

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "**Agreement**"), dated as of October 11, 2016, is by and between **Rocking M Media, LLC** a Kansas limited liability company ("**Purchaser**"), and **Alpha Media LLC** and **Alpha Media Licensee LLC**, each a Delaware limited liability company (collectively, "**Seller**").

### PRELIMINARY STATEMENTS

A. Seller holds the licenses, permits, approvals, and authorizations, and applications therefor issued by the Federal Communications Commission (the "**FCC**") and used in connection with the operation of the following radio broadcasting stations and their associated broadcast auxiliary facilities (collectively, the "**FCC Licenses**"): KBLS(FM), FCC Facility ID Number 65598, licensed to North Fort Riley, Kansas; KABI(AM), FCC Facility ID Number 18054, licensed to Abilene, Kansas; KYEZ(FM), FCC Facility ID Number 28470, licensed to Salina, Kansas; KSAL-FM, FCC Facility ID Number 65599, licensed to Salina, Kansas; KSAL(AM), FCC Facility ID Number 28471, licensed to Salina, Kansas (collectively, the "**Stations**").

B. Purchaser desires to purchase from Seller, and Seller desires to sell and assign to Purchaser, the Broadcasting Assets (as defined in Appendix I), including the FCC Licenses, all in accordance with the terms and subject to the conditions set forth herein.

C. Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in Appendix I hereto.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby agree as follows:

### STATEMENT OF AGREEMENT

#### **I. Purchase of Broadcasting Assets, Purchase Price and Method of Payment**

1.1. Purchase of Broadcasting Assets. At Closing: (a) Seller shall assign and deliver to Purchaser, and Purchaser shall accept assignment from Seller of, the FCC Licenses, (b) Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Seller, the other Broadcasting Assets, in each case free and clear of all Encumbrances, except for Permitted Encumbrances and (c) Seller shall assign to Purchaser, and Purchaser shall assume from Seller, all of Seller's rights, title, interest and obligations under the real property leases identified in Schedule 1.1(a) and the Assumed Contracts. The parties acknowledge and agree that, notwithstanding anything herein to the contrary, the Excluded Assets shall be retained by Seller and shall not be included in any sale and assignment hereunder.

1.2. Purchase Price. For and in full consideration of the assignments, conveyances,

and transfers of the Broadcasting Assets described herein, the total purchase price (the "**Purchase Price**") to be paid by Purchaser to Seller by wire transfer of immediately available funds at Closing shall be as defined in Addendum A, subject to adjustment in accordance with Section 1.6.

1.3. Earnest Money Deposit. Concurrently with the execution and delivery of this Agreement, Purchaser will make an Earnest Money Deposit, in accordance with the terms set forth in Addendum A. On the Closing Date, the Earnest Money Deposit shall be released to Seller as partial payment of the Purchase Price, and the accrued interest thereon shall be returned to Purchaser. In the event of termination of this Agreement prior to Closing, the Earnest Money Deposit shall be released in accordance with Section 15.4. The Parties shall each instruct the Escrow Agent to disburse the Earnest Money Deposit and all interest accrued thereon to the Party or Parties entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. Any failure by Purchaser to make the Earnest Money Deposit on the date hereof constitutes a material default as to which no cure period applies, entitling Seller to immediately terminate this Agreement

1.4. Assumed Liabilities. Purchaser shall not and does not assume any Liabilities of Seller, other than those expressly set forth on Schedule 1.4 hereof (the "**Assumed Liabilities**"). Except for the Assumed Liabilities, Purchaser does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller.

1.5. Allocation of Purchase Price. After Closing, the Purchase Price shall be allocated among the Broadcasting Assets in accordance with an allocation schedule prepared pursuant to Section 1060 of the Internal Revenue Code and mutually agreed upon by Seller and Purchaser. Seller and Purchaser shall use such allocation for tax purposes. If Seller and Purchaser are unable to timely agree upon the allocation of the Purchase Price, the dispute shall be referred to a firm of independent certified public accountants or an appraisal firm, mutually acceptable to Seller and Purchaser, whose decision shall be final and binding on the Parties, and whose fees and expenses shall be paid one-half by Seller and one-half by Purchaser. The Parties shall instruct the appraiser to deliver his report within ninety (90) days after his appointment. Purchaser will be responsible for the preparation of IRS Form 8594, subject to Seller's approval, which shall not be unreasonably withheld or delayed. Purchaser shall prepare that form and deliver it to Seller in time to enable Seller to submit its income tax returns in a timely manner.

1.6. Proration. Expenses for all taxes, including real estate, property and any other taxes (other than transfer taxes), all other cost and expense items arising from Seller's ownership of the Broadcasting Assets and operation of the Stations, including utility charges, FCC regulatory fees, music and other license fees, rents and amounts under the Assumed Contracts, and any deposits or prepaid and deferred items, shall be prorated between Seller and Purchaser in accordance with generally accepted accounting procedures ("**GAAP**") as of 12:01 a.m. on the Closing Date. Seller shall be responsible for all such items that have accrued and/or are owing prior to the Closing Date (except to the extent Purchaser has expressly assumed such Liability), and Purchaser shall be responsible for such items that accrue and/or are owing on and after the

Closing Date. Seller shall be entitled to all income attributable to the operation of the Stations and ownership of the Broadcasting Assets until 12:01 a.m. on the Closing Date and Purchaser shall be entitled to all income attributable to the operation of the Stations after 12:01 a.m. on the Closing Date. Sales commissions related to the sale of advertisements broadcast on the Stations prior to Closing shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on the Stations after Closing shall be the responsibility of Purchaser.

1.6.1. Determination. Adjustments or prorations, insofar as feasible shall be determined in accordance with GAAP and paid on the Closing Date based upon Seller's good faith calculation delivered to Purchaser for Purchaser's approval no less than five days prior to the Closing Date and reasonably approved by Purchaser, with final settlement and payment by the appropriate party occurring no later than ninety (90) days after the Closing Date (the "**Proration Period**"), unless there is a dispute with respect thereto.

1.6.2. Property Taxes. If the amount of any tax to be prorated is not known on the Closing Date, such tax shall be apportioned on the basis of the most recent tax assessment. As soon as the new tax rate and valuation can be ascertained, there shall be a reapportionment and adjustment with respect to such tax even though that final proration and adjustment may take place more than ninety (90) days after the Closing Date.

#### 1.7. Station Employees.

1.7.1. Seller has provided Purchaser a list showing employee positions and certain compensation information for employees of the Stations who are available to Purchaser for hire. Purchaser may, but is not obligated to, offer post-Closing employment to some or all of such employees. With respect to each such employee, at least thirty (30) calendar days prior to Closing, Purchaser shall notify Seller in writing whether or not it will offer employment to each or any of such employees upon Closing.

1.7.2. With respect to employees of the Stations hired by Purchaser ("**Transferred Employees**"), Seller shall be responsible for all compensation and benefits arising prior to Closing (in accordance with Seller's employment terms), and Purchaser shall be responsible for all compensation and benefits arising after Closing (in accordance with Purchaser's employment terms). Purchaser shall grant service credit to Transferred Employees for all unused vacation accrued as of Closing, and Purchaser shall assume and discharge Seller's obligation to provide such leave to such employees (such obligations being a part of the Assumed Liabilities). The prorations shall include an adjustment for employee leave (if any) accrued in the calendar year in which Closing occurs for those employees of Seller which Purchaser agrees to hire after Closing.

