

**[EXECUTION COPY]**

**ASSET PURCHASE AGREEMENT**

Among

Exosphere Broadcasting L.L.C.

Seller

and

Double O Radio Corporation

Purchaser

May 26, 2004

## Table of Contents

	<u>Page</u>
ARTICLE I Assets Being Sold and Purchased and Purchase Price .....	1
1.1 Assets .....	1
1.2 Excluded Assets .....	2
1.3 Liabilities. ....	3
1.4 Purchase Price .....	3
1.5 Additional Fees .....	4
ARTICLE II Closing and Closing Deliveries .....	4
2.1 Closing .....	4
2.2 Closing Deliveries .....	4
ARTICLE III Representations and Warranties of Seller .....	6
3.1 Good Standing .....	6
3.2 Right, Power and Authority .....	6
3.3 No Conflicts or Defaults .....	6
3.4 Broker's Fee .....	7
3.5 No Operations .....	7
3.6 FCC Permits and Other Authorizations. ....	7
3.7 FCC Compliance .....	7
3.8 Personal Property .....	8
3.9 Intellectual Property and Intangible Property .....	8
3.10 Title to Assets .....	8
3.11 No Litigation Or Violations of Law .....	8
3.12 Contracts .....	8
3.13 Operational Assets .....	9
3.14 Required Consents .....	9
3.15 Taxes .....	9
3.16 Reports .....	9
3.17 Environmental Matters .....	9
3.18 Affiliate Transactions .....	10
3.19 Disclosure .....	10
ARTICLE IV Representations and Warranties of Purchaser .....	11
4.1 Good Standing .....	11
4.2 Right, Power and Authority .....	11
4.3 Licensee Qualifications .....	11
4.4 No Conflicts or Defaults .....	11
4.5 Required Consents .....	11
4.6 Broker's Fee .....	11
ARTICLE V Covenants .....	12
5.1 FCC Approval .....	12
5.2 Cooperation .....	12

Table of Contents  
(continued)

	<u>Page</u>
5.3 Risk of Loss .....	13
5.4 No Inconsistent Act.....	13
5.5 Notifications.....	13
5.6 Allocation of Purchase Price.....	13
5.7 Real Property Assessment.....	14
5.8 Control of the Assets.....	14
5.9 Proration.....	14
5.10 Inspection Rights .....	15
5.11 No Changes.....	15
5.12 Written Consents.....	16
ARTICLE VI Conditions Precedent to the Obligations of Purchaser .....	16
6.1 Conditions.....	16
6.2 No Challenges.....	18
6.3 Closing Deliveries.....	18
ARTICLE VII Conditions Precedent to the Obligations of Seller .....	18
7.1 Conditions.....	18
7.2 No Challenges.....	18
7.3 Closing Deliveries.....	18
ARTICLE VIII Rights of Purchaser and Seller Upon Termination or Breach.....	19
8.1 Termination.....	19
8.2 Effect of Breach .....	19
8.3 Release of Escrow; Liquidated Damages .....	19
8.4 Specific Performance.....	19
ARTICLE IX Indemnification.....	20
9.1 Survival .....	20
9.2 Indemnification in General .....	20
9.3 Indemnification by Seller.....	20
9.4 Indemnification by Purchaser .....	21
9.5 Indemnification Procedure.....	21
9.6 Limitations on Indemnification.....	22
ARTICLE X Miscellaneous.....	23
10.1 Respective Costs .....	23
10.2 Terms Generally.....	23
10.3 Entire Understanding .....	23
10.4 Confidentiality. ....	23
10.5 Headings .....	24
10.6 Counterparts.....	24
10.7 Choice of Law .....	24

Table of Contents  
(continued)

	<u>Page</u>
10.8 Jurisdiction.....	24
10.9 Benefit and Binding Effect .....	24
10.10 Notices. ....	25
10.11 No Third-Party Beneficiaries.....	26

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "Agreement") is made and entered into as of this 26th day of May, 2004, by and among Exosphere Broadcasting L.L.C., a Delaware limited liability company ("Seller"), and Double O Radio Corporation, a Delaware corporation ("Purchaser").

### **RECITALS**

A. Seller holds (i) a construction permit issued by the Federal Communications Commission (the "FCC") for the construction of a new FM radio broadcast station (at the frequency 94.3MHz) that will be licensed to Forest Acres, South Carolina (Facility Identification Number 83396) (the "Proposed Station"), a copy of which FCC construction permit is annexed hereto as Exhibit A (the "FCC Permit"); (ii) a Master Lease Agreement with respect to a location for the Proposed Station's transmitting facilities, a copy of which Master Lease Agreement is annexed hereto as Exhibit B (the "Lease"); and (iii) such other Assets (as defined in Section 1.1) that are used in connection with the construction of the Proposed Station.

B. Seller desires to sell to Purchaser the Assets, and Purchaser desires to purchase and acquire the Assets from Seller for the consideration and upon the terms and conditions herein provided.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the parties hereto, intending to be legally bound, do hereby agree as follows:

### **ARTICLE I**

#### **ASSETS BEING SOLD AND PURCHASED AND PURCHASE PRICE**

**1.1 Assets.** Upon the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, assign, convey, transfer, and deliver to Purchaser at the Closing (as defined in Section 2.1 hereof), and Purchaser hereby agrees to purchase at the Closing, free and clear of all Liens (as defined in Section 1.3(a) hereof) (other than Permitted Liens (as defined in Section 1.3(a) hereof)), all of Seller's right, title, and interest in and to the tangible and intangible assets (except as expressly provided in Section 1.2 hereof) owned by, licensed to, or leased to Seller, or otherwise used by, useful to, or held for use by Seller in connection with the FCC Permit, the Lease and Seller's construction of the Proposed Station (collectively, the "Assets"), including, but not limited to:

(a) The FCC Permit and all other licenses, permits or authorizations, if any, issued by the FCC, the Federal Aviation Administration (the "FAA"), any other regulatory agency, or any Federal, state or local governmental authority in connection with the ownership of the FCC Permit, the Lease and any other Asset, as set forth in Schedule 1.1(a) hereto, and all applications therefor, together with any renewals, extensions or modifications thereof and additions thereto (collectively, and including the FCC Permit, the "Authorizations");

(b) All right, title, and interest of Seller in and to (i) the Lease, (ii) the contracts, leases, agreements, and commitments listed on Schedule 1.1(b) hereto (including, without limitation, rights to deposits under leases or held by utilities or others), (iii) any other contracts and agreements pertaining to the Proposed Station and/or the FCC Permit (whether identified prior to the execution of this Agreement or subsequently) that Purchaser specifically agrees in writing to assume in its sole discretion, and (iv) any additional contracts or agreements executed and delivered, if written, or entered into orally, if oral, by Seller between the date hereof and the Closing Date that Purchaser specifically agrees in writing to assume in its sole discretion (collectively, the “Assumed Contracts”);

(c) All real property used or held for use in connection with the FCC Permit and/or Seller’s construction of the Proposed Station, including, without limitation, the Lease and other real property interests, if any, which are owned by Seller and used in or held for use in connection with the FCC Permit and/or Seller’s construction of the Proposed Station, plus such additions thereto and minus such deletions therefrom as are permitted by the provisions of this Agreement (collectively, the “Real Property”);

(d) All books, files, records, and computer systems and software relating to the Assets, the Proposed Station, and Seller’s construction of the Proposed Station, including proprietary information, schematics, technical information and engineering data, maps, drawings, plans and engineering data developed or acquired by Seller and used or intended for use in connection with the Assets, the Proposed Station or Seller’s construction of the Proposed Station, correspondence, files, copies of the Assumed Contracts, all FCC application materials with respect to the FCC Permit, and all FCC-required files and records, but not including (i) those books, files, and records set forth in Section 1.2 below, and (ii) any corporate or accounting books or records of Seller which do not relate to the Assets or Seller’s construction of the Proposed Station or which relate to Seller’s past or current income tax liabilities;

(e) Except (i) for claims relating to taxes, (ii) as otherwise provided in Schedule 1.1(e), or (iii) for reimbursement of payments already made by Seller, all rights and claims of Seller, if any, against third parties relating to the Assets; and

(f) All other assets of Seller used principally in connection with the FCC Permit, the Lease or Seller’s construction of the Proposed Station, other than the Excluded Assets (as defined in Section 1.2 hereof).

