms. In the event Purchaser assigns all or any portion of its rights hereunder, Purchaser will deliver to Seller, at or prior to Closing, documentation verifying such assignee's assumption of Purchaser's rights and obligations

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hereunder.

9.3. **No Violation.** None of (i) the execution, delivery and performance of this Agreement by Purchaser, (ii) the consummation of the Transaction, or (iii) Purchaser's compliance with the terms and conditions hereof will, with or without the giving of notice or the lapse of time or both, conflict with, breach the terms and conditions of, constitute a default under, or violate Purchaser's organizational documents, any judgment, decree, order, agreement, lease or other instrument to which Purchaser is a party, or by which Purchaser is legally bound, or any law, rule or regulation applicable to Purchaser.

9.4. **Licensee Qualifications.** To the best of Purchaser's knowledge, there is no fact that would, under Applicable Law, disqualify Purchaser from being the assignee of the Governmental Authorizations or the owner and operator of the Station. Should Purchaser become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such disqualification. Purchaser will not take any action that Purchaser knows, or has reason to believe, would result in such disqualification.

9.5. **Litigation.** There is no action, suit, investigation or other proceeding pending or threatened that may adversely affect Purchaser's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Purchaser is not aware of any

facts that could reasonably result in any such proceeding.

**10. PRE-CLOSING RIGHTS AND OBLIGATIONS.** The Parties covenant and agree as follows with respect to the period prior to Closing:

**10.1. Application for FCC Consent.** Seller and Purchaser shall, within fifteen (15) Business Days after the execution of this Agreement, file an appropriate Assignment Application with the FCC. Seller and Purchaser shall diligently take all other steps necessary or desirable and proper expeditiously to prosecute the Assignment Application and to obtain the FCC's grant of the Assignment Application. The failure by either Seller or Purchaser to timely file or diligently prosecute its portion of the Assignment Application shall be deemed a material breach of this Agreement.

**10.2. Access.** Between the Effective Date and the Closing Date, Seller shall give Purchaser or representatives of Purchaser reasonable access upon reasonable notice to Seller to the Station, to the Purchased Assets and to the books and records of Seller relating to the business and operations of the Station (KYBE-FM). It is expressly understood that, pursuant to this Section 10.2, Purchaser, at its expense, shall be entitled to conduct such engineering inspections of the Station, and such audits of the Station's Financial Records and related materials as Purchaser may desire. No inspection or investigation made by or on behalf of Purchaser or Purchaser's failure to make any inspection or investigation shall affect Seller's representations, warranties, and covenants hereunder or be deemed to constitute a waiver of any of those representations, warranties, and covenants.

**10.3. Operations Prior to Closing.** Between the Effective Date and the Closing Date:

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(a) Seller shall operate the Station and conduct the Station's business in the ordinary course and in material compliance with all Applicable Laws. To the extent consistent with such operations, Seller shall use its best efforts to: (i) maintain the present character and entertainment format of the Station and the quality of its programs; (ii) keep

available for Purchaser the services and number of the Station's present employees; and (iii) preserve the Station's present customers and business relations.

(b) Seller shall: (i) use the Purchased Assets only for the operation of the Station, (ii) maintain the Purchased Assets in substantially their present condition (reasonable wear and tear in normal use excepted), (iii) maintain all inventories of Tangible Personal Property, including, but not limited to, supplies, tubes, and spare parts, at levels at least equivalent to those

existing on the Effective Date; and (iv) promptly give Purchaser written notice of any unusual or materially adverse developments with respect to the Purchased Assets or the business or operations of the Station.

(c) Seller shall maintain its books and records in the usual, regular and ordinary manner, on a basis consistent with prior periods.

(d) Seller shall not: (i) sell or otherwise dispose of any Purchased Assets except in the ordinary course of business and only if any property disposed of is replaced by property of like or better kind, quality, and utility prior to Closing; (ii) cancel, terminate, modify, amend, renew, or encumber any of the Assumed Contracts or Excluded Contracts without Purchaser's prior written consent; (iii) increase the compensation payable or to become payable to any employee of the Station except in the ordinary course of business consistent with Seller's past practice; (iv) enter into any contract, lease, or agreement that will impose any material obligation on Purchaser after Closing; or (v) take any action that would cause any of its representations and warranties set forth herein to not be true as of the Closing Date.

(e) Seller shall file on a current basis until the Closing Date all reports and documents required to be filed with the FCC with respect to the Stations Licenses. Copies of each such report and document filed between the date hereof and the Closing Date shall be furnished to Buyer promptly after its filing.