1.7.3. Purchaser shall permit Transferred Employees (and their spouses and dependents) to participate in its "employee welfare benefit plans" (including without limitation health insurance plans) and "employee pension benefit plans" (as defined in ERISA) in which similarly situated employees are generally eligible to participate, with coverage effective immediately upon Closing (and without exclusion from coverage on account of any pre-existing condition), with service with Seller deemed service with Purchaser for purposes of any

length of service requirements, waiting periods, vesting periods and differential benefits based on length of service, and with credit under any welfare benefit plan for any deductibles or co-insurance paid for the current plan year under any plan maintained by Seller.

1.8. Accounts Receivable. If requested by Seller, for a period of ninety (90) days after Closing (the “**Collection Period**”), Purchaser shall, without charge to Seller, use commercially reasonable efforts to collect the Stations’ accounts receivable arising during or attributable to any period prior to Closing (the “**A/R**”) in the ordinary course of business and shall apply all amounts collected from the Stations’ account debtors to the oldest account first, unless the advertiser disputes in good faith in writing an older account or designates the payment to a newer account. Any amounts relating to the A/R that are paid directly to Seller shall be retained by Seller. Purchaser shall not discount, adjust or otherwise compromise any A/R and Purchaser shall refer any disputed A/R to Seller. Within ten (10) calendar days after the end of each month, Purchaser shall deliver to Seller a report showing A/R collections for the prior month and Purchaser shall make a payment, without offset, to Seller equal to the amount of all such collections. At the end of the Collection Period, any remaining A/R shall be returned to Seller for collection.

## **II. Certain Regulatory Matters**

2.1. Application for FCC Consent. Seller and Purchaser will jointly file, as soon as reasonably practicable but in any event not later than ten (10) days after the execution and delivery of this Agreement, with the FCC an application requesting the consent of the FCC to the assignment of the FCC Licenses of the Stations from Seller to Purchaser. As used herein, “**FCC Consent**” means consent to such assignment application pursuant to the FCC’s Final order, without any material adverse conditions other than those of general applicability.

2.2. Cooperation and Notification Regarding FCC Approval. Seller and Purchaser shall prosecute the assignment application before the FCC, including opposing any petitions to deny or other objections 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. Each Party shall notify the other Party hereto in the event it is or becomes aware of any facts or circumstances that could delay or otherwise affect the FCC approval process or the transactions contemplated by this Agreement. Each of Seller and Purchaser shall make available to the other, promptly after the filing thereof, copies of all reports filed by it or its affiliates on or prior to the Closing Date with the FCC in respect of the Stations.

2.3. Divestiture. Purchaser owns radio broadcast stations licensed to the same local market as the Stations and, as a result, is not permitted to purchase all of the Stations under the FCC’s media ownership rules. To comply with the FCC’s media ownership rules, Purchaser must consummate the divestiture of one or more of the Stations prior to or simultaneously with Closing. Purchaser shall ensure compliance with the FCC’s multiple ownership rules to permit Closing not later than the date set forth in Section 15.2.4. The FCC assignment application to be filed pursuant to Section 2.1 shall reflect Purchaser’s intent to comply with the FCC’s media ownership rules by means of any necessary divestiture. Within the time for filing such application under Section 2.1, Purchaser shall enter into definitive agreements providing for such divestitures and cause such third party buyers to file all FCC applications necessary in

connection therewith. The FCC Consent may contain a condition to the effect that Purchaser must consummate such divestitures prior to or simultaneously with Closing. Seller shall not be entitled to any portion of the proceeds of any such divestiture by Purchaser.

### **III. Representations and Warranties of Seller**

Seller represents and warrants to Purchaser as follows:

3.1. Organization and Standing. Seller is duly organized, validly existing and in good standing under its jurisdiction of organization. Seller has full power and authority to own and sell or assign the FCC Licenses and the other Broadcasting Assets, to transact the business of operating the Stations in which it is currently engaged, and to perform all obligations required to be performed by it hereunder and to consummate the transactions contemplated hereby. Seller is duly qualified to do business in each jurisdiction in which the nature of the business conducted by Seller with respect to the Stations requires such qualification, except where the failure to be so qualified would not have a Material Adverse Effect.

3.2. Authorization and Binding Obligations. The execution, delivery and performance by Seller of this Agreement and the instruments contemplated hereby have been duly and validly authorized by Seller and constitute valid and binding agreements of Seller enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other laws relating to or affecting creditors' rights generally and the exercise of judicial discretion in accordance with general equitable principles.

#### **3.3. No Contravention; Consents.**

3.3.1. No Contravention. The execution, delivery and performance of this Agreement and the other documents to be executed in connection herewith, the consummation of the transactions contemplated hereby and thereby and the compliance with the provisions hereof and thereof by Seller do not: (i) conflict with or violate any provisions of the charter documents or bylaws of Seller; (ii) assuming receipt of the consents and waivers referred to in Section 3.3.2 below, result in the breach of, constitute a default under, conflict with or result in the termination or alteration of, the provisions of any agreement or other instrument to which Seller is a party or by which the Broadcasting Assets are bound or affected, or result in the creation of any Encumbrance upon any of the Broadcasting Assets (other than Permitted Encumbrances); or (iii) violate or conflict with any material laws, regulations, orders, writs, injunctions, decrees or judgments applicable to Seller (with respect to the Stations) or any of the Broadcasting Assets.

3.3.2. Consents. Except for the FCC Consent and consents to assign certain of the real property leases and Assumed Contracts, no consent, waiver, authorization or approval from, or filing of any notice or report with, any Governmental Authority or other Person is necessary in connection with the execution, delivery or performance by Seller of this Agreement or any of the documents or transactions contemplated hereby. Seller will use commercially reasonable efforts to obtain the consents for the assignment of the real property leases and Assumed Contracts prior to Closing.

3.4. Title to the Broadcasting Assets and FCC Licenses. Seller has good, valid and marketable title to, or valid leasehold or license interests in, the Broadcasting Assets and FCC Licenses, which of the Closing shall be free and clear of all mortgages, deeds of trust, security interests, pledges, liens, charges, adverse claims, unsatisfied judgments, and any encumbrances of any kind (collectively, "*Encumbrances*"), other than Permitted Encumbrances specifically listed on Schedule 3.4.

3.5. Licenses and Authorizations.

3.5.1. Licenses. Schedule 1.1(c) hereto contains a true and complete list of all FCC Licenses as of the date of this Agreement. Seller is the authorized and legal holder of the FCC Licenses. The Seller's conduct of the business and operations of the Stations is in accordance with the FCC Licenses. The Stations are operating in compliance in all material respects with the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC and the Federal Aviation Administration ("*FAA*"). All material FCC filings have been accomplished timely by Seller relative to the FCC Licenses and all necessary regulatory fees that have become due have been timely paid.