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained in this Agreement, the Assets do not include, and Seller shall not, and is not hereby agreeing to, sell, assign, transfer, deliver, or convey to Purchaser (a) promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposit, other similar items, and any cash surrender value in regard thereto; (b) any pension, profit-sharing, or employee benefit plans, including Seller’s interest in any welfare plan, pension plan, or benefit arrangement; (c) any collective bargaining agreements; and (d) any contract, lease, or agreement other than the Assumed Contracts (together (a)-(d), the “Excluded Assets”).

### **1.3 Liabilities.**

(a) The Assets shall be sold and conveyed to Purchaser by instruments of conveyance in form reasonably satisfactory to Purchaser and free and clear of all mortgages, liens, deeds of trust, security interests, pledges, restrictions, prior assignments, charges, claims, and encumbrances of any kind or type whatsoever (collectively, the “Liens”) except: (i) Liens for real estate taxes not yet due and payable for which Purchaser receives a Purchase Price adjustment; and (ii) the post-Closing obligations of Seller which Purchaser will assume under the Assumed Contracts ((i) and (ii) collectively, the “Permitted Liens”).

(b) Solely to the extent specifically assumed by Purchaser as of the Closing Date, Purchaser will assume and agree to pay for, discharge and perform insofar as they relate to the time period on and after the Closing Date, and arise out of events occurring on or after the Closing Date, all the obligations and liabilities of Seller under the Assumed Contracts (the “Assumed Obligations”). Otherwise, Purchaser shall not assume or be liable for, and does not undertake to attempt to, assume or discharge: (i) any liability or obligation of Seller arising out of or relating to any contract, lease agreement, or instrument; (ii) any liability or obligation of Seller arising out of or relating to any employee benefit plan or otherwise relating to employment; (iii) any liability or obligation of Seller arising out of or relating to any litigation, proceeding or claim (whether or not such litigation, proceeding or claim is pending, threatened or asserted before, on or after the Closing Date); (iv) any other liabilities, obligations, debts or commitments of Seller whatsoever, whether accrued now or hereafter, whether fixed or contingent, whether known or unknown; or (v) any claims asserted against the Assets or relating thereto with respect to any event (whether act or omission) occurring prior to the Closing Date, including, without limitation, the payment of all taxes.

(c) Purchaser shall in no event assume any liability or obligation arising (i) from the assignment to Purchaser of any contract, lease or agreement in violation of its terms or (ii) from any other breach or default by Seller upon or prior to the Closing under any contract, lease or agreement.

(d) Seller retains and shall hereafter pay, satisfy, discharge, perform and fulfill all obligations and liabilities not expressly assumed by Purchaser hereunder as they become due, without any charge or cost to Purchaser, and Seller agrees to indemnify and hold Purchaser and its successors and assigns harmless from and against any and all such liabilities in accordance with the terms of Article IX.

**1.4 Purchase Price.** (a) Upon the terms and subject to the conditions set forth in this Agreement, and in consideration for the sale, assignment, conveyance, transfer, bargain, and delivery of the Assets to Purchaser pursuant to the terms hereof, the purchase price hereunder (the “Purchase Price”) shall be Four Million Seven Hundred Twenty Five Thousand Dollars (\$4,725,000) payable in cash by Purchaser by wire transfer of immediately available funds, to an account designated by Seller, subject to any adjustments hereinafter described, less the amount of the Escrow Funds, together with interest thereon, as provided in Section 1.4(b) below.

(b) Upon execution and delivery of this Agreement, Purchaser shall place in escrow with Olshan Grundman Frome Rosenzweig & Wolosky LLP (the “Escrow Agent”), pursuant to the terms and conditions of an escrow agreement (the “Escrow Agreement”) substantially in the form of Exhibit C hereto and which is being executed and delivered by Purchaser, Seller and the Escrow Agent contemporaneously herewith, cash in an amount equal to Two Hundred Thirty Thousand Dollars (\$230,000) (the “Escrow Funds”), which Escrow Funds shall be held and released by the Escrow Agent in accordance with the terms and conditions of the Escrow Agreement. Any Escrow Funds and interest thereon delivered to Seller at Closing shall be credited toward the Purchase Price.

**1.5 Additional Fees.** Seller shall bear any and all sales and use taxes arising out of the transactions contemplated by this Agreement. Purchaser and Seller shall bear equally any transfer, conveyance, recordation and filing fees, taxes or assessments, including fees in connection with the conveyance of real property and the recordation of instruments related thereto, applicable to, imposed upon, or arising out of the sale, assignment, conveyance, and transfer to Purchaser of the Assets as contemplated by this Agreement, provided that Seller shall pay all income taxes or other fees based upon gain realized by Seller as a result of the sale of the Assets. Purchaser and Seller shall bear equally all of the FCC filing fees incurred in connection with the Application (as defined in Section 5.1).

## **ARTICLE II**

### **CLOSING AND CLOSING DELIVERIES**

**2.1 Closing.** The term “Closing” as used herein shall refer to the actual conveyance, transfer, assignment, and delivery of the Assets to Purchaser in exchange for the payment to Seller by Purchaser of the consideration payable pursuant to Section 1.4 hereof on the Closing Date (as hereinafter defined), and shall be deemed effective as of 12:01 a.m. Eastern Time on the Closing Date. The Closing shall take place at such place and hour as shall be mutually agreed upon by Purchaser and Seller or the Closing may be conducted by mail or courier delivery of documents executed in counterparts, provided, however, that the Closing shall be held no later than ten (10) business days after the date on which the FCC Consent (as defined in Section 5.1) has become a Final Order (as defined in Section 6.1) (such date referred to herein as the “Closing Date”), subject to the satisfaction or waiver of the other conditions set forth in Articles VI and VII of this Agreement.

#### **2.2 Closing Deliveries.**

(a) At the Closing, Seller shall deliver (or cause to be delivered) to Purchaser the following documents and instruments of conveyance and assignment, in each case reasonably satisfactory in form and substance to Purchaser and its counsel and duly executed by Seller or such other signatory as may be required by the nature of the document:

(i) bills of sale, certificates of title, endorsements, assignments, consents and other good and sufficient instruments of sale, conveyance, transfer and assignment sufficient to sell, convey, transfer and assign the Authorizations, the Assumed



Contracts and the other Assets to Purchaser free and clear of any Liens (other than Permitted Liens) and to quiet Purchaser's title thereto;

(ii) certified copies of the required consents and/or resolutions of the directors, managers, and/or members of Seller, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of the transactions contemplated by this Agreement;

(iii) certificates dated as of the Closing Date, executed by an officer of Seller certifying (A) that the representations and warranties of Seller contained in this Agreement are true and complete in all material respects as of the Closing Date, except for changes contemplated by this Agreement and except for representations and warranties expressly made solely as of a prior date; and (B) that Seller has, in all material respects, performed all of its obligations and complied with all of its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date;

(iv) Subject to the provisions of Section 1.2 hereof, copies of all Authorizations, Assumed Contracts, schematics, working drawings, plans, engineering records, and all files and records regarding the Assets;

(v) certificates from the appropriate governmental officials of Delaware as to the good standing of Seller, and a copy of the resolutions of the directors or managers of Seller authorizing their respective execution and delivery of this Agreement and the performance of their obligations hereunder, which copies shall be certified by Seller;

(vi) all consents and estoppel certificates required pursuant to this Agreement;

(vii) an opinion of Seller's corporate counsel and an opinion of Seller's FCC counsel in the forms attached hereto as Exhibit D;

(viii) to the extent not previously transferred, the files, records and other information referenced in Section 1.1(d);

(ix) written instructions by Seller to terminate the Escrow Agreement and deliver the Escrow Funds and interest thereon to Seller; and

(x) such other documents to be delivered by Seller and as are reasonably necessary for Purchaser to effectuate and document the transactions contemplated herein.