#### 10.4. **Damage.**

(a) **Risk of Loss.** The risk of loss or damage to the Purchased Assets shall be upon Seller at all times prior to Closing. In the event of material loss or damage to the Purchased Assets, Seller promptly shall notify Purchaser thereof and use its best efforts to repair, replace or restore the lost or damaged property to its former condition as soon as possible. If the cost of repairing, replacing or restoring any lost or damaged property is Ten Thousand Dollars (\$10,000.00) or less, and Seller has not repaired, replaced or restored such property prior to the Closing Date, Closing shall occur as scheduled and Seller shall pay to Purchaser the amount necessary to restore the lost or damaged property to its former condition. If the cost to repair, replace, or restore the lost or damaged property exceeds Ten Thousand Dollars (\$10,000.00), and

Seller has not repaired, replaced or restored such property prior to the Closing Date, Purchaser may, at its option:

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(1) elect to Close on the Transaction, in which event Seller shall pay to Purchaser the amount necessary to restore the lost or damaged property to its former condition, and, against such obligation, shall assign to Purchaser all Seller's rights under any applicable insurance policies; or

(2) elect to postpone the Closing, with prior consent of the FCC if necessary, for such reasonable period of time (not to exceed ninety (90) days) (the "Closing Extension Period") as is necessary for Seller to repair, replace or restore the lost or damaged property to its former condition. If, after the expiration of the Closing Extension Period, the lost or damaged property has not been fully repaired, replaced or restored to Purchaser's sole satisfaction, Purchaser may terminate this Agreement and obtain a return of the Escrow Deposit, and the Parties shall be released and discharged from any further obligation hereunder.

**(b) Failure of Broadcast Transmissions.** Seller shall give prompt written notice to Purchaser if any of the following (each a "Specified Event") shall occur:

(i) the transmission of the regular broadcast programming of the Station in the normal and usual manner

is interrupted or discontinued; or (ii) the Station is operated at less than its licensed antenna height above average terrain or at less than ninety percent (90%) of its licensed power. If, prior to

Closing, the Station is not operated at its licensed operating parameters for more than seventy-two (72) hours, whether or not consecutive, during any period of thirty (30) consecutive

days, or if there are three (3) or more Specified Events each lasting more than twenty-four (24)

consecutive hours, then Purchaser may, at its option: (i) terminate this Agreement, or (ii) proceed

in the manner set forth in Section 10.4. In the event of termination of this Agreement by Purchaser pursuant to this Section 10.5, the Parties shall be released and discharged from any

further obligation hereunder.

**(c) Resolution of Disagreements.** If the Parties are unable to agree upon the extent of any loss or damage, the cost to repair, replace or restore any lost or damaged

property, the adequacy of any repair, replacement, or restoration of any lost or damaged property, or any other matter arising under this Section 10.4(c), the disagreement shall be referred to a qualified consulting communications engineer, who is a member of the Association of Federal Communications Consulting Engineers. Such engineer must be mutually acceptable to Seller and Purchaser. The engineer's decision shall be final. The engineer's fees and expenses shall be borne equally by Seller and Purchaser.

**10.5. Administrative Violations.** If Seller receives any finding, order, complaint, citation or notice prior to Closing which states that any aspect of the Station's operations violates any Applicable Law (an "Administrative Violation"), Seller promptly shall notify Purchaser of the Administrative Violation, use its best efforts to remove or correct the Administrative Violation, and be responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed. In the event that this Administrative Violation is determined to be not cured in Purchaser's sole discretion, Purchaser may terminate this Agreement.

**10.6. Bulk Sales Act.** Buyer hereby waives compliance by Seller with the provisions of the "bulk sales" or similar laws of any state. Seller agrees to indemnify Buyer and hold it harmless from any and all loss, cost, damage and expense (including but not limited to, 13 reasonable attorney's fees) sustained by Buyer as a result of any failure of Seller to comply with any "bulk sales" or similar laws.

**10.7. Control of Station.** From the Effective Date until the Closing Date, Purchaser shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operations of the Station.

## **11. CONDITIONS PRECEDENT.**

**11.1. Mutual Conditions.** The obligation of both Purchaser and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

**(a) Grant of the Assignment Application.** The FCC shall have granted the Assignment Application, such grant shall have become a Final Order, and such grant shall be in full force and effect on the Closing Date, provided, however, that Purchaser may waive

the requirement that the grant shall have become a Final Order. In the event of such waiver, the Parties shall execute one or more agreements or other documents such that the Parties are restored to their pre-Closing positions in the event that the grant does not become a Final Order within the time required by this Agreement.

(b) **Absence of Litigation.** As of the Closing Date, no action, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction or operation of the Tower shall be pending before any court, the FCC, or any other Governmental Authority; provided, however, that this Section 11.1(b) may not be invoked by a Party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of such Party.

11.2. **Conditions to Purchaser's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 11.1, the obligation of Purchaser to consummate the Transaction is subject, at Purchaser's option, to the satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Seller and Morey to Purchaser shall be true, complete, and correct as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with the performed in all material respects.