3.5.2. Authorizations. The FCC Licenses are valid and in full force and effect, and have been complied with in all material respects. To the knowledge of Seller, no investigation, notice of investigation, notice of apparent liability, notice of violation, forfeiture, order, complaint, action or other proceeding is pending or threatened before the FCC to vacate, revoke, suspend, refuse to renew or materially adversely modify the FCC Licenses (other than proceedings to amend rules of general applicability). The FCC Licenses have been renewed in the ordinary course for a full renewal term, without adverse conditions (except as may be set forth on the face of the FCC Licenses). To the knowledge of Seller, no facts exist and no event has occurred which may result in the revocation, modification, non-renewal or suspension of any FCC Licenses, the denial of any pending applications related thereto, the issuance of any cease and desist order, the imposition of any administrative actions by the FCC with respect to the FCC Licenses, or which may materially adversely affect Purchaser's ability to operate the Stations (in the manner operated by Seller) upon consummation of the Closing in accordance with the FCC Licenses and the FCC's rules and regulations.

3.6. Litigation; Violations. Except for administrative rulemaking or other proceedings of general applicability to the broadcast industry: (a) there is no proceeding of any nature pending or, to Seller's knowledge, threatened against Seller (in relation to the Stations), any of the Stations or the FCC Licenses, and to Seller's knowledge there is no investigation pending or threatened related thereto, in each case that will subject Purchaser to liability; and (b) no writ, decree, or similar instrument has been rendered or is pending against Seller or its subsidiaries which would materially and adversely affect the FCC Licenses or the Broadcasting Assets or Seller's ability to perform under this Agreement. There are no claims, actions or suits, pending, or to the best knowledge of Seller, threatened, disputing Seller's ownership of the Stations or the Broadcasting Assets, and to Seller's knowledge there are no inquiries, hearings or investigations related thereto.

3.7. Reports. All material reports and other material filings currently required to be



filed by Seller with the FCC or with any other federal, state, or local governmental agency with respect to the FCC Licenses have been timely filed and shall continue to be timely filed on a current basis until the Closing Date. All such reports and other filings are (or will be, in the case of future reports) complete and correct as filed in all material respects.

3.8. Taxes. Seller has filed or caused to be filed all returns, declarations of estimated taxes, reports, statements and information statements ("**Tax Returns**") required to be filed by Seller with any taxing authority prior to the date hereof with respect to the FCC Licenses and the Broadcasting Assets. Seller has paid or caused to be paid all Taxes due and payable by Seller with respect to the FCC Licenses and the Broadcasting Assets. No federal, state, local or foreign audits or other administrative or court proceedings are presently pending with regard to any Tax Returns or Taxes of Seller relating to the FCC Licenses and the Broadcasting Assets, and Seller has not received written notice from any Governmental Authority of the expected commencement of such proceedings. To Seller's knowledge, there are no liens for unpaid Taxes on the FCC Licenses or the Broadcasting Assets. Seller is not a "**foreign person**" within the meaning of Section 1445(b)(2) of the Internal Revenue Code.

3.9. Environmental. Seller represents and warrants that: (i) to Seller's knowledge, all activities of Seller with respect to the operation of the Stations have been and are being conducted in material compliance with all Environmental Laws; (ii) Seller has not Released any Hazardous Material on, in, from or onto any of the Stations' transmitter sites, except in accordance with Environmental Laws; (iii) to Seller's knowledge, neither the Stations nor any Broadcasting Assets are the subject of any investigation with respect to any Environmental Law; (iv) no polychlorinated biphenyls or substances containing polychlorinated biphenyls are present on the Stations' transmitter sites in violation of any Environmental Laws; and (v) no friable asbestos is present on any of the Stations' transmitter sites in violation of any Environmental Laws. As used herein, (i) the term "**Environmental Laws**" shall mean any and all state, federal, and local statutes, regulations and ordinances relating to the protection of human health and the environment, (ii) the term "**Hazardous Material**" shall mean any hazardous or toxic substance, material, or waste including, without limitation, those substances, materials, pollutants, contaminants and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products (as defined in Title I to the Resource Conservation and Recovery Act, 42 U.S.C. § 6991-6991(i)) and their derivatives, and such other substances, materials, pollutants, contaminants and wastes as become regulated or subject to cleanup authority under any Environmental Laws, and (iii) the term "**Released**" shall have the meaning set forth in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.

3.10. Real Property. Schedule 1.1(a) describes all interests, including all leasehold interests, in Real Property included in the Broadcasting Assets and the nature of the right, title, or interest that Seller has in such real estate. The Seller has good and marketable title to all parcels of Real Property owned by Seller that are included in the Broadcasting Assets (the "**Owned Real Property**"), if any. Seller has delivered to Purchaser a copy of all policies of title insurance currently existing in favor of Seller and in Seller's possession with respect

to the Owned Real Property. Seller's current use of the Owned Real Property does not violate in any material respect any restrictive covenants of record affecting the Owned Real Property.

3.11. Personal Property. Each of the material items of Tangible Personal Property owned by Seller that are used or useful exclusively in the operation of the Stations and included in the Broadcasting Assets are listed in Schedule 1.1(b)(i) and Schedule 1.1(b)(ii). The Tangible Personal Property is in normal operating condition and repair (ordinary wear and tear excepted).

3.12. Certain Contracts. Schedule 1.1(d) (Assumed Contracts) lists certain contracts, commitments, agreements, leases, licenses (other than the FCC Licenses), understandings and obligations to which Seller is party or by which Seller or the Broadcasting Assets are bound, that are material and used or useful exclusively in the operation of the Stations and which Purchaser has agreed to assume as Assumed Contracts. Seller has delivered to Purchaser true and complete copies of all written Assumed Contracts and true and complete memoranda of all oral Assumed Contracts, including any and all amendments and other modifications thereto, other than agreements entered into in the ordinary course of business for the sale of advertising time on the Stations (for which no copies or memoranda shall be required). Seller knows of no existing defaults and, to Seller's knowledge, no events or circumstances have occurred which, with or without notice or lapse of time or both, would constitute defaults under any of the Assumed Contracts which would individually or in the aggregate have a Material Adverse Effect. Any contract not included in either Schedule 1.1(a) (real property leases) or Schedule 1.1(d)(i) (Assumed Contracts) or as described in Section 6.3 is not a contract being assumed by Purchaser and Purchaser will have no obligation therefor whatsoever.

#### **IV. Representations and Warranties of Purchaser**

Purchaser represents and warrants to Seller that:

4.1. Organization and Standing. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of Kansas. Purchaser has full power and authority to own its properties and to transact the business in which it is currently engaged and to perform the obligations required to be performed by it hereunder and to consummate the transactions contemplated hereby. Purchaser is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it requires such qualification.

4.2. Authorization and Binding Obligations. The execution, delivery and performance of this Agreement and the instruments contemplated hereby have been duly and validly authorized by Purchaser and constitute valid and binding agreements of Purchaser enforceable in accordance with their terms except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other laws relating to or affecting creditors' rights generally and the exercise of judicial discretion in accordance with general equitable principles.

4.3. No Contravention. The execution, delivery and performance of this Agreement and the other documents to be executed in connection herewith, the consummation of the transactions contemplated hereby and thereby and the compliance with the provisions hereof



and thereof by Purchaser do not and will not, after the giving of notice, or the lapse of time, or otherwise: (i) conflict with or violate any provisions of the organization documents of Purchaser; (ii) result in the breach of, conflict with, or constitute a default under, or result in the termination or alteration of, the provisions of any agreement or other instrument to which Purchaser is a party or by which the property of Purchaser is bound or affected; or (iii) violate or conflict with any laws, regulations, orders, writs, decrees, injunctions or judgments applicable to Purchaser, including FCC regulations, or require any partner consent or consent under applicable law, except the FCC Consent. Except for the FCC Consent, no consent, waiver, authorization or approval from, or filing of any notice or report with, any Governmental Authority or other Person is necessary in connection with the execution, delivery or performance by Purchaser of this Agreement or any of the documents or transactions contemplated hereby.