(b) At Closing, Purchaser shall deliver to Seller in a form reasonably agreeable to Seller and its counsel:

(i) the Purchase Price, which shall be paid in the manner specified in Section 1.4;

(ii) an instrument or instruments of assumption of the Authorizations, the Assumed Contracts and the other Assets to be assumed by Purchaser pursuant to this Agreement;

(iii) a certificate, dated as of the Closing Date, executed by an officer of Purchaser, certifying that (A) the representations and warranties of Purchaser contained in this Agreement are true and complete in all material respects as of the Closing Date, except for changes contemplated by this Agreement and except for representations and warranties expressly made as of a prior date; and (B) Purchaser has, in all material respects, performed all of its obligations and complied with all of its covenants set forth in this Agreement to be performed and complied with prior to or on the Closing Date;

(iv) written instructions by Purchaser to terminate the Escrow Agreement and deliver the Escrow Funds and interest thereon to Seller; and

(v) such other documents to be delivered by Purchaser hereunder as are reasonably necessary to effectuate and document the transactions contemplated herein;

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Purchaser as follows:

**3.1 Good Standing.** Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware. Seller has all requisite power and authority (a) to own, lease, and use the Assets as presently owned, leased, and used and (b) to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms and conditions to be performed and complied with by Seller hereunder and thereunder. Seller holds the licenses and permits issued by the FCC necessary to construct the Proposed Station. Seller is not a participant in any joint venture or partnership with any other person or entity with respect to any part of the Assets.

**3.2 Right, Power and Authority.** Seller has taken all requisite action in order to authorize the execution, delivery, and performance of this Agreement and the consummation of the sale of the Assets and the other transactions contemplated hereby. This Agreement and the Escrow Agreement have been duly executed and delivered by Seller and are the legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their terms.

**3.3 No Conflicts or Defaults.** Neither the execution, delivery, nor performance of this Agreement by Seller, nor the consummation of the sale and purchase of the Assets or any other transaction contemplated hereby, after the giving of notice, or the lapse of time, or both, (a) conflicts with, results in a breach of, or constitutes a default under, the articles of incorporation, bylaws, operating agreement, or other organizational instrument, of Seller, or any Federal, state or local law, statute, ordinance, rule, or regulation, or any court or administrative order or process applicable to Seller; (b) conflicts with, constitutes grounds for termination of, results in an organizational breach of, constitutes a default under, violates any right of first refusal or similar right granted to a third party under, or accelerates or permits the

acceleration of any performance required by the terms of, any contract, agreement, arrangement, commitment, plan, instrument, license, or permit to which Seller is a party, by which Seller is bound or by which any Asset is subject; provided, however, that certain Assumed Contracts listed in Schedule 1.1(b) hereto are not assignable without the consent of another party (the “Consents”); or (c) results in the creation of any mortgage, pledge, lien, claim, liability, charge, condition, or encumbrance, other than Permitted Liens, upon any of the Assets, other than as expressly contemplated by this Agreement.

**3.4 Broker’s Fee.** Neither this Agreement, nor the sale and purchase of the Assets contemplated by this Agreement, was induced or procured through the services of any person, firm, corporation, or other entity acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor, or in any similar capacity, except for Harold Miller, whose fees, expenses and commissions shall be the sole responsibility of Seller.

**3.5 No Operations.** The Proposed Station does not currently have, and has never had, any employees or operations.

**3.6 FCC Permits and Other Authorizations.**

(a) Seller holds the FCC Permit and other Authorizations identified on Schedule 1.1(a) hereto. Schedule 1.1(a) includes a true and complete list of all Authorizations, except as otherwise noted therein. Seller has delivered to Purchaser true and complete copies of the Authorizations (including any and all amendments and other modifications thereto). The Authorizations were validly issued and are in full force and effect. None of the Authorizations is subject to any restriction or condition which would limit the full operation of the Proposed Station, upon completion, as required by the FCC, other than (a) restrictions set forth in the Authorizations on the date hereof, and (b) restrictions of general applicability to the radio broadcasting industry as a whole.

(b) No action or proceeding is pending or, to the knowledge of Seller, threatened, by or before the FCC or by or before any other governmental body to revoke, refuse to renew, or modify any Authorization, and no applications are currently pending before the FCC with respect to the Assets or the construction of the Proposed Station.

(c) The FCC Permit authorizes the Proposed Station to be constructed at the premises covered by the Lease in compliance with all applicable FCC rules and policies, including, without limitation, the FCC rules governing human exposure to radio frequency radiation and the FAA rules governing air navigation safety.

(d) Seller is duly qualified under all applicable laws to hold and assign the FCC Permit (absent any limitations, qualifications or restrictions) to Purchaser in accordance with the terms and conditions of this Agreement.

**3.7 FCC Compliance.** All reports and other filings required by the FCC with respect to the Assets or the construction of the Proposed Station on or prior to the date hereof have been duly and currently filed in all material respects.

**3.8 Personal Property.** Neither Seller nor any of its affiliates has any right, title or interest in and to any tangible asset or personal property used, or held for use, by Seller in connection with any Asset or the construction of the Proposed Station.

**3.9 Intellectual Property and Intangible Property.** Seller does not have any right, title or interest in and to any (a) call signs or letters used or held for use with respect to the Proposed Station, (b) trade names, brand names, trademarks, service marks, copyrights, patents, licenses and permits (registered or unregistered, and including applications and licenses therefor), (c) telephone numbers and listings, trade secrets, universal resource locators, domain names and website addresses, nor (d) logograms, jingles, slogans or other intangible property used or held for use in connection with the FCC Permit and/or Seller's construction of the Proposed Station (including any and all common law rights, applications, registrations, extensions and renewals relating thereto). To the knowledge of Seller, Seller's ownership of the Assets does not infringe upon or conflict in any material respect with any patent, trademark, trade name, service mark, brand name or copyright of any other person, firm, corporation, or entity.

**3.10 Title to Assets.** Seller has good and marketable title to all of the Assets, free and clear of any mortgages, pledges, liens, encumbrances, or other charges or rights of others of any kind, except for (a) Permitted Liens and (b) the mortgages, pledges, liens, encumbrances, or other charges or rights of others listed in Schedule 3.10, all of which will be removed on or before the Closing Date.

**3.11 No Litigation Or Violations of Law.**

(a) Except for matters affecting the radio broadcasting industry generally, and except for those matters set forth in Schedule 3.11(a) hereto, there is no litigation at law or in equity, no arbitration proceeding, and no proceeding before or by any court, commission, agency, or other administrative or regulatory body or authority, pending or, to the knowledge of Seller, threatened, which would reasonably be expected to have a material adverse effect upon the Assets, the construction of the Proposed Station or Seller's ability to perform in accordance with the terms of this Agreement.

(b) Seller owns and leases the Assets in material compliance with all Federal, state, and local laws, statutes, ordinances, rules, and regulations. To Seller's knowledge, neither the ownership nor use of the Assets conflicts in any material way with the rights of any other person, firm, corporation or entity.

**3.12 Contracts.** Other than the Lease, there are no program contracts, real and personal property leases, or other contracts, agreements, and commitments to which Seller, or any affiliate of Seller, is a party as of the date hereof and which relate to the Assets. The Lease is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. Seller is not in material breach, nor, to Seller's knowledge, is any other party in material breach of the Lease. Seller is not aware of any intention of any party to the Lease (a) to terminate the Lease, or to amend the terms thereof, (b) to refuse to renew the same upon its expiration of its term, or (c) to renew the same upon its expiration only upon terms and conditions which are more onerous than those presently in effect. Assuming that the Consents shall have been

obtained, Seller has full legal power and authority to assign its rights under the Lease to Purchaser in accordance with this Agreement, and such assignment will not affect the validity, enforceability, and continuation of the Lease.

**3.13 Operational Assets.** Other than the FCC Permit and the Lease, Seller does not have an interest in any asset used for, or intended by Seller to be used for, the construction of the Proposed Station.