(c) **No Material Adverse Change.** There shall have been no change subsequent to the Effective Date in the financial condition of Seller or any of the Purchased Assets, the operation of the Station, or the prospects for Purchaser's operation of the Station with the Purchased Assets except (i) changes in the ordinary course of business, none of which, individually or in the aggregate, shall be materially adverse, and (ii) changes that are specifically contemplated by this Agreement.

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(d) **Occupancy Certificates.** At Closing, Seller shall deliver to Purchaser true and complete copies of any certificates of occupancy, certificates of land use compliance, or equivalent instruments ("Occupancy Certificates") issued by the appropriate

Governmental Authority, that are required to permit the present operation of the Station by Seller

prior to Closing and by Purchaser after Closing. No proceedings to amend, cancel, or revoke any

such Occupancy Certificates shall be pending or threatened as of the Closing Date.

(e) **Third-Party Consents.** Seller shall have obtained all required third-party consents to Purchaser's assumption of the Assumed Contracts on Schedule 2.2 such

that Purchaser will, after Closing, enjoy all the rights and privileges of Seller under such Assumed

Contracts subject only to the same obligations as are binding on Seller pursuant to their present terms.

(f) **Opinion of Seller's Counsel.** At Closing, Seller shall deliver to Purchaser the written opinion of Seller's counsel substantially in the form included in Exhibit H

attached hereto and incorporated herein by reference.

(g) **Closing Documents.** Seller shall deliver to Purchaser such assignments, bills of sale, and other instruments of conveyance as are necessary to assign the

Governmental Authorizations to Purchaser and to vest title to the Purchased Assets in Purchaser,

all of which documents shall be dated as of the Closing Date, duly executed by Seller, and in such

form as is customary for transactions of this type and reasonably acceptable to Purchaser's

counsel, as well as such other documents and instruments as are reasonably requested by Purchaser.

**11.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 11.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

(a) **Applicability to Assignee.** In the event Purchaser has assigned all or any portion of its rights hereunder, the conditions in this Section 11.3(a) shall apply to Purchaser's assignee as well as to Purchaser.

(b) **Representations and Warranties.** The representations and warranties of Purchaser to Seller shall be true, complete and correct as of the Closing Date with

the same force and effect as if then made.

(c) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Purchaser on or before the Closing Date shall

have been duly complied with and performed in all material respects.

(d) **Assumption of Contracts.** Purchaser shall assume and agree to pay, perform and discharge Seller's obligations under the Assumed Contracts to the extent the

same are to be assumed by Purchaser hereunder.

(e) **Consideration.** Purchaser shall deliver to Seller the Purchase Price as specified in Section 6 hereof.

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## 12. INDEMNIFICATION.

12.1. **Indemnification.** Seller and Morey shall, jointly and severally, indemnify and hold Purchaser and its affiliates and the officers, directors, partners, stockholders, employees and agents of Purchaser and its affiliates (the “Indemnified Persons”) harmless from and against any loss, damage, claim, demand, cause of action, liability, costs or expense (including without limitation interest, penalties, and attorneys’ fees and disbursements) of any kind or nature whatsoever asserted against or incurred by any Indemnified Person by reason of, resulting from, or based upon: (a) any misrepresentation, breach of warranty or breach or nonfulfillment of any covenant or other agreement made by either of Seller or Morey herein or in any other agreement executed and delivered by either of them pursuant to this Agreement, (b) any liability of Seller for failure to file any federal, state, local or foreign tax return, and any liability or obligation to pay any federal, state, local or foreign taxes, relating to any tax period ending on or prior to the Closing Date and any liability to pay interest or penalties upon or with respect to any of the foregoing, (c) any obligation or liability relating to any period prior to the Closing Date relating to any employee benefit plan of Seller or relating to any employee of Seller who is not hired by Purchaser after the Closing, (d) operations of Seller prior to the Closing or conditions in existence prior to the Closing that give rise to liability under any applicable environmental laws, including, but not limited to, costs incurred in connection with the investigation and/or remediation of hazardous substances which Purchaser determines are reasonably necessary to comply with Applicable Laws or to allow full economic use of the Purchased Assets or the Governmental Authorizations, (e) any other actions or omissions of Seller prior to the Closing that give rise to liability to Purchaser other than the assumed liabilities described in Section 5 hereof, and (f) any

obligation or liability for any finders', brokers' or agents' fee in connection with the transactions contemplated hereby.

NO INVESTIGATION BY OR ON BEHALF OF, AND NO NEGLIGENCE OF, PURCHASER OR ITS AFFILIATES, NOR ANY INFORMATION THAT THEY MAY HAVE OR OBTAIN WILL AFFECT THE INDEMNIFICATION OBLIGATIONS OF SELLER OR MOREY HEREUNDER.

