

## **AGREEMENT FOR SALE AND PURCHASE OF MEMBER INTEREST**

**THIS AGREEMENT FOR SALE AND PURCHASE OF MEMBER INTEREST** ("the Agreement") is made and entered into effective the 13<sup>th</sup> day of May, 2003, by and among **ALEXANDER L. CREIGHTON** ("Purchaser" or "Creighton"), **KEVIN M. SHAFFER** ("Seller" or "Shaffer") and **ROSS O. MILLER** ("Miller").

### **RECITALS**

**A.** JMS Broadcasting Limited Liability Company ("JMS"), a Colorado limited liability company, is engaged in the business of owning FCC licenses for broadcasting, including the operation of radio station(s) (the "Business");

**B.** Creighton, Miller and Shaffer are all of the members of JMS, and together own 100% of the ownership interest in JMS, have all of the rights to receive profits and losses of JMS and have all of the rights to receive distributions of JMS's assets;

**C.** JMS operates the Business and maintains its offices in Ft. Morgan, Colorado; and

**D.** Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, Seller's ownership interest and other rights in JMS ("Member Interest"), subject to the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, in consideration of the recitals which are considered contractual terms and not mere recitals and the mutual promises, representations, warranties, and covenants of the parties as hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **1. Sale and Transfer of Member Interest.**

**1.1** Seller agrees to sell, convey, transfer and assign to Purchaser all of Seller's right, title and ownership interest in JMS.

**1.2** The JMS Members, on behalf of themselves and JMS, hereby waive any and all notices required by, and any rights, benefits, obligations and transfer restrictions or requirements (including but not limited to any rights of first refusal, any express or implied rights to any buy-sell agreements, whether or not formally executed or resulting from that certain June 8, 2001 Agreement for the Sale and Purchase of Member Interest) that might arise or exist under, any operating agreement or amendment thereto or other agreement among them, including but not limited to any agreement concerning the transferability of any of one or more Member's Member Interest in JMS, in connection with the transactions contemplated by this Agreement. JMS Members hereby acknowledge and agree that it is their intention and desire to permit and close the sale of the Member Interest as contemplated herein, notwithstanding any oral or written terms or conditions of any

operating agreement or amendment thereto or other agreement which may effect the sale or transfer thereof.

**2. Agreement to Purchase.**

**2.1** Purchaser agrees that, subject to the terms and conditions of this Agreement (and in any of the Exhibits attached hereto and which are now expressly incorporated herein by reference), Purchaser will purchase and accept delivery and conveyance of Seller's full right, title and ownership interest in and to JMS and Seller's Member Interest in JMS and, upon the terms and conditions of this Agreement, as part and parcel of the purchase of Seller's Member Interest.

**3. Purchase Price.**

**3.1** The parties hereby agree that the purchase price shall be \$400,000. The amount payable pursuant to this Paragraph 3.1 shall be paid as follows: \$150,000 in good funds upon Closing provided for herein, and the remaining \$250,000 in the form of a promissory note ("Note"), in substantially the same form as Exhibit A hereto, with the terms of interest at 1.25% and payable in 120 monthly installments in the amount of \$2,217.34, with the Note maturing in 10 years. The payments will be due on the first of each month.

**4. Execution of Agreements Before, Contemporaneously with and/or After Closing.**

**4.1** At Closing, the parties agree to deliver the following executed documents, which documents the parties anticipate will previously be executed: this Agreement, the Employment Separation Agreement and the Consent Minutes. All parties hereto acknowledge that such execution and delivery of the above-referenced documents are material and essential parts of this transaction, that Purchaser is unwilling to close the purchase contemplated by this Agreement without such fully-executed documents referred to herein, and that all purchases and other transactions contemplated by this Agreement shall be deemed rescinded and all amounts paid therefor shall be refunded in full if Seller, Miller, and/or Purchaser, or any one of them, fails to execute and deliver the above-referenced documents at Closing.

**4.2** At or before Closing, Purchaser shall execute and deliver a promissory note in the form attached hereto as Exhibit A and Seller shall enter into the General Warranty Bill of Sale attached hereto as Exhibit B. All parties hereto acknowledge that Purchaser has informed them that such execution and delivery of the Employment Separation Agreement and the Consent Minutes is a material and essential part of this transaction, that Purchaser is unwilling to close any of the other purchases contemplated by this Agreement without such fully-executed agreements, and that all purchases and other transactions contemplated by this Agreement shall be deemed rescinded and all amounts paid therefor shall be refunded in full if either Purchaser or Seller or the JMS current members should fail to execute and deliver the agreements at Closing.