**3.14 Required Consents.** Except for the FCC Consent and the Consents described in Schedule 3.14 hereto, 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 to be obtained by Seller in order (a) to consummate the transactions contemplated by this Agreement, or (b) to permit Seller to assign or transfer the Assets to Purchaser.

**3.15 Taxes.** Seller has 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 have been filed by Seller, and Seller has paid or caused to be paid all taxes shown on said returns or on any tax assessment received by Seller to the extent that such taxes have become due, or has set aside on its books reserves (segregated to the extent required by generally accepted accounting practices) deemed by Seller to be adequate with respect thereto and except as specifically disclosed or scheduled there is no known, threatened or anticipated tax liability. No events have occurred which could impose upon Purchaser any transferee liability for any taxes, penalties, or interest due or to become due from Seller.

**3.16 Reports.** All material returns, reports, and statements which Seller is currently required to have filed with respect to the Assets with the FCC or with any other governmental agency have been filed, and all material reporting requirements of the FCC and other governmental authorities having jurisdiction over the Assets have been complied with. All of such reports, returns, and statements are substantially complete and correct as filed. The public inspection files with respect to the FCC Permit are located at Seller's main office and are in material compliance with the FCC's rules and regulations.

**3.17 Environmental Matters.** To the best of Seller's knowledge, without any independent investigation, except as disclosed on Schedule 3.17:

(a) Any and all Real Property is, and with respect to any predecessor or prior owner, operator or lessee (each a "Predecessor") has been, in compliance, in all material respects, with all Environmental Laws (as defined in Section 3.17(f)).

(b) No judicial or administrative proceedings are pending or threatened against Seller, relating to any of the Real Property, alleging the violation of or seeking to impose liability on Seller pursuant to any Environmental Law. Seller has not received any written notice or claim or other written communication from any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign or other person alleging the violation of or liability under any Environmental Laws in connection with any of the Real Property or operations thereon.

(c) There are no facts, circumstances or conditions associated with the Real Property or the operations thereon that could reasonably be expected to give rise to an environmental claim against the Proposed Station or the owner or operator thereof or result in the Proposed Station or the owners or operators thereof incurring material Environmental Costs and Liabilities (as defined in Section 3.17(f)).

(d) All substances, materials or waste that are regulated by federal, state or local government under the Environmental Laws as hazardous, toxic or a pollutant or contaminant as well as any petroleum or petroleum derived product (collectively, "Hazardous Substances"), used or generated by Seller or to Seller's knowledge, by any Predecessor in connection with the Real Property, have been stored, used, treated, and disposed of by such persons or on their behalf in such manner as not to result in any material Environmental Costs or Liabilities.

(e) There are not now, nor have there been in the past, on, in or under any Real Property when owned, leased or operated by Seller or any Predecessor, any of the following: (i) underground storage tanks, above-ground storage tanks, dikes or impoundments containing Hazardous Substances, (ii) asbestos containing materials, (iii) polychlorinated biphenyls or related compounds (other than those labeled and maintained in accordance with applicable Environmental Laws) in amounts or concentrations regulated under the Environmental Laws or (iv) radioactive substances in amounts or concentrations regulated under the Environmental Laws.

(f) For purposes of this Agreement, the following terms shall have the following meanings: "Environmental Laws" shall mean all applicable Federal, state and local laws, statutes, codes, rules, regulations, common law or other legal requirements relating to the environment, natural resources, and public or employee health and safety; and "Environmental Costs and Liabilities" shall mean any losses, including environmental remediation costs, liabilities, obligations, damages, fines, penalties or judgments, arising from or under any Environmental Law or order of or agreement with any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign or other person.

**3.18 Affiliate Transactions.** There is no Assumed Contract or other arrangement or accommodation between Seller and any affiliate of Seller which relates, directly or indirectly, to any Asset, except for such arrangements which are set forth on Schedule 3.18 (the "Affiliate Arrangements"). All Affiliate Arrangements shall be terminated at or prior to the Closing and the assets and/or real property to which they relate shall be included in the Assets being conveyed to Purchaser hereunder.

**3.19 Disclosure.** Neither this Agreement, nor any schedule or exhibit hereto or any certificate, document or other statement delivered to Purchaser by Seller, its affiliates or their officers, directors, employees or agents, in connection with the transactions contemplated herein, contains any untrue statement of a material fact or omits any statement of material fact necessary to make the statements contained in this Agreement, or in any schedule or exhibit hereto or any certificate, document or other statement delivered to Purchaser by Seller, its affiliates or their

officers, directors, employees or agents, in connection with the transactions contemplated herein, not misleading.

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents, warrants and covenants to Seller as follows:

**4.1 Good Standing.** Purchaser is a corporation, validly organized and in good standing under the laws of the State of Delaware.

**4.2 Right, Power and Authority.** Purchaser has the full power and authority to enter into, to execute and deliver, and to perform its obligations under, this Agreement, the Escrow Agreement and any other instruments contemplated hereby, and Purchaser has taken all requisite action in order to authorize the execution, delivery, and performance of this Agreement and the Escrow Agreement, and the transactions contemplated hereby and thereby. This Agreement and the Escrow Agreement have been duly executed and delivered by Purchaser and are the legal, valid, and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms.

**4.3 Licensee Qualifications.** There is no fact that would, under the Communications Act of 1934, as amended, and the rules and policies of the FCC, each as in effect on the date of this Agreement, disqualify Purchaser from holding the FCC Permit, and Purchaser has taken no action that would be likely to cause such disqualification prior to the Closing Date. Purchaser is legally qualified under FCC rules and policies to acquire the FCC Permit.

**4.4 No Conflicts or Defaults.** Neither the execution, delivery, nor performance of this Agreement by Purchaser, nor the consummation of the sale and purchase of the Assets or any other transaction contemplated hereby or thereby, after the giving of notice, or the lapse of time, or both, (a) conflicts with, results in a breach of, or constitutes a default under any Federal, state, or local law, statute, ordinance, rule, or regulation, or any court or administrative order or process applicable to Purchaser, (b) conflicts with, constitutes grounds for termination of, results in a breach of, constitutes a default under, or accelerates or permits the acceleration of any performance required by the terms of, any material contract, agreement, arrangement, commitment, plan, instrument, license, or permit to which Purchaser is a party or by which Purchaser is bound and which might materially affect Purchaser's ability to perform its obligations under this Agreement, or (c) conflicts with the organizational documents of Purchaser.

**4.5 Required Consents.** Except for the Consents and the FCC Consent, 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 to be obtained by Purchaser in order (a) to consummate the transactions contemplated by this Agreement, or (b) to permit Purchaser to acquire the Assets from Seller.

**4.6 Broker's Fee.** Neither this Agreement, nor the sale and purchase of the Assets contemplated by this Agreement, was induced or procured through the services of any

person, firm, corporation, or other entity acting on behalf of or representing Purchaser as broker, finder, investment banker, financial advisor, or in any similar capacity.

## ARTICLE V

### COVENANTS

#### 5.1 FCC Approval.

(a) Purchaser and Seller shall jointly file with the FCC a substantially complete application (the “Application”) to request the FCC’s consent to the voluntary assignment of the FCC Permit from Seller to Purchaser (the “FCC Consent”) within five (5) business days after the execution and delivery of this Agreement; provided, however, that if any FCC-imposed freeze on the filing of broadcast construction permit license assignment applications is in effect during such five (5) business day period, then the Application shall be filed not more than five (5) business days after such freeze is lifted. Purchaser and Seller shall each pay its own expenses in connection with the preparation and prosecution of the Application and shall share any filing fees associated with the Application equally. Seller and Purchaser shall prosecute the Application before the FCC, including opposing any petitions to deny filed against the Application, with all reasonable diligence, in order to obtain the FCC Consent promptly and in order to carry out the provisions of this Agreement. If FCC reconsideration or review, or if judicial review shall be sought with respect to the FCC Consent by a third party or upon the FCC’s own motion, Purchaser and Seller shall cooperate in opposing such requests for FCC reconsideration or review or for judicial review.