12.2. **Indemnification Not Sole Remedy.** The right to indemnification hereunder shall not be the exclusive remedy of Purchaser, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which Purchaser may otherwise be entitled.

### 13. DEFAULT AND REMEDIES.

13.1. **Material Breaches.** A Party shall be deemed to be in default under this Agreement (the "Breaching Party") only if such Breaching Party has materially breached or failed to perform its obligations hereunder. No non-material breaches or failures shall be grounds for declaring a Party to be in default, postponing the Closing, or terminating this Agreement.

13.2. **Opportunity to Cure.** If a Party (the "Non-breaching Party") believes the Breaching Party to be in default hereunder, the Non-breaching Party shall provide the Breaching Party with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of: (i) the Closing Date, or (ii) within ten (10) days after

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delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the Breaching Party undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the Non-breaching Party may exercise the remedies available to such Party pursuant to this Section 13, subject to the right of the Breaching Party to contest such action through appropriate proceedings.

13.3. **Seller's Remedies.** Purchaser recognizes that, if the Transaction is not consummated as a result of Purchaser's default, Seller would be damaged, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the Parties agree that if the Transaction is not consummated due to the default of Purchaser, and, provided that Seller is

not in default and otherwise has complied with its obligations under this Agreement, Seller shall be entitled to the Escrow Deposit plus actual legal costs incurred in connection with this agreement as liquidated damages. The Parties agree that this sum shall constitute liquidated damages and shall be in lieu of any other relief to which Seller might otherwise be entitled due to Purchaser's wrongful failure to consummate the Transaction.

**13.4. Purchaser's Remedies.** Seller agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Purchaser will be irreparably injured if this Agreement is not specifically enforced. Therefore, Purchaser shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Purchaser has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Alternatively, in the event of a material default by Seller, Purchaser may terminate this Agreement and obtain a return of the Escrow Deposit. In addition, Purchaser may pursue such damages as to which it may be entitled under the laws of the State of Texas.

#### **14. TERMINATION.**

**14.1. Failure to Close.** This Agreement may be terminated at the option of either Seller or Purchaser upon written notice to the other Party if the Closing has not occurred within eight (8) months from the date the Assignment Application has been filed with the FCC; provided, however, that neither Seller nor Purchaser may terminate this Agreement if such Party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such Party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by such Party of incorrect, inaccurate or incomplete information to the FCC; and (iii) by any other action taken by such Party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application. In the event of termination pursuant to this Section 14.1, the Parties shall be released and discharged from any further obligation hereunder.

14.2. **Designation for Hearing.** The time for FCC approval provided in Section 14.1 notwithstanding, neither Seller nor Purchaser may terminate this Agreement upon written notice to the other Party, if, for any reason, the Assignment Application is designated for hearing by the FCC, provided, however, written notice of termination must be given within twenty (20) days after release of the hearing designation order and that the Party giving such notice is not in default and otherwise has complied with its obligations under this Agreement. Upon termination pursuant to this Section 14, the Parties shall be released and discharged from any further obligation hereunder.

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## 15. GENERAL PROVISIONS.

15.1. **Brokerage.** Seller and Purchaser represent to each other that no Party has been engaged as a broker or finder in connection with the Transaction.

15.2. **Expenses.** All FCC filing fees for the Assignment Application, and all recording costs, transfer taxes (but not income or franchise taxes), document stamps, and other

similar charges shall be paid equally by Seller and Purchaser. Except as otherwise provided

herein, all other expenses incurred in connection with this Agreement or the Transaction shall be

paid by the Party incurring those expenses whether or not the Transaction is consummated.

15.3. **Notices.** Any notice, request, demand or other communications required or permitted hereunder (unless otherwise expressly provided therein) must be in writing and will be sufficiently given by (a) personal delivery, (b) expedited delivery service with proof of delivery,

(c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or

(d) prepaid telegram, telex or telecopy (facsimile) sent to the intended addressee at the address

shown below, or to such different address as the addressee shall have designated by written notice

sent in accordance herewith.

If to Seller or Morey: Tomar Broadcasting Company, Inc.

Attn:

Tel:

Fax:

with a copy which shall not constitute notice to:

{Attorney}

Tel:

Fax:

If to Purchaser: Fort Worth Media Group GP, LLC  
301 Commerce Street, Suite 1600  
Fort Worth, TX 76102  
Tel: (817) 332-3235  
Fax: (817) 332-4630

w

with a copy which shall not constitute notice to:

Lawrence B. Goldstein, Esq.  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
Tel: (214) 999-4564  
Fax: (214) 999-3564

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A notice is deemed to have been given and received: (a) on the day it is delivered, if delivered personally, (b) on the day on which transmission is confirmed if sent by facsimile transmission, unless such day is not a Business Day or the time of delivery or transmission is after ordinary office hours, in which case the notice or other communication shall be deemed to have been sent and received on the next following Business Day, or (c) on the fourth Business Day following the date any notice or other communication is mailed as aforesaid.