**4.3** All parties hereto acknowledge that the execution and delivery of certain

documents as referenced in this Paragraph 4 are material and essential parts of this transaction, that Purchaser is unwilling to close the purchase contemplated by this Agreement without such fully-executed documents at the Closing on this matter, and that all purchases and other transactions contemplated by this Agreement shall be deemed rescinded and all amounts paid therefor shall be refunded in full if Seller, Miller and/or Purchaser, or any one of them, each of them acting in good faith, fails to agree on the material provisions, execute and deliver the documents at Closing.

**4.3.3** The JMS Members shall approve all the transactions agreed to on behalf of JMS in this Agreement and the other documents executed as part and parcel of this transaction, including approving any amendment of the Operating Agreement, if necessary, and amendment of the Articles of Organization, if necessary.

## **5. Closing; Conditions to Closing.**

**5.1** Closing of the transactions contemplated by this Agreement shall take place within 10 days after the later occurring of the Community First National Bank approving the change of ownership for the JMS Loan (and nullifying Seller's personal guarantee) and the FCC approving the change of ownership, at such place and time as the Purchaser, Seller and Miller may mutually agree.

**5.2** Shaffer shall execute and deliver the Consent Minutes, General Warranty Bill of Sale and the Employment Separation Agreement; Purchaser shall execute and deliver the promissory note. Delivery of such documents is a condition precedent to Closing.

**5.3** At Closing, Shaffer will deliver to Purchaser his properly-executed General Warranty Bill of Sale in the form attached hereto as Exhibit B conveying all of his right title and interest in his Member Interest to Creighton.

**5.4** At Closing, Seller will execute and deliver to Purchaser all documents necessary to close, including the consent of Members authorizing this transaction. Purchaser also shall execute all such agreements necessary to consummate the sale. Each party upon receipt of the documents referred to in this Section 5 shall execute and deliver a fully-executed copy of each of the other parties at the Closing.

**5.5** Purchaser will have no obligation to close on the purchase of the Member Interest or to fulfill any other obligation of Purchaser hereunder unless:

**5.5.1** Seller has tendered and delivered his properly-executed agreements and documents at Closing as required hereby;

**5.5.2** Each of the representations and warranties of Seller, as set forth in this Agreement, remain true and correct at the time of the Closing, as if made at the time of Closing;

**5.5.3** The FCC does not approve the transfer of Seller's interest to Purchaser or there is a problem with the FCC licenses for JMS as a result of the change of ownership; and

**5.5.4** Community First National Bank calls the Loan of JMS as a result of the transfer, and does not approve the change in ownership of JMS, as it has a right to do under the Loan.

**5.6** Seller will have no obligation to close on the sale of the Member Interest or to fulfill any other of their obligations hereunder unless:

**5.6.1** Purchaser does not provide the \$150,000 to Shaffer and the duly executed promissory note in the amount of \$250,000 for Seller's Member Interest.

**5.6.2** Purchaser has tendered and delivered the properly-executed agreements and documents at Closing as required hereby; or

**5.6.3** Any of the representations and warranties of Purchaser as set forth below do not remain true and correct at the time of the Closing, as if made at the time of Closing.

**6. Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that:

**6.1** The written operating agreement entitled "Operating Agreement of JMS Broadcasting, LLC" and dated August 8, 1996, as amended in October 2001, is the entire operating agreement and it has not been amended since October 2001 to the best of such Seller's knowledge.

**6.2** Seller's Member Interest is not subject to any pledge, assignment, default, claim, setoff, lien, demand, restrictions or encumbrance of any nature and there are no unpaid obligations attributable to such Member Interest or affecting Seller's ability to transfer to Purchaser his Member Interest, except that Shaffer has pledged his Member Interest to Community First National Bank as part of the loan agreement with JMS. Creighton acknowledges that pledge and takes Shaffer's Member Interest subject to that pledge.

**6.3** Seller has no knowledge of any present or future condition, state of facts or circumstances which has affected or may affect adversely the business of JMS or prevent JMS from carrying on its business which have not been disclosed to Purchaser or the remaining JMS Members.

**6.4** This Agreement (including the Exhibits hereto) does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained herein not misleading. There is no fact known to Seller which is not disclosed in this Agreement which materially adversely affects the accuracy of the representations and warranties contained in this Agreement or JMS's financial condition, results of operations, business, or

prospects.