(b) If the FCC Consent shall impose any condition upon any party hereto, such party shall use its commercially reasonable efforts to comply with such condition. If any party to this Agreement shall seek FCC reconsideration or review, or judicial review, of a materially adverse condition imposed by the FCC, the other party shall cooperate fully with the party seeking reconsideration or review of such condition; provided, however, that neither party shall seek or cause to be sought, without the prior written consent of the other party, FCC reconsideration or review, or judicial review, of any condition or qualification that is not a materially adverse condition. For purposes of this Agreement, a “materially adverse condition” shall not include any condition generally applicable to the broadcast industry or a transaction of this kind.

**5.2 Cooperation.** Purchaser and Seller shall cooperate fully with each other and with their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and Purchaser and Seller shall execute such other documents as may be necessary and reasonable for the implementation and consummation of the transactions contemplated by this Agreement, and otherwise use their commercially reasonable efforts to consummate the transactions contemplated hereby and to fulfill their obligations hereunder. Notwithstanding the foregoing, Seller and Purchaser shall have no obligation (a) to expend funds out-of-pocket in order to obtain the Consents, or (b) to agree to any material adverse change to any Assumed Contract in order to obtain a Consent with respect thereto.



### **5.3 Risk of Loss.**

(a) The risk of loss or damage to the Assets shall be upon Seller at all times prior to the Closing. In the event of loss or damage, Seller shall promptly notify Purchaser thereof (the “Seller’s Risk of Loss Notice”) and if the lost or damaged Assets are capable of being replaced or repaired for an aggregate amount less than \$50,000, then Seller shall, at its sole cost and expense, replace or repair such Assets prior to the Closing or deliver to Purchaser at the Closing an amount in cash equal to the cost of replacement or repair of such Assets, as mutually agreed in good faith by Purchaser and Seller. Notwithstanding the foregoing, if the amount required to replace or repair such Assets exceeds \$50,000, Seller may elect in the Seller’s Risk of Loss Notice not to replace or repair such Assets (which election must be set forth in Seller’s Risk of Loss Notice); provided, however, that in such event Purchaser, at its option, may elect within thirty (30) days after receipt of the Seller’s Risk of Loss Notice to terminate this Agreement without either party being subject to a claim by the other for liquidated damages or any other claims for damages, or waive any default or breach with respect to the loss or damage and receive a \$50,000 credit at Closing. Either party may extend the Closing Date by up to thirty (30) days in order to allow Seller to complete the repair or replacement.

(b) 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 5.3, the disagreement shall be referred to a qualified consulting communications engineer mutually acceptable to Seller and Purchaser who is a member of the Association of Federal Communications Consulting Engineers, whose decision shall be final, binding upon and non-appealable by the parties, and whose fees and expenses shall be paid one-half by Seller and one-half by Purchaser.

**5.4 No Inconsistent Act.** Pending the Closing Date, neither Seller nor Purchaser shall (a) take any action which is materially inconsistent with its respective obligations hereunder, or which would reasonably be expected to materially hinder or delay the consummation of the transaction contemplated by this Agreement, except as specifically required or permitted herein, or (b) take or fail to take any action which would render any of its representations and warranties set forth in Articles III or IV, as the case may be, no longer accurate.

**5.5 Notifications.** Pending the Closing Date, Seller and Purchaser shall promptly notify each other in writing of any developments, except for matters affecting the radio broadcasting industry generally, which singly or in concert with others are materially adverse to the ability of such notifying party to consummate the transactions contemplated hereby, and of any material change in any of the information contained in such party’s representations and warranties contained in this Agreement, provided that such notification shall not relieve such party of any obligations under this Agreement.

**5.6 Allocation of Purchase Price.** The Purchase Price set forth in Section 1.4 shall be allocated among the Assets in accordance with the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended (the “Code”), and as determined by mutual agreement of Seller and Purchaser. Purchaser and Seller shall each complete, execute and timely

file Form 8594 with the Internal Revenue Service with their respective tax returns for the taxable year that includes the Closing Date (or such other Internal Revenue Service Form as may then be prescribed for use by the regulations promulgated under the Code (the “Tax Regulations”) to comply with applicable asset acquisition reporting requirements of Section 1060 of the Code and the Tax Regulations thereunder). Purchaser and Seller agree to act in accordance with the allocation of the Purchase Price established pursuant to this Section 5.6 in the preparation and filing of all tax returns, including Form 8594.

**5.7 Real Property Assessment.** Purchaser may, at its sole expense, conduct environmental studies, title examinations, and land surveys (the “Studies”) of the Real Property provided all information received as a result of, or in the course of, any of the Studies will be deemed confidential. Seller agrees to cooperate with any reasonable request of Seller for a site assessment or site review concerning any environmental, title or survey matter, including the making available of such personnel of Seller as Seller may reasonably request, so long as such activities do not unreasonably interfere with the conduct of Seller’s business. At the discretion of Purchaser, Purchaser may arrange, at its sole expense, for one or more independent contractors to conduct tests of the Real Property, including tests of air, soil (including surface and subsurface materials), surface water and ground water, or any equipment or facilities located thereon, in order to identify any present or past release or threatened release of any Hazardous Materials. Such tests may be done at any time, or from time to time, upon reasonable notice and under reasonable conditions, which do not impede the performance of such tests. If Purchaser notifies Seller within forty-five (45) days of the date of this Agreement that the Studies disclose potential Environmental Costs and Liabilities in excess of \$100,000 or the presence of Hazardous Materials at concentrations exceeding those allowed by Environmental Laws, evidence encroachments that materially and adversely affect the use (for the purpose currently used) of the Real Property, or any other matters that materially affect the title or use of the Real Property, Seller shall promptly commence remedial action at its expense to cure the condition giving rise to such matter and attempt to cure such condition prior to the Closing; provided that Seller shall not be obligated to spend (but may choose to spend) more than \$100,000 in the aggregate in its attempts to cure all such conditions. Seller shall notify Purchaser within thirty (30) days after its receipt of Purchaser’s Studies if it determines that it is unable to cure such conditions for \$100,000 or less and chooses not to attempt to cure such conditions, in which case Purchaser may elect within thirty (30) days after Purchaser’s receipt of Seller’s notice that it chooses not to attempt to cure such conditions (a) to terminate this Agreement or (b) to waive such obligations and receive a \$100,000 credit at the Closing. If this Agreement is terminated in accordance with the immediately preceding sentence, no party shall have any liability to the other with respect to such termination. Either party may extend the Closing by not more than thirty (30) days if either party reasonably determines that any necessary remedial action can be completed during such period.

**5.8 Control of the Assets.** Prior to Closing, Purchaser shall not, directly or indirectly, control, supervise, direct, or attempt to control the Assets in contravention of the rules and policies of the FCC; all such control and supervision of the Assets shall be the responsibility of Seller until the Closing.

**5.9 Proration.** Seller and Purchaser shall pro-rate between them, as of the Closing Date, all sewer, water, gas, electrical and similar utility charges applicable to the Assets,

and any prepaid taxes, rents charges, and other items, to the extent transferred to Purchaser (collectively, the “Pro Rated Items”). The Pro Rated Items shall be estimated at the Closing Date, and the Purchase Price shall be appropriately adjusted, and the Pro Rated Items shall be calculated and finalized by Seller and Purchaser as soon as practical after the Closing Date but in no event later than 60 days after the Closing Date and the appropriate party shall be paid within five business days after the determination thereof any difference between the estimate at Closing and the final determination.

**5.10 Inspection Rights.** Until the Closing, upon reasonable prior notice, Seller shall make all facilities, books, accounts, records, contracts, and documents pertaining to the Assets available for examination and inspection by Purchaser and its agents; provided that neither the furnishing of such information nor any investigation made heretofore or hereafter shall affect Purchaser’s right to rely upon any representation or warranty made by Seller in this Agreement, each of which shall survive any furnishing of information or any investigation, subject to Section 9.1 hereof.