15.4. **Assignment.** No Party may assign its rights or obligations hereunder without the prior written consent of the all other Parties; provided, however, that Purchaser may, without the consent of Seller or Morey, assign all or any portion of its rights and obligations to a corporation, partnership or other business entity controlled by Purchaser or its principals, and Seller and Morey agree to execute acknowledgements of such assignment(s) in such forms as Purchaser may from time to time reasonably request. Upon such assignment and assumption, Purchaser shall be released from all obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective successors and assignees.

15.5. **Exclusive Dealings.** For so long as this Agreement remains in effect, neither Seller, Morey nor any person acting on Seller's behalf shall solicit or initiate any offer from, or conduct any negotiations with, any person concerning the acquisition of the Station,

directly or indirectly, by any party other than Purchaser or Purchaser's permitted assignees.

15.6. **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Morey, Purchaser, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Purchaser.

15.7. **Indulgences.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any Party at any time to require performance by the other Parties of any provision of this Agreement shall not affect such Party's right thereafter to enforce the same; (ii) no waiver by a Party of any default by the other shall be taken or held to be a waiver by such Party of any other preceding or subsequent default; and (iii) no extension of time granted by a Party for the performance of any obligation or act by another Party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

15.8. **Survival of Representations and Warranties.** The several representations, warranties, and covenants of the Parties contained herein shall survive the execution and delivery hereof and Closing.

15.9. **Schedules and Exhibits.** The Schedules and Exhibits attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.

15.10. **Entire Agreement; Amendment.** This Agreement and the Schedules and Exhibits to this Agreement set forth the entire understanding among the Parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or

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provision hereof may be altered or amended in any manner except by an instrument in writing signed by the Party against whom the enforcement of any such change is sought.

15.11. **Counsel.** *Each Party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each Party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law*

*to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.*

15.12. **Disclosure.** Without the prior written consent of the other Parties, no Party shall (except as required in connection with filings with the FCC) directly or indirectly prior to the Closing make any public comment, statement or communication with respect to or otherwise disclose or permit the disclosure of the existence of this Agreement, the Transaction or any of the terms hereof.

15.13. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Texas without regard to the choice of law rules utilized in that jurisdiction.

15.14. **Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law, and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

15.15. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument.

SIGNATURE PAGE

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller, Morey and Purchaser have executed this Asset Purchase Agreement as of the Effective Date.

SELLER:

**TOMAR BROADCASTING COMPANY, INC.**

By: Brent Morey

Title:

MOREY:

Brent Morey

PURCHASER:

**Fort Worth Media Group GP, LLC**

By: Kevin Prigel

Title: Vice -President

**Schedule 1.14**

**Tower**

A 62 meter tower located at 34-23-30.0 North latitude, 99-01-52.0 W longitude, ASRN 1062020.

**Schedule 2.1**

**Tangible Personal Property**

- Harris HT 5 CD Transmitter
- One Harris Exciter
- FM Antenna (3 bay), and installed at a height above ground level of 54 meters.
- STL receiving dish on tower
- 180 ft. of coaxial cable installed
- Marti STL receiver
- Audiotronix Broadcast console
- Control Room Computer
- Four microphones
- Two CD Players
- One TEAC Cassette Player/Recorder
- Three Cart Machines
- Optimod FM Modulation Monitor
- Marti Remote STL Broadcast Transmitter
- Production Room Computer/Monitor
- Remote STL Transmitting Dish
- Virtual DJ Software Package
- Two Satellite Receiving Dishes
- 75 feet of coaxial cable connecting Satellite dishes
- The Music Library of KYBE-FM, including all copies of music on CD, Minidisc, or other medium of storage.
- Any and all other equipment necessary for the lawful operation of KYBE-FM in accordance with FCC rules

**Schedule 2.2****Contracts****Learfield Communications (OU Sooner Broadcasts)****Schedule 2.3****Intellectual Property**

Call letters KYBE

Logo – “The Coyote”

K -96 FM “The Coyote”

**Schedule 2.5****Warranties**

None

**Schedule 3****Licenses and Permits**

FCC License to operate a Class A radio station with a city of license of Frederick, Oklahoma, as reflected in FCC File Number BLH-19990225KE.