4.4. Litigation. Except for administrative rulemaking or other proceedings of general applicability to the broadcast industry, there is no proceeding or investigation of any nature pending or, to the best of Purchaser's knowledge, threatened against or affecting Purchaser that would adversely affect Purchaser, the FCC Licenses, the Stations or Purchaser's ability to consummate the transactions contemplated in this Agreement.

4.5. Financial Qualification. Purchaser is financially qualified to perform all obligations under this Agreement. Purchaser has funds on hand and firm commitments letters from financial lenders for amounts sufficient to assure the availability and payment of the Purchase Price and any and all other amounts which Purchaser will be obligated to pay to Seller hereunder on or before the Closing Date and thereafter and Purchaser will have such funds available at Closing. Purchaser acknowledges and agrees that its obligations to consummate the transactions under this Agreement are not conditioned on obtaining financing.

4.6. FCC Matters. Subject to Section 2.3, Purchaser is legally qualified under the Communications Act and FCC rules and policies to become the licensee of the Stations. There is no fact known to Purchaser that, under the Communications Act and FCC rules and policies, reasonably may be expected to disqualify Purchaser from holding the FCC Licenses, or that would prevent Purchaser from consummating the transactions contemplated by this Agreement other than the multiple ownership and divestiture issue discussed hereinabove at Section 2.3. Purchaser shall take no action that would reasonably be likely to cause disqualification prior to the Closing Date. Purchaser is able to certify on an FCC Form 314 that it is financially qualified to be the licensee of the Stations.

## **V. Access and Information**

From the date of execution of this Agreement until Closing, Seller shall: (i) give Purchaser and its representatives limited access during normal business hours and upon prior written request, to all of the Broadcasting Assets to be acquired hereunder, but Purchaser shall not contact any Station employees without Seller's prior consent, and (ii) furnish Purchaser and its representatives during such period with such information relating to the Broadcasting Assets as Purchaser may reasonably request in writing in order to enable Purchaser to make such reasonable examinations and investigations thereof in order to consummate the

transactions contemplated hereby. Notwithstanding anything in this Agreement to the contrary, (i) the rights under this Section shall not be exercised in a manner that interferes with the operation of the Stations or other stations owned by Seller or its affiliates, and (ii) Purchaser shall have no access to assets used or held for use in the operation of or information related to KSAJ-FM, Abilene, Kansas.

## **VI. Conduct of Business to Closing**

Each Party hereto covenants and agrees that pending the Closing, except to the extent contemplated by this Agreement, or except with the prior written consent of other Party, which shall not be unreasonably withheld, delayed or conditioned:

6.1. Operation of Stations. Subject to the provisions of this Agreement, Seller shall continue to operate the Stations in the normal and ordinary course and shall use all commercially reasonable efforts to avoid any act that might have a Material Adverse Effect upon the Broadcasting Assets, the FCC Licenses, or the transaction contemplated hereby. Seller shall not transfer the FCC Licenses and shall not, without the prior written consent of Purchaser, which shall not be unreasonably withheld, delayed or conditioned, transfer any of the other Broadcasting Assets, except that Seller shall have the right to replace the Stations' equipment and other personal property in the ordinary course of business with equipment or personal property serving the same function and of equal or greater value. For the purposes of this Agreement, "*transfer*" shall be interpreted broadly and shall include but not be limited to any sale, gift, assignment or other disposition, including any disposition under judicial order, legal process, execution, attachment or enforcement of a pledge, trust or other encumbrance.

6.2. Litigation and Proceedings. (i) Each of Seller and Purchaser shall notify the other promptly of any litigation or proceeding commenced, pending or, to its knowledge, threatened, against it, the Stations, the FCC Licenses or the other Broadcasting Assets which challenges the transactions contemplated hereby or could otherwise have a Material Adverse Effect on the transactions contemplated hereby, and (ii) Seller shall notify Purchaser promptly of any material damage to or destruction of the Broadcasting Assets.

6.3. Agreements. Seller shall perform all material obligations required to be performed prior to Closing by it under all Assumed Contracts, and shall not, without Purchaser's consent, which shall not be unreasonably withheld, delayed or conditioned, amend the Assumed Contracts or enter into any new agreements pertaining to the operation of the Stations which would be binding on Purchaser or the Broadcasting Assets on and after Closing, except for (i) new time sales agreements made in the ordinary course of business and (ii) other agreements made in the ordinary course of business that either (A) are terminable on ninety (90) days' notice or less without penalty, or (B) do not require post-Closing payments by Purchaser of more than \$2,000 for any individual agreement. Any agreements entered into pursuant to subsections (i) or (ii) above shall be Assumed Contracts.

6.4. Third Party Consents of Assumed Contracts. Seller and Purchaser shall use commercially reasonable efforts to obtain the consent of the other contracting parties to the assignment to Purchaser of the Assumed Contracts (including the real property leases) if such

consent is so required, provided that neither Seller nor Purchaser shall be obligated to pay money to any other contracting party to obtain any such consent. No such consent is a condition to Closing. If the parties are unable to obtain any consent necessary to permit the valid assignment of any Assumed Contract, Seller and Purchaser shall cooperate in a mutually agreeable arrangement under which Purchaser would obtain the benefits and assume the obligations under such contract until such consent is obtained, and to the extent of the benefits received, Purchaser shall pay and perform the applicable portion of Seller's obligations arising under the contract from and after Closing in accordance with its terms. Each Party shall cooperate fully with the other to obtain any other consents or approvals necessary to consummate the transactions contemplated by this Agreement.

6.5. No Breach of Representations and Warranties. Neither Seller nor Purchaser shall intentionally take any action or pursue any other course of conduct, or fail to take any action, that would cause any of its representations and warranties made in this Agreement to be untrue, incorrect or inaccurate in any material respect when made, or to become untrue, incorrect or inaccurate thereafter.

6.6. No Implied Representations or Warranties. Purchaser hereby acknowledges and agrees that Seller is not making any representations or warranty whatsoever, express or implied, except those representations and warranties of Seller explicitly set forth in this Agreement or in the Schedules hereto. Subject to the foregoing, and subject to the provisions of this Agreement, the Broadcasting Assets other than the FCC Licenses being acquired by Purchaser at the Closing as a result of this Agreement and the transactions contemplated hereby shall be acquired by Purchaser on an "as is, where is" basis and in their then present condition (except that all equipment listed in the Schedules, and any replacement equipment acquired by Seller prior to Closing, shall be in normal operating condition and repair (ordinary wear and tear excepted and except as otherwise disclosed in the Schedules) as of the Closing Date), and Purchaser shall rely solely upon its own examination thereof. In any event, except as explicitly set forth herein, neither Seller nor any of its officers directors, employees, affiliates or representatives, as the case may be, has made or is making any representation, express or implied, as to the value of any asset of business being so acquired, or any warranty of merchantability, suitability or fitness for a particular purpose or quality, or as to the condition or workmanship thereof, or as to the enforceability or validity of any contract or as to the absence of any defects or breaches of any assets or contracts, whether latent or patent.