**5.11 No Changes.** From and after the date hereof until the Closing Date, Seller shall:

(a) maintain the FCC Permit in full force in effect, take any actions and make any filings necessary before the FCC to preserve the FCC Permit’s effectiveness and notify Purchaser of any proceeding or matter pending before the FCC that could have a material adverse affect on the FCC Permit.

(b) pay when due all obligations arising under the Assumed Contracts or any other agreements or commitments related to the Assets which accrue prior to the Closing Date;

(c) not sell, assign, lease, mortgage, pledge, or otherwise transfer, or dispose of any of the Assets, or create, assume, or permit to exist any claim, liability, lien, condition, charge, or encumbrance upon any of the Assets, except for (i) liens, charges, and encumbrances in favor of Purchaser, (ii) Permitted Liens; (iii) immaterial items of personal property included in the Assets which are sold, or otherwise disposed of in the ordinary and regular course of the operation of Seller’s business; and (iv) transactions engaged in with Purchaser’s written consent first obtained;

(d) not, except with Purchaser’s prior written consent, enter into, or become obligated under, any other agreement or commitment with respect to the Assets which provide for payments, in the aggregate, in excess of Five Thousand Dollars (\$5,000.00) during the full terms of all such agreements and commitments, nor materially change, amend, terminate, or otherwise modify any agreement or commitment with respect to the Assets;

(e) maintain insurance policies on the Assets in accordance with Seller’s normal and customary business practices;

(f) not do any act which would reasonably be expected to result in the expiration, revocation, suspension, or adverse modification of any of the Authorizations (other than to correct FCC records), or fail to do any act necessary in order to prevent the expiration, revocation, suspension, or adverse modification of any of the Authorizations;

(g) not assign, waive or release any material right of Seller in the Assumed Contracts;

(h) maintain all of the Assets (except for immaterial Assets with a fair market value, in the aggregate, not exceeding Five Thousand Dollars (\$5,000)), or replacements thereof (to the extent required pursuant to this Agreement) and improvements thereon in their current condition (ordinary wear and tear excepted) in the usual and customary manner, and in material compliance with the FCC's rules and policies, and maintain all of the Assets in a reasonable manner;

(i) with respect to the Assets, maintain its books and records, including the record keeping and reporting requirements imposed by the FCC, in accordance with past practices and in material compliance with the FCC's rules and regulations;

(j) prior to the Closing Date, deliver to Purchaser a list of any contracts relating to the Assets entered into by Seller between the date hereof and the Closing Date of the type required to be listed in Schedule 1.1(b) hereto, together with copies of such contracts; and

(k) comply in all material respects with all rules and policies of the FCC, and all other laws, rules, and regulations to which the Assets are subject.

**5.12 Written Consents.** Pending the Closing Date, Seller shall proceed with all reasonable diligence and shall use commercially reasonable efforts to obtain (a) all Consents and (b) for each real property leasehold interest included in the Assets, certificates of estoppel and non-disturbance and attornment commitments in favor of Purchaser, and if so requested by Purchaser, its financing sources, from any mortgagees and from the respective landlords of such leaseholds or the tenants under any leases where Seller is the lessor, addressing such matters as Purchaser may reasonably request.

## **ARTICLE VI**

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

The obligations of Purchaser hereunder to close the transactions herein contemplated are subject to the following conditions precedent (unless any such conditions are waived in writing by Purchaser, in Purchaser's sole discretion):

#### **6.1 Conditions.**

(a) All warranties and representations made by Seller herein to Purchaser (except for any such representation or warranty that expressly relates solely to a date prior to the Closing Date), after disregarding any materiality qualifications contained therein, shall be true and correct on and as of the Closing Date, with the same effect as if such warranties and representations had been made by Seller to Purchaser on and as of the Closing Date, with only such exceptions as would not, in the aggregate, be reasonably expected to have a material adverse impact on the consummation of the transactions contemplated by this Agreement or the Assets;

(b) Seller shall have performed and complied in all material respects, after disregarding any materiality qualifications contained therein, with all agreements, covenants, and conditions herein required to be performed or complied with on Seller's part on or prior to the Closing Date, with only such exceptions as would not, in the aggregate, be reasonably expected to have a material adverse impact on the consummation of the transactions contemplated by this Agreement or the Assets;

(c) each of the Consents shall have been duly obtained and delivered to Purchaser, with no material adverse change to the terms of the Assumed Contracts with respect to which such Consent shall have been obtained, unless Purchaser shall have consented in writing to such change;

(d) Seller shall be the holder of the FCC Permit and there shall not have been any adverse modification with respect to such FCC Permit;

(e) no proceeding (other than proceedings generally applicable to the radio broadcast industry) shall be pending, the reasonably likely effect of which would be to revoke, cancel, fail to renew, suspend, or adversely modify the FCC Permit;

(f) Purchaser shall have obtained all local permits required to construct and install a transmitter facility on the roof and penthouse levels of the South Trust Building at the corner of Assembly and Gervais Streets, 1201 Main Street, Columbia, South Carolina, including, without limitation, all building, zoning and other related permits (provided, however, that Seller shall make a good faith effort to obtain all such local permits as soon as reasonably practicable following the date of this Agreement);

(g) the consent of any governmental authority required to be obtained for the consummation of the transactions contemplated by this Agreement shall have been obtained; and

(h) the FCC Consent shall have been granted without any "materially adverse condition" (as defined in Section 5.1(b)) having been imposed upon Purchaser, except as may be the result of Purchaser's actions or failure to take any action reasonably required to obtain such FCC Consent, such FCC Consent shall be in full force and effect, and, unless waived by the Purchaser, such FCC Consent shall have become a Final Order. For the purpose of this Agreement, an action or order of the FCC granting the FCC's Consent shall be deemed to have become a "Final Order" when such action or order shall have been issued by the FCC in writing, setting forth the FCC Consent, and (i) so long as such action or order shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, and (ii) so long as no protest, request for stay, reconsideration or review by the FCC on its own motion or by any third party, petition for FCC reconsideration or for rehearing, application for FCC review, or judicial appeal of such action or order shall be pending, when the period provided by law for initiating such protest, request for stay, reconsideration or review by the FCC on its own motion, petition for FCC reconsideration or for rehearing, application for FCC review, or judicial appeal of such action or order shall have expired.

**6.2     No Challenges.** No proceeding or formal investigation by or before any court or governmental agency shall be pending or threatened which would reasonably be expected to prevent the consummation of the transactions contemplated by this Agreement.

**6.3     Closing Deliveries.** Seller shall have received each of the documents or items required to be delivered pursuant to Section 2.2(b) hereof.

## **ARTICLE VII**

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

The obligations of Seller hereunder to close the transactions herein contemplated are subject to the following conditions precedent (unless any such conditions are waived in writing by Seller, in Seller's sole discretion):

#### **7.1     Conditions.**

(a) All warranties and representations made by Purchaser herein to Seller (except for any such representation or warranty that expressly relates solely to a date prior to the Closing Date), after disregarding any materiality qualifications contained therein, shall be true and correct in all material respects on and as of the Closing Date, with the same effect as if such warranties and representations had been made by Purchaser to Seller on and as of the Closing Date, with only such exceptions as would not, in the aggregate, be reasonably expected to have a material adverse impact on the consummation of the transactions contemplated by this Agreement;

(b) Purchaser shall have performed and complied in all material respects, after disregarding any materiality qualifications contained therein, with all agreements, covenants, and conditions herein required to be performed or complied with on Purchaser's part on or prior to the Closing Date, with only such exceptions as would not, in the aggregate, be reasonably expected to have a material adverse impact on the consummation of the transactions contemplated by this Agreement;

(c) the consent of any governmental authority required to be obtained for the consummation of the transactions contemplated by this Agreement shall have been obtained; and

(d) the FCC Consent shall have been granted and shall be in full force and effect.

**7.2     No Challenges.** No proceeding or formal investigation by or before any court or governmental agency shall be pending or threatened which would reasonably be expected to prevent the consummation of the transactions contemplated by this Agreement.

**7.3     Closing Deliveries.** Purchaser shall have received each of the documents or items required to be delivered pursuant to Section 2.2(a) hereof.