**Schedule 6.4****Purchase Price Allocation**

Harris HT 5 CD Transmitter \$15,000.00

One Harris Exciter \$4,000.00

FM Antenna (3 bay) \$10,000.00

STL receiving dish on tower \$1,200.00

180 ft. of coaxial cable installed \$500.00

Marti STL receiver \$700.00

Audiotronix Broadcast console \$1,500.00

Control Room Computer \$1,500.00

Four microphones \$350.00

Two CD Players \$300.00

One TEAC Cassette Player/Recorder \$500.00

Three Cart Machines \$300.00

Optimod FM Modulation Monitor \$2,000.00

Marti Remote STL Broadcast Transmitter \$1,200.00  
Production Room Computer/Monitor \$1,500.00  
Remote STL Transmitting Dish \$1,200.00  
Virtual DJ Software Package \$200.00  
Two Satellite Receiving Dishes \$1,500.00  
75 feet of coaxial cable connecting Satellite dishes \$500.00  
The Music Library of KYBE-FM \$2,000.00  
Balance of Purchase 279,050.00

**Schedule 8.10**

**Insurance**

**Westphalen Insurance Tower 40,000**

**General Star Commercial Liability**

**Schedule 8.11**

**Financial Statements**

**Provide at Closing**

**Schedule 8.15**

**Governmental Authorizations**

FCC License to operate a Class A radio station with a city of license of Frederick, Oklahoma, as reflected in FCC File Number BLH-19990225KE.

**Exhibit B**

**Escrow Agreement**

{ATTACHED}

**Exhibit C**

**Office Lease**

Buyer will lease to seller office space at 217 W. Grand Avenue in Frederick including all office facilities except the studio room for KTAT-AM, the small office just across the hall, and the rear of the facility that is used for storage. Both parties shall have access to restroom facilities and equipment storage area. Seller will maintain building insurance. Each party shall be responsible for their own content insurance. Buyer will be responsible for utilities at the office and will transfer responsibility for electrical, water service with the City of Frederick and natural gas with Oklahoma Natural Gas the day following closing. Buyer can utilize storage area in the rear of the facility if needed with permission of seller. Lease payment shall be \$300.00 per month due upon the first day of the month. Terms shall be for one year with the option to renew at the same rate for an additional year. Buyer may terminate the lease agreement with 30 day notice. Seller may terminate lease with 90 day notice.

**Agreed to and accepted:**

\_\_\_\_\_  
**Fort Worth Media Group GP, LLC**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Tomar Broadcasting Company, Inc.**

**Date:** \_\_\_\_\_

**Exhibit D**

**Tower Lease**

Seller will lease existing tower space and transmitter room approximately ¼ mile west of Frederick to Buyer at a rate of \$300.00 per month for one year with an option to renew at the same rate and conditions for an additional year. Buyer will be responsible for electrical service for Buyer's equipment at the tower site and will contact the electric utility to set up separate metering if necessary. Buyer will be responsible for insuring equipment on site including antenna. Should storm, wind, or other natural disaster result in the loss of or extensive damage to the existing tower, seller will make every effort to repair the tower or install another tower on the existing site as quickly as possible. Should a replacement tower need to be erected, the new tower will be approximately the same height and strength of the original structure. Reasonable time shall be given to seller to make such repairs. Seller will not be held liable for any damage to the antenna or equipment owned by buyer at the tower site or for any loss of income buyer may experience due to damage to the tower or building.

**Agreed to and accepted:**

\_\_\_\_\_

**Fort Worth Media Group GP, LLC**

**Date:** \_\_\_\_\_

**Tomar Broadcasting Company, Inc.**

**Date:** \_\_\_\_\_

**Exhibit E**

**Promissory Note**

**Promissory Installment Note And Security Agreement**

**RECITATIONS:**

**Date:** \_\_\_\_\_

**Borrower:** \_\_\_\_\_

**Address:** 301 Commerce Street, Suite 1600

Fort Worth, Texas 76102

**P**

**ayee:** Tomar Broadcasting Company, Inc.

**Address:** \_\_\_\_\_

**Principal Amount:** One-hundred Thousand Dollars (\$100,000.00)

**Term:** Five (5) Years

**Annual Payment:** Twenty-three Thousand Ninety-seven and 48/100 Dollars (\$23,097.48)

**INTEREST RATE:** Annual interest rate on matured, unpaid amounts shall be 5%, or the maximum rate permitted by the Laws of the State of Texas.

**PAYMENT TERMS.** This Note is due and payable as follows, to-wit: Five (5) equal annual payments of \$23,097.48. The first such payment due and payable on the 1st day of \_\_\_\_\_, 2005, and a like installment shall be due and payable on the same day of each succeeding year thereafter until the total principal of \$100,000 is paid in full.

**BORROWER'S PRE-PAYMENT RIGHT.** Borrower reserves the right to prepay this Note in whole or in part, prior to maturity, without penalty.