## **VII. Conditions Precedent to the Obligations of the Parties**

7.1. Conditions To Seller's Obligation To Close. The obligations of Seller to sell, transfer, convey and deliver the Broadcasting Assets and to proceed with the Closing are subject to the satisfaction at or prior to the Closing of each of the following conditions (unless waived in writing by Seller, with the exception of Section 7.1.1, which cannot be waived):

7.1.1. FCC Consent. The FCC shall have granted the FCC Consent by Final order.

7.1.2. Consideration. Purchaser shall have delivered to Seller, in accordance with Section 1.2 hereof, the consideration specified therein, including the release of the Earnest Money Deposit to Seller and the release of the accrued interest thereon to Purchaser.

7.1.3. Accuracy of Representations and Warranties. The representations and warranties made herein by Purchaser shall be true and correct when made and true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date.

7.1.4. Compliance with Agreement. All of the terms, agreements, covenants and conditions of this Agreement to be performed or complied with by the Purchaser on or prior to the Closing shall have been duly performed or complied with.

7.1.5. No Obstructive Proceeding. No order, decree or judgment of any Governmental Authority shall be subsisting against any of the Parties which would render it unlawful or materially restrain or limit the Parties' ability, as of the Closing Date, to effect the transactions contemplated hereunder in accordance with the terms hereof.

7.1.6. Officer's Certificates. Purchaser shall have delivered a certificate signed by an authorized officer of Purchaser, to the effect that the conditions set forth in Sections 7.1.3 and 7.1.4 have been satisfied.

7.1.7. Lender Consent. Seller's lenders shall have consented to the consummation of the transactions contemplated by this Agreement and the other documents delivered in connection herewith and shall have released its liens on the Broadcasting Assets.

7.1.8. Transfer of Documents. Seller shall have received the instruments and other documents required to be delivered to it pursuant to Section 8.2 hereof.

7.1.9. Secretary's Certificate. Purchaser shall have delivered to Seller (a) a copy of a resolution of the Board of Directors, or other applicable governing body of Purchaser authorizing the acquisition of the Broadcasting Assets, and (b) a certificate of good standing or the equivalent thereof for Seller from the State of Kansas.

7.2. Conditions To Purchaser's Obligation To Close. The obligations of Purchaser to purchase the Broadcasting Assets and to proceed with the Closing are subject to the satisfaction at or prior to the Closing of each of the following conditions (unless waived in writing by Purchaser, with the exception of Section 7.2.1, which cannot be waived):

7.2.1. FCC Consent. The FCC shall have granted the FCC Consent by Final order.

7.2.2. Transfer of Documents. Purchaser shall have received the instruments and other documents required to be delivered to it pursuant to Section 8.1 hereof.

7.2.3. Accuracy of Representations and Warranties. The representations and warranties made herein by Seller shall be true and correct when made and true and correct in all material respects of the Closing Date with the same force and effect as though made on and

as of the Closing Date.

7.2.4. Compliance with Agreement. All of the terms, agreements, covenants and conditions of this Agreement to be performed or complied with by Seller on or prior to the Closing shall have been duly performed or complied with.

7.2.5. No Obstructive Proceeding. No order, decree or judgment of any Governmental Authority shall be subsisting against any of the Parties which would render it unlawful or materially restrain or limit the Parties' ability, as of the Closing Date, to effect the transactions contemplated hereunder in accordance with the terms hereof.

7.2.6. Officer's Certificates. Seller shall have delivered a certificate signed by an authorized officer of Seller, to the effect that the conditions set forth in Sections 7.2.3 and 7.2.4 have been satisfied.

7.2.7. Secretary's Certificate. Seller shall have delivered to Purchaser (a) a copy of a resolution of the Board of Directors, or other applicable governing body of Seller authorizing the sale of the Broadcasting Assets, and (b) certificates of good standing or the equivalent thereof for Seller from the State of Delaware.

7.2.8. FCC Matters. On the Closing Date, Seller shall be the owner and holder of the FCC Licenses to the extent that such licenses can be owned or held by Seller under the Communications Act, and the FCC Licenses shall be in full force and effect, valid for the balance of the current license terms applicable generally to radio stations licensed to communities located in the State of Kansas.

### **VIII. Instruments of Conveyance and Transfer**

8.1. Instruments of Conveyance and Transfer of Personal Property. At the Closing, to effect the transfers, conveyances and assignments from Seller to Purchaser, Seller shall deliver to Purchaser the following, all in form reasonably satisfactory to counsel for each of Seller and Purchaser, and dated as of the Closing Date):

8.1.1. Bills of Sale. Bills of sale for all tangible personal property included in the Broadcasting Assets;

8.1.2. Assignments of Licenses. Assignments of the FCC Licenses and all other authorizations for Seller included in the Broadcasting Assets;

8.1.3. Assignments of Contracts. Assignments of the Assumed Contracts;

8.1.4. Assignments of Leases. Assignments of the real property leases included in the Broadcasting Assets;

8.1.5. Other Documents. Such other instruments or documents as Purchaser may reasonably request at least ten days prior to Closing, in form reasonably acceptable to Seller and Purchaser and their respective legal counsel, to effect the transfer to



Purchaser of the real and personal property included in the Broadcasting Assets to be transferred, not inconsistent with the obligations of Seller under this Agreement.

8.2. Instruments of Assumption. At the Closing, to effect the transfers, conveyances and assignments from Seller to Purchaser, Purchaser shall deliver to Seller the following, all in form reasonably satisfactory to counsel for each of Seller and Purchaser, and dated as of the Closing Date):

8.2.1. Assumptions of Contracts. Assumptions of the Assumed Contracts;

8.2.2. Assumptions of Leases. Assumptions of the real property leases included in the Broadcasting Assets;

8.2.3. Other Documents. Such other instruments or documents as Seller may reasonably request at least ten days prior to Closing, in form reasonably acceptable to Seller and Purchaser and their respective legal counsel, to effect the assumption of the Assumed Liabilities, not inconsistent with the obligations of Purchaser under this Agreement.

## **IX. Risk of Loss; Insurance**

The risk of any loss, damage or impairment, confiscation or condemnation of the Broadcasting Assets or any part thereof from fire, explosion, disaster, flood, accident, riot, insurrection, war, act of God or other similar occurrence shall be borne by Seller at all times prior to the Closing and by Purchaser at all times thereafter. In any such event, the proceeds of, or any claim for any loss payable under, any insurance policy, claim, judgment or award with respect thereto (collectively, the "**Proceeds**") shall be applied toward the repair, replacement or restoration of such Broadcasting Assets as soon as possible after its loss, impairment, confiscation or condemnation.