## ARTICLE VIII

### RIGHTS OF PURCHASER AND SELLER UPON TERMINATION OR BREACH

**8.1 Termination.** This Agreement may be terminated by either Purchaser or Seller, as appropriate (if the terminating party is not then in material breach of any provision of this Agreement), upon written notice to the other party, upon the occurrence of any of the following:

(a) if at any time prior to the Closing Date, there shall have occurred a material breach of a representation or warranty of the non-terminating party contained herein, or a material default in the performance by the non-terminating party of a covenant or obligation of such non-terminating party contained herein, and if such breach or default shall not have been cured within thirty (30) days, with curative steps having been commenced within fifteen (15) days, from and after the date upon which written notice thereof shall have been given to the nonterminating party by the terminating party;

(b) by Purchaser or Seller pursuant to Sections 5.3 and 5.7 of this Agreement;

(c) by Purchaser if the FCC designates the Application for a hearing;

(d) by either party if the FCC denies the Application and such denial becomes a Final Order;

(e) by mutual agreement of Seller and Purchaser; and

(f) by either party if the Closing has not occurred within (i) ten (10) months of the date hereof or (ii) ten (10) days of the FCC Consent becoming a Final Order, unless, in either case, such deadline has been extended by the written agreement of both parties.

**8.2 Effect of Breach.** The parties agree that they shall each have the rights and remedies set forth in this Agreement for any breach hereof and expressly waive any and all other rights and remedies at law or in equity.

**8.3 Release of Escrow; Liquidated Damages.** If this Agreement is terminated by either party, the Escrow Funds shall be released on the terms and conditions as set forth in the Escrow Agreement. The parties hereto agree in advance that in the event that this Agreement is terminated by Seller due to Purchaser's breach, despite Seller being in material compliance herewith, actual damages would be difficult to ascertain and that the Escrow Funds, plus such interest accrued thereon during the period such amount was in escrow, is a fair and equitable amount to reimburse Seller for damages sustained due to such event.

**8.4 Specific Performance.** Each of Purchaser and Seller acknowledges and agrees that the Assets are unique and that Purchaser would be damaged irreparably in the event Seller fails to transfer the Assets to Purchaser upon satisfaction of the conditions set forth in Article VII of this Agreement. Accordingly, Purchaser and Seller agree that Purchaser shall be entitled to specific performance and injunctive or other equitable relief as remedies for any breach by Seller of its obligations hereunder; provided, however, that in no event shall Purchaser

be precluded from seeking any damages in lieu of specific performance, or in the event Purchaser is unable to compel specific performance, or for reasonable attorney's fees and expenses incurred in pursuing its remedies against Seller. Seller agrees to waive the posting of any bond in connection with any such remedies. Seller shall not be entitled to the remedy of specific performance, and in the event of Purchaser's failure to consummate the transactions contemplated hereby in breach of Purchaser's obligations hereunder, Seller's sole remedy shall be to terminate this Agreement pursuant to Section 8.1(a) and to seek release of the Escrow Funds and accrued interest thereon pursuant to Section 8.3 and the terms and conditions of the Escrow Agreement.

## **ARTICLE IX**

### **INDEMNIFICATION**

**9.1 Survival.** Except as otherwise specifically provided in this Agreement, all representations, warranties, covenants and agreements contained in this Agreement, or in any certificate, agreement, or other document or instrument, delivered pursuant hereto, shall survive (and not be affected in any respect by) the Closing for a period of eighteen (18) months, provided that if a Claim (as hereinafter defined) or notice for indemnification with respect to any such representation, warranty, covenant, agreement, certificate, or other document or instrument, arises prior to the end of the survival period, such Claim or notice shall continue (and such representation, warranty, covenant, agreement, certificate, or other document or instrument shall survive) indefinitely until such Claim is finally resolved. Notwithstanding the foregoing, the representations of Seller made in Sections 3.2, 3.8, 3.15, and 3.17 shall survive for the applicable statute of limitations plus ninety (90) days, and any Claims arising therefrom shall continue to be subject to this Article IX for such period.

**9.2 Indemnification in General.** Purchaser and Seller agree that the rights to be indemnified and held harmless set forth in this Agreement, as between the parties hereto and their respective permitted successors and assigns, shall be exclusive of all rights (other than those specifically referenced in the Agreement) to be indemnified and held harmless that such party (or its permitted successors or assigns) would otherwise have by statute, common law or otherwise.

**9.3 Indemnification by Seller.** Seller shall indemnify, defend, and hold harmless Purchaser, any officer, director or member thereof, and their permitted assigns with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, obligations, liabilities, recoveries, deficiencies, and expenses (including interest, penalties and reasonable attorneys' fees) of every kind and description (individually or collectively, a "Claim") relating to or arising out of:

(a) any breach or non-performance by Seller of, or misrepresentation with respect to, any of Seller's representations, warranties, covenants or agreements set forth in this Agreement;

(b) the operations or business of Seller with respect to the Assets prior to the Closing Date, to the extent such Claim relates to any period before the Closing Date, regardless of whether disclosed in any schedule or document and regardless of whether constituting a



breach by Seller of any representation, warranty, covenant or agreement, and any other liability or obligation of Seller other than the post-Closing obligations assumed by Purchaser pursuant to the Assumed Contracts;

(c) any legal, administrative or tax proceedings pursuant to which Seller is or could be made liable for any taxes, penalties, interest or other charges and the liability of which is extended to Purchaser in connection with the transactions contemplated by this Agreement; or

(d) any and all damages occasioned by, arising out of or resulting from any claim by any person or entity that any agent, broker, investment or commercial banker, person or firm acting on behalf of Seller that it is entitled to any broker, finder, financial advisor fee or any other commission or similar fee directly or indirectly in connection with the transaction contemplated by this Agreement.

**9.4 Indemnification by Purchaser.** Purchaser shall indemnify, defend, and hold harmless Seller, any officer or director thereof, and their permitted assigns, with respect to any Claim of any kind and description relating to or arising out of:

(a) any breach or non-performance by Purchaser of, or misrepresentation with respect to, any of Purchaser's representations, warranties, covenants or agreements set forth in this Agreement, it being understood that, for purposes of this Section 9.4(a), the representations and warranties of Purchaser shall mean such representations and warranties of Purchaser made on and as of the Closing Date after disregarding all knowledge qualifications of Purchaser; or

(b) the Assumed Obligations and any other liability, obligation or debt of Purchaser or the Proposed Station that arises or results from and is attributable to the construction or operations of the Proposed Station on or after the Closing Date excluding, however, any liability or obligation of Seller specifically retained by Seller; or

(c) any and all damages occasioned by, arising out of or resulting from any claim by any person or entity that any agent, broker, investment or commercial banker, person or firm acting on behalf of Purchaser that it is entitled to any broker, finder, financial advisor fee or any other commission or similar fee directly or indirectly in connection with the transaction contemplated by this Agreement.

**9.5 Indemnification Procedure.** For purposes of administering the indemnification provisions set forth in this Article IX, the following procedure shall apply:

(a) Whenever a Claim shall arise under this Article, the party entitled to indemnification (the "Indemnified Party") shall promptly and in no event later than ten (10) business days after becoming aware of such a Claim, give written notice to the party from whom indemnification is sought (the "Indemnifying Party") setting forth in reasonable detail, to the extent then available, the facts concerning the nature of such Claim and the basis upon which the Indemnified Party believes that it is entitled to indemnification hereunder, provided that the Indemnified Party's failure to do so shall not preclude it from seeking indemnification hereunder unless such failure has materially prejudiced the Indemnifying Party's ability to defend such Claim.