**6.5** As the Managing-Member of JMS, Seller represents and warrants that to the best of his knowledge, none of the following have taken place, or if they did, Seller has given full disclosure thereof to Purchaser and Miller:

**6.5.1** Mortgaged, pledged, or subjected to lien, charge, security interest, or other encumbrance any of JMS's assets or properties.

**6.5.2** Sold, assigned, transferred, leased, disposed of, or agreed to sell, assign, transfer, lease, or dispose of, any of JMS's assets or properties.

**6.5.3** Acquired or leased any assets or property of any other person.

**6.5.4** Cancelled or compromised any debt or claim.

**6.5.5** Waived or released any rights.

**6.5.6** Transferred or granted any rights with respect to know-how or any rights existing under any leases, licenses, agreements, inventions, or any type of proprietary rights.

**6.5.7** Granted or made any contract, agreement, promise or commitment to grant any wage, salary or employee benefit increase to, or entered into any employment contract, bonus, stock option, profit sharing, pension, incentive, retirement or other similar arrangement or plan with, any officer, employee or other person.

**6.5.8** Made any capital expenditure in excess of \$500 or entered into any commitment therefor.

**6.5.9** Suffered any casualty loss or damage, whether or not such loss or damage is or was covered by insurance.

**6.5.10** Suffered any adverse change in its operations, earnings, assets, liabilities, properties, or business or in its condition (financial or otherwise).

**6.5.11** Changed the nature of its business or its method of accounting.

**6.5.12** Other than in the ordinary course of business, entered into any transaction, contract, or commitment.

**6.5.13** Terminated or modified, or agreed to the termination or modification of, any service or other contract.

**6.5.14** Suffered a loss of any advertiser(s) or supplier(s), which loss (individually or in the aggregate) has had, or may have, an adverse effect on its financial condition, results of operations, business, or prospects.

**6.5.15** Suffered any material adverse change in its assets or liabilities, in its condition, financial or otherwise, or in its business, properties, earnings or net worth.

**6.5.16** That the FCC licenses are in good standing and there has been nothing done to otherwise jeopardize JMS's FCC licenses.

**6.5.17** There are no lawsuits, claims, demands, causes of action made, threatened, pending or in process against JMS, including any disputes, lawsuits or claims by past or present employees, and Seller has not done anything that would compromise JMS's defenses, claims or actions in regard thereto.

**6.6** Seller's representations and warranties will survive the Closing of the sale and purchase of the Member Interest.

**7. Representations and Warranties of Purchaser.** Purchaser represents and warrants to JMS current members and Seller that:

**7.1** Purchaser is ready, willing and able to enter into this Agreement and to carry out the transactions contemplated hereby.

**7.2** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or constitute or cause a default under any debt, obligation, contract, commitment or other agreement to which Purchaser is a party, and Purchaser is not in default and has not committed any act which is, or would with the giving of notice or the passage of time or both become, a default under any agreement to which Purchaser is a party or by which Purchaser is bound or violate any statute, law, judgment, order, regulation or rule of any court or governmental authority.

**7.3** Purchaser's representations and warranties will survive the Closing of the sale and purchase of the Member Interest.

## **8. Compliance with Communications Act and FCC Rules.**

**8.1** The parties agree that the provisions of this Agreement are subject to all applicable requirements under the Communications Act of 1934, as amended (the "Communications Act"), and the rules, regulations and policies of the FCC promulgated thereunder ("FCC Rules"). The parties agree that all actions undertaken pursuant to this Agreement or otherwise on behalf of JMS, shall be in full compliance with the requirements of the Communications Act and the FCC Rules, and the parties shall take no action with respect to JMS which would be in violation thereof, nor,

consistent with the above, will any of the parties take any action or fail to take such action, as the case may be, that could jeopardize the FCC authorizations and licenses held by JMS. Each party agrees to execute on behalf of himself and JMS, and to cooperate in the filing and prosecution of, all applications and other documents which in the opinion of counsel are necessary to obtain FCC or other governmental approval of any transactions contemplated by this Agreement or any actions otherwise properly taken on behalf of JMS.

**8.2** If any provision of this Agreement is deemed contrary to FCC rules or policies or is otherwise ruled unenforceable, the parties mutually agree to reform this Agreement to modify or delete such provision, exercising their best good faith efforts to insure that such modification, while removing the legal infirmity, conforms as closely as possible to the parties' original intention.

**9. Indemnification.**

**9.1** Seller hereby agrees to indemnify and hold Purchaser harmless from and against any and all liens, judgments, actions, causes, suits, costs (including reasonable attorney fees), damages, claims and demands of whatever nature or kind, arising out of or in connection with the transfer of Seller's Member Interest or asserted against Seller's Member Interest.