**PLACE FOR PAYMENT.** Borrower promises to pay to the order of Payee at the place for payment and according to the terms for payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

**DEFAULT AND ACCELERATION CLAUSE.** If Borrower defaults in the payment of this Note or in the performance of any obligation, and the default continues after Payee gives Borrower sufficient notice of the default and the time within which it must be cured, as may be required by law or written agreement, then Payee may declare the unpaid principal balance and earned interest on this Note immediately due. Borrower and each surety, endorser, and guarantor waive all demands for payment, presentation for payment, notices of intentions to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

**INTEREST ON PAST DUE INSTALLMENTS AND CHARGES.** All past due installments of principal and/or interest and/or all other past-due incurred charges shall bear interest after maturity at 10%, or the maximum amount of interest permitted by the Laws of the State of Texas until paid. Failure by Borrower to remit any payment by the 30th day following the date that such payment is due entitles the Payee hereof to declare the entire principal and accrued interest immediately due and payable. Payee's forbearance in enforcing a right or remedy as set forth herein shall not be deemed a waiver of said right or remedy for a subsequent cause, breach or default of the Borrower's obligations herein.

**INTEREST.** Interest on this debt evidenced by this Note shall not exceed the maximum amount of nonusurious

interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of the maximum shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this instrument (and any other instruments) concerning this debt.

**FORM OF PAYMENT.** Any check, draft, Money Order, or other instrument given in payment of all or any portion hereof may be accepted by the holder and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of the holder hereof except to the

extent that actual cash proceeds of such instruments are unconditionally received by the payee and applied to this indebtedness in the manner elsewhere herein provided.

**SECURITY.** This note shall be secured generally by the assets of Fort Worth Media Group GP, LLC.

**SEVERABILITY.** If any provision of this Note or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Note nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

**BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.

**DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations under this Note.

**CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.

**GOVERNING LAW.** This Note shall be governed, construed and interpreted by, through and under the Laws of the State of Texas.

**Borrower is responsible for all obligations represented by this Note.**

**EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.**

**Borrower's Signature:**

\_\_\_\_\_  
**Payee's Signature:**

\_\_\_\_\_  
**Exhibit F**

**First Right to Purchase KTAT**

Fort Worth Media Group GP, LLC ("FWMG") is interested in purchasing the FCC license of KTAT-AM and the assets associated with it, including any contracts to lease space on a tower for the purpose of broadcasting, and any other assets or contracts of Tomar Broadcasting Company, Inc. ("Tomar"), including FCC Construction Permits, related to KTAT-AM (collectively the "Assets"). AMPM Group is interested in selling the Construction Permit. Therefore, for and in consideration of the mutual covenants and agreements between the parties, the sufficiency of which is acknowledged, Fort Worth Media Group GP, LLC and Tomar Broadcasting Company, Inc. hereby agree as follows:

FWMG shall have the first right to make an offer to purchase the Assets, subject to customary due diligence, should Tomar decide to sell or contemplate selling the Assets. FWMG agrees to present its offer within ten (10) business days of notification by Tomar of their intention to sell the Assets. Such offer shall be in the form of a Binding Term Sheet, subject to such terms and conditions as are customary.

Tomar agrees to notify FWMG if it will accept FWMG's offer within three (3) business days.

If Tomar does not accept FWMG's offer, Tomar shall grant FWMG the right to match any other written and binding offer for the Construction Permit or Assets received by Tomar, and Tomar shall be obligated to accept FWMG's offer. Tomar agrees to notify FWMG within 48 hours if and when it receives another offer for the Construction Permit or Assets. FWMG agrees to notify Tomar whether or not it will exercise its right to match any offer within ten (10) business days from the receipt of notice.

Tomar agrees that FWMG's right to match any offer will extend for two years from the date of this Agreement. Tomar also agrees that in the event another offer contains non-cash items, FWMG will be allowed to match the cash value of those non-cash items in matching the offer. In the event of a disagreement over the cash value of non-cash items, a value will be set by a mutually agreed upon appraiser qualified to appraise the non cash items in question.

Tomar agrees that because monetary damages are not sufficient recourse in the event of a violation of this agreement, FWMG is entitled to demand specific performance.

**Agreed to and accepted:**

\_\_\_\_\_  
**Fort Worth Media Group GP, LLC**

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Tomar Broadcasting Company, Inc.**

**Date:** \_\_\_\_\_

**Exhibit G**

Agreement with 3 Amigo regarding KTAT

Exhibit H

Seller's Opinion of Counsel

**ESCROW AGREEMENT**

This Escrow LOI is made and entered into as of this 26th day of July, 2004 by and among Tomar Broadcasting Company, Inc. ("Seller"), Fort Worth Media Group GP, LLC or its assigns ("Purchaser"), and Texas Bank, Fort Worth, Texas ("Escrow Agent").