(b) In the event of any Claim hereunder resulting from or in connection with any Claim brought by a third party, the Indemnifying Party shall be entitled, at its sole expense, either:

(i) to participate therein, or

(ii) to assume the entire defense thereof with counsel who is selected by it and who is reasonably satisfactory to the Indemnified Party provided that:

(A) the Indemnifying Party agrees in writing that it does not and will not contest its responsibility for indemnifying the Indemnified Party in respect of such Claim, and

(B) no settlement shall be made without the prior written consent of the Indemnified Party which shall not be unreasonably withheld (except that no such consent shall be required if the claimant is entitled under the settlement to only monetary damages to be paid solely by the Indemnifying Party). If, however, (1) the Claim would, if successful, result in the imposition of damages for which the Indemnifying Party would not be solely responsible hereunder, or (2) representation of both parties by the same counsel would otherwise be inappropriate due to actual or potential differing interests between them, then the Indemnifying Party shall not be entitled to assume the entire defense and each party shall be entitled to retain counsel (in the case of Clause (A) of this sentence, at their own expense) who shall cooperate with one another in defending against such Claim.

(c) If the Indemnifying Party does not choose to defend against a Claim by a third party, the Indemnified Party may defend against such Claim in such manner as it deems appropriate or settle such Claim (after giving notice thereof to the Indemnifying Party) on such terms as the Indemnified Party may deem appropriate, and the Indemnified Party shall be entitled to periodic reimbursement of expenses incurred in connection therewith and prompt indemnification from the Indemnifying Party, including without limitation reasonable attorneys' fees, in accordance with this Article IX.

(d) The Indemnifying Party will not, without the Indemnified Party's written consent, settle or compromise any Claim or consent to any entry of judgment which does not include, as an unconditional term thereof, the giving by the claimant to the Indemnified Party of a release from all liability with respect to such Claim. Neither Purchaser nor Seller shall be deemed to have notice of any Claim by reason of any knowledge acquired on or prior to the Closing Date by an employee of the Proposed Station unless express evidence is available establishing actual notice to either party.

**9.6 Limitations on Indemnification.** Notwithstanding anything to the contrary in this Article IX, (a) no claim for indemnification shall be made by either Indemnified Party unless the aggregate Claims of such Indemnified Party exceed Forty Seven Thousand Two Hundred Fifty Dollars (\$47,250) (the "Deductible Amount"), in which event all Claims of such party above the Deductible Amount shall be recoverable hereunder; and (b) in no event shall an

Indemnifying Party's aggregate obligation to indemnify an Indemnified Party exceed the Purchase Price.

## ARTICLE X

### MISCELLANEOUS

**10.1 Respective Costs.** Except as otherwise specifically provided herein, Purchaser on the one hand, and Seller on the other, will each pay its own costs and expenses (including attorneys' fees, accountants' fees, and other professional fees and expenses) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement, and the consummation of the purchase and sale of the Assets and the other transactions contemplated by this Agreement.

**10.2 Terms Generally.** The defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Section, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules, to this Agreement unless the context shall otherwise require, and references to "herein," "hereof," "hereunder," and words of similar import shall refer to this Agreement as a whole rather than specific sections hereof unless the context shall otherwise require.

**10.3 Entire Understanding.** This Agreement, including the Schedules and Exhibits hereto and the Escrow Agreement, contain the entire understanding among the parties hereto with respect to the transactions contemplated herein and therein, and supersede all negotiations, representations, warranties, commitments, offers, letters of intent, contracts, agreements, understandings, and writings not set forth herein or therein. No waiver and no modification or amendment of any provision of this Agreement shall be effective, unless specifically made in writing and duly signed by all parties hereto. No party's ability to rely upon the representations, warranties, covenants, and other provisions of this Agreement shall be limited by any information or document provided to or obtained by such party, unless specifically set forth in a writing duly signed by all parties hereto.

**10.4 Confidentiality.**

(a) Except as necessary for the consummation of the transactions contemplated by this Agreement, and except as and to the extent required by law, each party will keep confidential, and shall cause its representatives, advisors, attorneys and financing sources to keep confidential, any information obtained from the other party in connection with the transactions contemplated by this Agreement. If this Agreement is terminated, each party will return to any other party that furnished it with information in connection with the transactions contemplated by this Agreement all such information.

(b) No party shall publish any press release or make any other public announcement concerning this Agreement or the transactions contemplated hereby without the

prior written consent of each other party; provided, however, that nothing contained in this Agreement shall prevent any party, after notification to and consultation with the other party, from making any filings with governmental authorities that, in its judgment, may be required or advisable in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

**10.5 Headings.** The Article headings contained herein are for convenience and for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

**10.6 Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one (1) and the same instrument. Any such counterpart signature page may be delivered by electronic means or facsimile and shall become binding on the delivering party upon receipt by the other party.

**10.7 Choice of Law.** This Agreement shall be governed by, and shall be construed in accordance with, the internal laws of the State of Delaware governing contracts made and to be performed entirely within such State, without reference to any choice-of-law principles of the laws of such State. If any provision herein shall be held to be invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative or administrative action, such holding or action shall be strictly construed and shall not affect the validity or the enforceability of any other provision herein.

**10.8 Jurisdiction.** The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 10.10 shall be deemed effective service of process on such party.

**10.9 Benefit and Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the parties hereto. No party may transfer by operation of law or assign any of its rights, interests or obligations under this Agreement without the prior written consent of the other party hereto, except that without the consent of Seller, Purchaser may assign its rights, interests and obligations under this Agreement, in whole or in part, to any entity controlled by, controlling or under common control with, Purchaser (a "Pilot Entity"), provided that such entity is legally qualified to be an FCC licensee

and financially qualified to perform hereunder. Notwithstanding the foregoing, no assignment by Seller or Purchaser shall be permitted after the applications requesting FCC Consent to the transactions contemplated herein have been filed with the FCC if such an assignment would result in a situation in which a new file number will be assigned to any such application under 47 C.F.R. §73.3572. If Purchaser assigns its rights, interests and obligations under this Agreement to a Pilot Entity, Seller and Purchaser agree to amend this Agreement, if necessary, so as to eliminate Purchaser as a party hereto and to reflect the assumption by the Pilot Entity of the assigned obligations and liabilities of Purchaser under this Agreement.

**10.10 Notices.**

(a) All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be delivered in person or sent by overnight private commercial delivery service or by certified or registered United States mail, postage prepaid, or by facsimile, and addressed as follows:

to Seller:

Exosphere Broadcasting L.L.C.  
966 East Essex Drive  
Fresno, CA 93720  
Facsimile: 559-434-2429  
Attn: Clifford N. Burnstein

with copies to (which shall not constitute notice to Seller):

Drinker Biddle & Reath LLP  
1500 K Street, N.W.  
Suite 1100  
Washington, DC 20005  
Facsimile: 202-842-8465  
Attn: Howard M. Liberman

to Purchaser:

Double O Radio Corporation  
c/o Pilot Group Radio, L.L.C.  
625 Madison Avenue  
Third Floor  
New York, NY 10022  
Facsimile: 212-486-2896  
Attn: Paul McNicol, Esq.

with copies to (which shall not constitute notice to Purchaser):

Olshan Grundman Frome Rosenzweig & Wolosky LLP  
Park Avenue Tower  
65 East 55th Street  
New York, NY 10022  
Facsimile: 212-451-2222  
Attention: Steven Wolosky, Esq.

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 10.10, shall be effective upon such delivery.

(b) Either party may from time to time change its address for the purpose of the giving of notices to that party, by giving to the other party a notice specifying a new address in compliance with the provisions of this Section 10.10.

**10.11 No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

[SIGNATURES ON FOLLOWING PAGE]

**[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]**

**IN WITNESS WHEREOF**, the parties hereto have caused their hands and seals to be affixed herein below on the date and year first above written.

EXOSPHERE BROADCASTING L.L.C.

By: Clifford N. Burnett  
Name:  
Title:

DOUBLE O RADIO CORPORATION

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

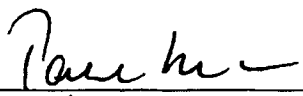
**[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]**

**IN WITNESS WHEREOF**, the parties hereto have caused their hands and seals to be affixed herein below on the date and year first above written.

EXOSPHERE BROADCASTING L.L.C.

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

DOUBLE O RADIO CORPORATION

By:   
Name: Paul M. McNeal  
Title: Senior Vice Pres. Col