## **X. Event of Loss**

Except as set forth below, if any Broadcasting Assets with a value of greater than Five Thousand Dollars (\$5,000) (but less than \$40,000) are damaged or destroyed and shall not be restored, replaced or repaired by the Closing Date, the Parties shall proceed to Closing (with Seller's representations and warranties deemed modified to take into account any such condition) and Seller shall repair or replace such items in all material respects after Closing (and Purchaser will provide Seller access for and otherwise reasonably cooperate with such repair or replacement). If (a) any Broadcasting Assets with a value of \$40,000 or greater are damaged or destroyed and shall not be restored, replaced or repaired by the Closing Date, or (b) any Station is off the air in excess of twenty-four (24) hours as a result of damage to any Broadcasting Asset (regardless of the value of such asset), Purchaser may, at its option and upon reasonable notice to Seller, either (i) postpone the Closing until the date five (5) business days after such restoration, replacement or repair has occurred, subject to Section 15.2, or (ii) elect to proceed to Closing with the Broadcasting Assets in their then-current condition, in which case either (A) Seller shall assign all proceeds from insurance on such damaged or destroyed Broadcasting Assets to Purchaser, and Purchaser shall have the responsibility to repair or replace such Broadcasting

Assets or (B) the cost to complete the repair or replacement of such damaged or destroyed Broadcasting Asset shall be held back from the Purchase Price and released to Seller upon Seller's completion of such repair or replacement (provided that Purchaser will provide Seller access for and otherwise cooperate with such repair or replacement). Purchaser acknowledges and agrees that if Purchaser elects clause (ii) above, Purchaser shall be deemed to have waived any right or claim it may have had on account of any such damaged or destroyed Broadcasting Asset, except in respect of a claim to such insurance proceeds or the held back amount, as the case may be.

#### **XI. Books and Records**

Purchaser shall be entitled to all records relating exclusively to the Broadcasting Assets, including but not limited to, the Stations' public files, technical information and engineering data, FCC logs, asset history files, and other files, documents and correspondence of Seller relating exclusively to the Broadcasting Assets prior to the Closing Date as shall be reasonably necessary to the maintenance of the Broadcasting Assets after the Closing Date, but expressly excluding those books, records and files identified as Excluded Assets. At, or as soon as practicable after the Closing, Seller shall deliver to Purchaser in accordance with Purchaser's instructions the foregoing documents relating to the Broadcasting Assets that are in the possession of Seller, or any of their representatives, agents or affiliates.

#### **XII. Possession and Control of Stations**

Notwithstanding any other provision of this Agreement, between the date of this Agreement and the Closing Date, Purchaser shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct, the operations of the Stations, and the conduct of such business operations, including control and supervision of programming, shall be the sole responsibility of, and in the complete discretion and independent and separate control of, Seller. Neither title to, nor right to possession of, the Broadcasting Assets shall pass to Purchaser until the Closing Date.

#### **XIII. Brokers**

Seller represents and warrants to Purchaser that it has engaged no broker, finder or consultant, other than Media Services Group, the fees of whom will be paid by, and the sole responsibility and obligation of, Seller, in connection with this Agreement and the transactions contemplated herein or any aspect thereof. Purchaser represents and warrants to Seller that it has not engaged any broker, finder or consultant, other than Gammon Miller, LLC, the fees of whom will be paid by, and the sole responsibility and obligation of, Purchaser, in connection with this Agreement and the transactions contemplated herein. Seller and Purchaser each agrees to indemnify and hold the other harmless from any and all loss, cost, Liability, damage and expense (including reasonable legal and other expenses incident thereto) in respect of any claim for a broker, finder or consultant's fee or commission or similar payment by virtue of any alleged agreements, arrangements or understandings with the indemnifying party.

#### **XIV. Survival; Indemnification**

14.1. Survival. The several representations and warranties of the Parties contained in this Agreement shall be deemed to have been made on the date of this Agreement and on the Closing Date, shall survive the Closing Date and shall remain operative and in full force and effect for a period of twelve (12) months after the Closing Date except with respect to Taxes and Section 3.4 which shall survive for the applicable statute of limitations period (each such date, an “**Indemnification Cut-Off Date**”). The Indemnification Cut-Off Date of any representation, or warranty as provided in this Section 14.1 shall not affect the rights of a party in respect of any indemnification claim made by such party in writing prior to the Indemnification Cut-Off Date, which shall survive until resolution of such claim. The covenants and agreements in this Agreement shall survive Closing until performed.

14.2. Seller's Indemnification. After the Closing, and subject to this Section 14.2, Seller agrees to indemnify, defend and hold Purchaser harmless from and against: any and all Liabilities, known or unknown, actions, suits, proceedings, demands, assessments, judgments, costs and expenses (including reasonable legal and other expenses incident thereto) (collectively, “**Losses**”) resulting from causes of action or claims of any kind (excluding any and all claims and Liabilities arising or resulting from a breach of any of Purchaser's agreements or warranties or from an inaccuracy in any of Purchaser's representations hereunder) arising from: (a) any breach by Seller of its representations and warranties made under this Agreement, (b) any default by Seller of any covenant or agreement made under this Agreement, (c) Seller's operation of the Stations and ownership of the Broadcasting Assets prior to Closing (except for the Assumed Liabilities), or (d) any and all contracts, agreements, Liabilities and obligations of Seller not included in the Assumed Liabilities.

14.2.1 Limitation of Seller Indemnification. Notwithstanding anything herein to the contrary,

(i) Purchaser shall not be entitled to indemnification for Losses in respect of claims made pursuant to Section 14.2(a) unless the total of all Losses in respect of such claims made by Purchaser shall exceed Twenty Thousand Dollars (\$20,000) in the aggregate (the “**Seller Deductible**”), whereupon, only such Losses in respect of such claims above such amount shall be recoverable by Purchaser in accordance with the terms hereof;

(ii) Except as set forth below, the maximum amount payable to Purchaser for Losses in respect of claims made by Purchaser under Sections 14.2(a) and (b) shall not exceed an amount equal to twenty percent (20%) of the Purchase Price (the “**Seller Cap**”); for the avoidance of doubt, the Seller Cap shall not apply to Losses incurred by Purchaser which relate to Seller Liabilities under Sections 14.2(c) and (d) above;

(iii) Seller shall not be obligated to provide indemnification hereunder with respect to any claim made by Purchaser after the applicable Indemnification Cut-Off Date;

(iv) Seller shall not be liable for Losses under Section 14.2 resulting from any breach of representation, warranty or covenant with respect to which Purchaser or any of its employees or agents had actual knowledge prior to the Closing. Seller will have no liability

under any provision of this Agreement for any Losses to the extent that such Losses relate to actions taken or not taken by Purchaser after the Closing. After the Closing, Purchaser will take all reasonable steps to mitigate all Losses upon and after becoming aware of any event or circumstance that could reasonably be expected to give rise to any Losses with respect to which indemnification may be required hereunder; and

(v) Any liability for indemnification under Section 14.2 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty or covenant. Seller shall not in any event be liable under this Section 14.2, and no claim for indemnification may in any event be asserted against Seller under this Section 14.2, for any special, punitive, incidental or consequential or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable, by reason of a breach of any representation, warranty, covenant or indemnity contained herein.

14.3. Purchaser's Indemnification. After the Closing, and subject to this Section 14.3, Purchaser agrees to indemnify, defend and hold Seller harmless from and against any and all Losses resulting from causes of action or claims of any kind (excluding any and all claims and liabilities arising or resulting from a breach of any of Seller's agreements and warranties or from any inaccuracy in any of Seller's representations hereunder) arising from: (a) any breach by Purchaser of its representations and warranties made under this Agreement, (b) any default by Purchaser of any covenant or agreement made under this Agreement, (c) Purchaser's operation of the Stations and ownership of the Broadcasting Assets on and after Closing and (d) the Assumed Liabilities and any and all liabilities and obligations of Purchaser before and after the Closing.