**WITNESSETH:**

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement for the proposed acquisition of certain assets of Tomar Broadcasting Company, Inc. (hereinafter referred to as the "LOI") of even date herewith for the proposed sale and purchase of

assets used and useful in the operation of Radio Station KYBE-FM, Frederick, Oklahoma, and

WHEREAS, the parties desire Escrow Agent to hold certain deposit monies in escrow;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. Receipt of Deposit. By their signatures below, Escrow Agent acknowledge receipt from Purchaser of the sum of Ten Thousand

Dollars (\$10,000.00) (the "Escrow Deposit"). The Escrow Deposit

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shall be held and released by Escrow Agent in accordance with the terms of this Escrow LOI.

2. Investment of Escrow Deposit. Escrow Agent shall invest the Escrow Deposit in one or more interest-bearing accounts in

Texas Bank, Fort Worth, Texas. For tax reporting purposes, all

interest earned on the Escrow Deposit shall be deemed to be for the

account of Purchaser, and Purchaser shall provide its tax identification number to Escrow Agent.

3. Release from Escrow. Escrow Agent shall release the Escrow Deposit as follows:

(a) Upon receipt of joint written instructions executed by Seller and Purchaser.

(b) Upon receipt of a final order of an arbitration

panel selected by Seller and Purchaser (if Seller and Purchaser otherwise agree to arbitration) or of a court of competent jurisdiction. An order shall be deemed "final" when, by lapse of time or otherwise, it is no longer subject to reconsideration or review.

(c) Upon written notice signed by Seller or Purchaser stating that the notifying party is entitled to the Escrow Deposit, provided, however, that upon receipt of such notice the Escrow Agent shall promptly send a copy of such notice to the other party. If the other party fails to object to such notice within ten (10)

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business days, Escrow Agent shall release the Escrow Deposit as claimed. If the other party makes a timely objection, Escrow Agent shall promptly notify the claiming party, and shall make no release of the Escrow Deposit until the conditions of subparagraphs (a) or (b) above have been satisfied. The Escrow Agent may, at any time there is a dispute between the parties, file an interpleader action in a court of competent jurisdiction, and release the Escrow Deposit to such court.

4. Indemnity. Seller and Purchaser jointly and severally agree to indemnify and hold Escrow Agent harmless against any loss, claim, damage, liability, or expense incurred in connection with its duties as Escrow Agent, or in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow LOI, provided, however, that Escrow Agent shall not be so indemnified or held harmless for gross negligence or willful misconduct by them or any of their Agent or employees, nor for their breach of this Escrow LOI.

5. Notices. All notices and other communications hereunder shall be in writing and be sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail,

return receipt requested and postage prepaid, or by private overnight mail courier service. Such communication shall be deemed

delivered as of the date of delivery indicated on the receipt

issued by the postal service, or, if the addressee, fails or

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refuses to accept delivery, as of the date of such failure or

refusal. The respective addresses to be used for all such notices

or communications are as follows:

(a) If to Seller: Tomar Broadcasting Company, Inc.

\_\_\_\_Brent Morey\_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

(b) If to Purchaser: Fort Worth Media Group GP, LLC

301 Commerce Street

Suite 1600

Fort Worth, TX 76102

Tel: (817)332-3235

Fax: (817)332-4630

(c) If to Escrow Agent:

Texas Bank

2525 Ridgmar Blvd.

Fort Worth, Texas 76116

Tel: (817)738-9400

Any notice sent to Escrow Agent shall also be sent to the other

party.

6. Duties of Escrow Agent. Any provision herein to the contrary notwithstanding, Escrow Agent shall not have notice or be

deemed to have notice of any other agreement or document herein

referenced and shall not be bound by same. The duties and responsibilities of Escrow Agent shall be limited to those expressly set forth herein.

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6. Compensation of Escrow Agent. Except for the indemnification

provided for in Paragraph 4, Escrow Agent shall not receive any compensation for their services as escrow Agent.

7. Binding Effect. This Escrow LOI shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8. Counterparts. This Escrow LOI may be executed in multiple counterparts, all of which taken together shall constitute

one and the same instrument.

9. Governing Law. This LOI shall be governed and interpreted by the law of the State of Texas except for the choice

of law rules utilized in that State.

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IN WITNESS WHEREOF, the parties have caused this LOI to be executed on the date written above.

SELLER:

TOMAR BROADCASTING COMPANY, INC.

By:\_\_\_\_\_

Title:\_\_\_\_\_

PURCHASER:

FORT WORTH MEDIA GROUP GP, LLC

By:\_\_\_\_\_

Title:\_\_\_\_\_

ESCROW AGENT:

TEXAS BANK

By:\_\_\_\_\_

Title:\_\_\_\_\_