**9.2** Purchaser hereby agrees to indemnify and hold Seller harmless from and against any and all liens, judgments, actions, causes, suits, costs (including reasonable attorney fees), damages, claims and demands of whatever nature or kind, arising out of or in connection with the non-payment of or default on the Community First National Bank Loan, which Seller has personally guaranteed, to the extent that it is still in existence at the time of Closing, and to the extent that Community First National Bank seeks recovery of the amount due from Seller personally.

**10. Notice.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given as and when mailed, postage prepaid, certified mail, return receipt requested:

- |    |               |   |
|----|---------------|---|
| a. | To Shaffer:   | 502 Gayle<br>Ft. Morgan, Colorado 80701         |
| b. | To Creighton: | P.O. Box 392<br>Flagler, Colorado 80815         |
| c. | To Miller:    | 1322 Hineman Drive<br>Garden City, Kansas 67846 |

**11. Severability.** Should any one or more of the provisions hereof be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and

shall not be affected thereby.

**12. Binding Effect.** Upon execution, this Agreement shall be binding and fully enforceable and shall inure to the benefit of the parties hereto and their respective successors, assigns, personal representative and heirs.

**13. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE COLORADO STATE COURTS LOCATED IN THE COUNTY OF MORGAN, STATE OF COLORADO. SELLER, MILLER AND PURCHASER, AND EACH OF THEM, WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION.

**14. Representation by Counsel; Interpretation.** Seller, Purchaser and Miller, and each of them, acknowledge that each party to this Agreement has been represented by counsel or given the opportunity to be represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Further, each party acknowledges that each party has had input to this Agreement. Accordingly, any rule or law, or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it shall have no application and is expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the parties.

**15. Section Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**16. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

**17. Remedies.** The parties hereto acknowledge that the Seller's Membership Interest is unique; that any claim for monetary damages may not constitute an adequate remedy; and that it may therefore be necessary for the protection of the parties and to carry out the terms of this Agreement to apply for the specific performance of the provisions hereof. It is accordingly hereby agreed by all parties that no objection to the form of the action or the relief prayed for in any proceeding for specific performance of this Agreement shall be raised by any party, in order that such relief may be expeditiously obtained by an aggrieved party. All parties may proceed to protect and enforce their rights hereunder by a suit in equity, transaction at law or other appropriate proceeding, whether for specific performance or for an injunction against a violation of the terms hereof or in aid of the exercise of any right, power or remedy granted hereunder or by law, equity or statute or otherwise. No course of dealing and no delay on the part of any party hereto in exercising any right,



power or remedy shall operate as a waiver thereof or otherwise prejudice its rights, powers or remedies, and no right, power or remedy conferred hereby shall be exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

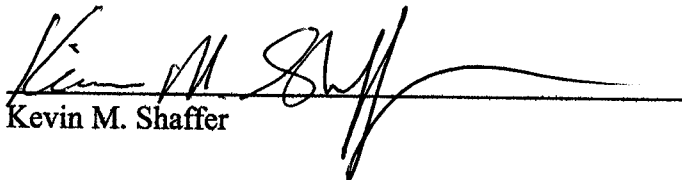
18. **Assignability.** This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties hereto.

19. **Amendment; Waiver.** No provision of this Agreement may be amended, waived, or otherwise modified without the prior written consent of all of the parties hereto. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement herein contained. The waiver by any party hereto of a breach of any provision or condition contained in this Agreement shall not operate or be construed as a waiver of any subsequent breach or of any other conditions hereof.

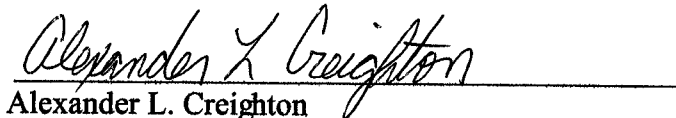
20. **Costs.** The prevailing party in any action to enforce this Agreement or otherwise concerning this Agreement shall be entitled to recover from the other parties all costs of prosecuting or defending such action, as the case may be, including reasonable attorneys' fees