14.3.1. Limitation of Purchaser Indemnification. Notwithstanding anything herein to the contrary:

(i) Seller shall not be entitled to indemnification for Losses in respect of claims made pursuant to Section 14.3(a) unless the total of all Losses in respect of such claims made by Seller shall exceed Twenty Thousand Dollars (\$20,000) in the aggregate (the "**Purchaser Deductible**"), whereupon, only such Losses in respect of such claims above such amount shall be recoverable by Seller in accordance with the terms hereof;

(ii) Except as set forth below, the maximum amount payable to Seller for Losses in respect of claims made by Seller under Sections 14.3(a) and (b) shall not exceed an amount equal to twenty percent (20%) of the Purchase Price (the "**Purchaser Cap**"); for the avoidance of doubt, the Purchaser Cap shall not apply to Losses incurred by Seller which relate to Purchaser's Liabilities under Sections 14.3(c) and (d) above;

(iii) Purchaser shall not be obligated to provide indemnification hereunder with respect to any claim made by Seller after the applicable Indemnification Cut-Off Date;

(iv) Purchaser shall not be liable for Losses under Section 14.3 resulting from any breach of representation, warranty or covenant with respect to which Seller or any of its employees or agents had actual knowledge at any time prior to the Closing. Purchaser will

have no liability under any provision of this Agreement for any Losses to the extent that such Losses relate to actions taken or not taken by Seller after the Closing. After the Closing, Seller will take all reasonable steps to mitigate all Losses upon and after becoming aware of any event or circumstance that could reasonably be expected to give rise to any Losses with respect to which indemnification may be required hereunder; and

(v) Any liability for indemnification under Section 14.3 shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty or covenant. Purchaser shall not in any event be liable under this Section 14.3, and no claim for indemnification may in any event be asserted against Purchaser under this Section 14.3, for any special, punitive, incidental or consequential or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable, by reason of a breach of any representation, warranty, covenant or indemnity contained herein.

14.4. Exclusive Remedy. After the Closing, the exclusive remedy of the Parties with respect to any claim of the type described in Sections 14.2 and 14.3 shall be a claim for indemnification pursuant to the terms and conditions of this Article XIV, except in the case of fraud and except for any breach of any covenant or agreement that provides for performance following the Closing Date for which the remedies of specific performance, injunctive relief, non-monetary declaratory judgment or any other non-monetary equitable remedies may be available under applicable law.

14.5. Indemnification Procedures.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "**Claim**"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given prior to the Indemnification Cut-Off Date.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;



(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim.

## **XV. Default; Termination**

15.1. Default and Cure. If prior to Closing either Party believes the other party to be in material breach or default of its representations, warranties, covenants or obligations hereunder, the non-defaulting Party may provide the defaulting party with written notice specifying in reasonable detail the nature of such breach or default. If such breach or default cannot be cured, or has not been cured by the earlier of (i) the Closing Date, or (ii) the date thirty (30) calendar days after delivery of such notice, then the non-defaulting Party giving such notice may (x) terminate this Agreement in accordance with Section 15.2 below or (y) extend the Closing Date by ten (10) business days to permit such cure (but no such extension shall constitute a waiver of the non-defaulting party's right to terminate as a result of such default), subject to Section 15.2.4. Such rights are contingent upon the giving of such notice. Notwithstanding anything in this Agreement to the contrary, no cure period shall apply to Purchaser's obligation to make Earnest Money Deposit on the date of this Agreement or to pay the Purchase Price at Closing.

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

15.2.1. Mutual Consent. This Agreement may be terminated by mutual written consent of Seller and Purchaser.

15.2.2. Seller. This Agreement may be terminated by written notice from Seller to Purchaser (i) pursuant to Section 15.1 hereof provided Seller is not then in material breach of this Agreement, or (ii) if both the Purchaser and Seller agree that any condition set forth in Section 7.1 (other than Section 7.1.1) cannot be met and has not been waived.

15.2.3. Purchaser. This Agreement may be terminated by written notice from Purchaser to Seller (i) pursuant to Section 15.1 hereof provided Purchaser is not then in material breach of this Agreement, or (ii) if both the Purchaser and Seller agree that any condition set forth in Section 7.2 (other than Section 7.2.1) cannot be met and has not been waived.

15.2.4. Passage of Time. Either party may terminate this Agreement by written notice to the other if Closing has not occurred by the date twelve (12) months after the date of

this Agreement.

15.3. Effect of Termination. In the event of termination of this Agreement pursuant to Section 15.2, this Agreement shall forthwith become void and the Parties shall be released and discharged from any further obligation hereunder except (i) the agreements, rights and obligations contained in this Article XV (Termination) and Articles XVI (Confidentiality) and XVII (Miscellaneous) hereof shall survive the termination hereof, (ii) as provided by Section 15.4(b) with respect to liquidated damages, and (iii) in the case of fraud, in which case such fraudulent party shall be liable for Losses incurred or suffered by the other party as a result of such fraud.

15.4. Remedies; Specific Performance; Release of Earnest Money Deposit.

(a) In the event of failure or threatened failure by either Party to comply with the terms of this Agreement, the other Party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. Notwithstanding the foregoing, if prior to Closing Purchaser is in material breach or default of this Agreement, then Seller's sole remedy for Purchaser's breach of this Agreement shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 15.4(b), except for any failure by Purchaser to comply with its obligations related to the Earnest Money Deposit, Sections 2.1 and 2.3, or Articles XII or XVI, as to which Seller shall be entitled to all available rights and remedies, including without limitation specific performance.

(b) The Parties hereby further agree that if this Agreement is terminated in accordance with its terms as a result of Purchaser's breach, Seller shall be entitled to the Earnest Money Deposit including the interest accrued thereon (which shall be released to Seller promptly upon such termination but in any event no later than one (1) business day thereafter) as liquidated damages, which shall be Seller's sole remedy hereunder absent Purchaser's fraud. Purchaser agrees that damages suffered by Seller in the event of a termination of this Agreement would be difficult to determine, and that the Earnest Money Deposit represents a reasonable estimate of actual damages and not a penalty.

(c) If this Agreement is terminated in accordance with its terms for any reason other than Purchaser's breach, the Earnest Money Deposit and any interest accrued thereon shall be disbursed to Purchaser. If this Agreement is terminated due to Seller's breach or default, Purchaser shall be entitled to all available rights and remedies for such breach or default, including without limitation specific performance.

## **XVI. Confidentiality**

In addition to the rights and obligations the Parties also agree that they shall at all times maintain confidential and not use for any purpose other than the operation of Stations, any non-public information (including without limitation all financial information) relating

to this transaction, the Stations, the Broadcasting Assets, the FCC Licenses and the other confidential and proprietary information of the other Party (other than information in the public domain not as the result of a breach of this Agreement), except: (i) for disclosure to authorized representatives of a Party, provided that any such person shall agree to maintain confidential any such information; (ii) as reasonably necessary to the performance of this Agreement; (iii) as authorized in writing by the other Party; or (iv) to the extent that disclosure is required by law or the order of any Governmental Authority under color of law; provided, that, prior to disclosing any information pursuant to this clause (iv), the Party from whom disclosure is requested shall have given reasonable prior written notice thereof to the other Party and provide such Party with the opportunity to contest such disclosure at such Party's expense. Prior to Closing, neither Party shall issue any press releases or communications to the press or general public relating to the transactions contemplated by this Agreement or the terms or existence of this Agreement, without the prior written approval of the other Party, except to the extent that such Party is so obligated by law, in which case such Party shall give advance notice to the other, and except as necessary to enforce rights under or in connection with this Agreement. Notwithstanding the foregoing, the Parties acknowledge that this Agreement and the terms hereof will be filed with the FCC assignment application and thereby become public.

## **XVII.**

### **Miscellaneous**

17.1. Costs, Expenses. Each Party will be responsible for and bear all of its own costs and expenses (including any expenses of its representatives) incurred at any time in connection with pursuing or consummating the acquisition contemplated by this Agreement. FCC filing fees in connection with the assignment of the Licenses shall be equally divided between Purchaser and Seller. All recording costs and fees incurred in connection with the clearing and removing of any liens and encumbrances to which the Broadcasting Assets may be subject, so as to permit Seller to convey good and marketable title to the Broadcasting Assets free and clear of all Encumbrances (other than Permitted Encumbrances), shall be the responsibility of Seller.

17.2. Taxes. The payment of all sales, use, transfer or similar Taxes, documentation stamps, or other charges imposed by any and all Governmental Authorities (excluding any income or gain Taxes) with respect to the transfer of title to the Broadcasting Assets hereunder and the other transactions anticipated hereby shall be the responsibility of and shall be paid by Purchaser.

17.3. Further Assurances. Each Party shall, from time to time, upon the request of the other Party, execute, acknowledge and deliver to the other Party such other documents or instruments, and take any and all actions as are reasonably necessary for the implementation and consummation of the transactions contemplated by this Agreement.

17.4. Notice of Proceedings. Purchaser or Seller, as the case may be, will promptly notify the other in writing upon becoming aware of any pending or threatened order or similar issuance restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder.

17.5. Notices. Any notice, request, demand or consent required or permitted to be given under this Agreement shall be in writing and shall be effective when transmitted and confirmation of receipt is obtained for facsimile transmissions; when delivered personally or by electronic mail transmission; one (1) Business Day after sent by recognized overnight courier; and five (5) calendar days after sent by mail, first class, postage prepaid; in each case to the following address or telephone number, as applicable:

If to Seller to: Alpha Media LLC  
1015 Eastman Drive  
Bigfork, MT 59911  
Attention: Larry Wilson, Chairman  
E-mail: [Larry@alphamediausa.com](mailto:Larry@alphamediausa.com)

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

Alpha Media LLC  
1211 SW 5th Avenue, Suite 750  
Portland, OR 97204  
Attention: Donna Heffner, CFO  
E-mail: [Donna.Heffner@alphamediausa.com](mailto:Donna.Heffner@alphamediausa.com)

and with a copy (which shall not constitute notice) to:

Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Attention: Kathleen A. Kirby  
E-mail: [KKirby@wileyrein.com](mailto:KKirby@wileyrein.com)

If to Purchaser to: Rocking M Media, LLC  
1707 Thomas Circle, Suite A Manhattan, KS 66502  
Attention: Christopher Miller, President  
E-mail: [cmiller@rockingmradio.com](mailto:cmiller@rockingmradio.com)

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

Christopher D. Imlay, Esquire  
Booth, Freret & Imlay, LLC  
14356 Cape May Road  
Silver Spring, Maryland 20904-6011  
E-mail: [chris@imlaylaw.com](mailto:chris@imlaylaw.com)

or at such other address as either party shall specify by notice to the other.

17.6. Headings, Entire Agreement, Amendment. The section and subsection headings do not constitute any part of this Agreement and are inserted herein for convenience

of reference only. This Agreement, including the Schedules and Appendices hereto, embodies the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Parties on the subject matter hereof. This Agreement may not be amended, modified or changed orally, but only in writing signed by the Party against whom enforcement of any amendment, modification, change, waiver, extension or discharge is sought.

17.7. Waiver. No waiver of a breach of, or default under, any provision of this Agreement shall be deemed a waiver of such provision or of any subsequent breach or default of the same or similar nature or of any other provision or condition of this Agreement.

17.8. Binding Effect and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns. Neither this Agreement nor any obligation hereunder shall be assignable by either Party except with the prior written consent of the other Party. No assignment shall relieve a Party of any obligations or liability under this Agreement.

17.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which taken together shall constitute one agreement.

17.10. Schedules and Appendices. The Schedules and Appendices attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. Capitalized terms used in the Schedules have the meanings set forth in this Agreement. A disclosure on any of the Schedules is a disclosure for all purposes. Except as set forth herein or in the Schedules, all disclosures are made as of the date of this Agreement. The fact that any item or information is contained in the Schedules shall not be construed to mean that such item or information is required to be disclosed in or by this Agreement or that such item or information is material. The Schedules qualify all representations, warranties and covenants set forth in this Agreement.

17.11. Rights Cumulative. Except as set forth herein, all rights, powers and remedies herein given to Purchaser and Seller are cumulative and not alternative, and are in addition to all statutes or rules of law.

17.12. Governing Law. This Agreement, and the rights and obligations of Purchaser and Seller hereunder, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the choice of law provisions thereof. The prevailing party in a lawsuit brought to enforce the performance or compliance of any provision of this Agreement may recover reasonable attorneys' fees and costs from the non-prevailing party.

17.13. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance, is held invalid, then so long as no Party is deprived of the benefits of this Agreement in any material respect, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application. Any such invalid provision shall be given effect to the extent possible or shall be reformed so as to make it enforceable and valid while preserving the original intent of the Parties.



17.14. Third Party Rights. Neither Seller nor Purchaser assumes any duty hereunder to any other person or entity by reason of execution of this Agreement, and this Agreement shall operate exclusively for the benefit of the Parties hereto and their respective affiliates and not for the benefit of any other person or entity.

17.15. Time of Essence. Time is of the essence in the performance of this Agreement.

17.16. Drafting Ambiguities. Each Party to this Agreement and its counsel have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments, schedules or appendices to this Agreement.

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[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first above written.

**SELLER:**

ALPHA MEDIA LLC  
ALPHA MEDIA LICENSEE LLC

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

Name: Lawrence R. Wilson

Title: Chairman

*Bob Proctor*  
*Bob Proctor*  
*PRESIDENT*

**PURCHASER:**

ROCKING M MEDIA, LLC

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

Name: Christopher Miller

Title: President

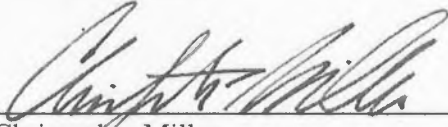
SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first above written.

**SELLER:** ALPHA MEDIA LLC  
ALPHA MEDIA LICENSEE LLC

By: \_\_\_\_\_  
Name: Lawrence R. Wilson  
Title: Chairman

**PURCHASER:** ROCKING M MEDIA, LLC

By:  \_\_\_\_\_  
Name: Christopher Miller  
Title: President