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

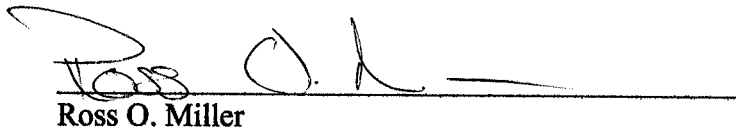
**"SELLER/SHAFFER":**

  
Kevin M. Shaffer

**PURCHASER/CREIGHTON:**

  
Alexander L. Creighton

**"MILLER":**

  
Ross O. Miller

## PROMISSORY NOTE

**\$250,000.00**

May 13, 2003  
Flagler, Colorado

For value received, the undersigned promises to pay to the order of Kevin M. Shaffer, Ft. Morgan, Colorado, **Two Hundred Fifty Thousand Dollars (\$250,000)** with interest at the rate of 1.25% per annum, payable in monthly installments of \$2,217.34 each, beginning on June 1, 2003, and continuing thereafter on the first day of each month until the balance of principal and interest accrued has been paid in full. Any remaining balance shall be due and payable on June 1, 2013. Any payment to be made hereunder shall be applied first to interest and then to principal.

Maker reserve the right to make prepayments at any time and from time to time without penalty.

The payments hereunder shall be due on the first of each month and considered late if not paid on or before the tenth of each month. Should payment not be timely made as provided for herein, then holder shall provide notice to Maker of the default and the right to cure said default, and Maker shall have 10 days from the date of notice to cure any default. It is agreed that if this note is not paid upon expiration of the cure period herein or when it is declared due under the terms provided for herein, the principal and accrued interest thereon shall draw interest at the rate of the current prime, as reported in the *Wall Street Journal* for the first business day of the default month, at the time of default plus 1% per annum, and that failure to make any payment of principal or interest when due or any default under any encumbrance or agreement securing this note shall cause the whole note to become due at once, or the interest to be counted as principal, at the option of the holder of the note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The maker and endorsers hereof severally waive presentment for payment, protest, notice of nonpayment and of protest, and agree to any extension of time of payment and partial payments before, at or after maturity, and if this note or interest thereon is not paid when due, or suit is brought, agree to pay all reasonable costs of collection, including a reasonable amount of attorney's fees.

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Alexander L. Creighton  
P.O. Box 392  
Flagler, Colorado 80815

## GENERAL WARRANTY BILL OF SALE

**THIS GENERAL WARRANTY BILL OF SALE** ("Bill of Sale") is made and entered into the 13<sup>th</sup> day of May, 2003, by and between **KEVIN M. SHAFFER** ("Seller" ) and **ALEXANDER L. CREIGHTON** ("Purchaser").

### RECITALS

**A.** Pursuant to that certain Agreement for Sale and Purchase of Member Interest dated May 13, 2003 (the "Sale Agreement"), Seller desires to sell, convey, transfer and assign to Purchaser Seller's Member Interest in JMS Broadcasting, LLC ("JMS"); and

**B.** Pursuant to the Sale Agreement, Purchaser desires to accept the delivery and conveyance of Seller's Member Interest and close on the Sale Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of the parties as hereinafter set forth, and for other good and valuable consideration, the receipt sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Sale and Acceptance.** For value received, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, conveys and assigns to Purchaser all of his Member Interest in JMS. Purchaser hereby accepts Seller's Member Interest from Seller and Seller and Purchaser agree to the terms and conditions of that Sale Agreement, which terms are incorporated herein by reference.

**2. Consent and Withdrawal.** Ross O. Miller, a current JMS member hereby approves and consents to Seller's sale, conveyance and transfer of Seller's Member Interest to Purchaser. The parties agree that the sale shall not trigger any buy-sell agreements, that the sale will not dissolve JMS and the business of JMS will continue after the consummation of the transfers contemplated hereby.

**3. Warranties and Representations of Seller.** Seller represents and warrants to Purchaser that:

**(a)** Seller's Member Interest includes Seller's right to receive profits and losses and to receive distributions of JMS's assets and Seller's Member Interest being transferred herein is not subject to any pledge, assignment, default, claim, setoff, lien, demand, restrictions or encumbrance of any nature and there are no unpaid obligations to JMS attributable to Seller's membership or ownership interest being conveyed, sold and transferred, except that Shaffer has pledged his Member Interest to Community First National Bank as part of the loan agreement with JMS. Creighton acknowledges that pledge and takes Shaffer's Member Interest subject to that pledge.

(b) Seller has good right to sell his Member Interest and will warrant and defend the title thereto unto Purchaser, its successors and assigns, against the claims and demands of all other persons or entities.

4. **Miscellaneous.**

(a) **Binding Effect.** This Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, personal representative and heirs.

(b) **Governing Law.** This Bill of Sale shall be governed by and construed under the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the date first above written.

**"Seller:**

**"SHAFFER":**


  
Kevin M. Shaffer

**"Purchaser":**

**CREIGHTON:**

  
Alexander L. Creighton

**MILLER:**

  
Ross O. Miller