

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**COMMONWEALTH COMMUNICATIONS, LLC**

**AND**

**COMMONWEALTH LICENSE SUBSIDIARY, LLC**

**AS SELLERS**

**AND**

**CHERRY CREEK RADIO LLC**

**AS**

**BUYER**

**DATED AS OF OCTOBER 10, 2003**

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## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into as of this 10<sup>th</sup> day of October, 2003, by and between Commonwealth Communications, LLC, a limited liability company organized under the laws of the State of Delaware ("Operating Seller"), Commonwealth License Subsidiary, LLC, a limited liability company organized under the laws of the State of Delaware ("License Seller" and, together with Operating Seller, "Sellers" and each a "Seller"), Cherry Creek Radio LLC, a limited liability company organized under the laws of the State of Delaware ("Buyer") and Claude C. Turner a/k/a Dex Allen and Alta Communications VII, L.P. (collectively, the "Seller Beneficiaries").

### **WITNESSETH:**

**WHEREAS**, License Seller holds certain licenses, permits and authorizations (the "FCC Licenses") issued by the Federal Communications Commission (the "FCC") for the operation of the radio broadcast stations listed on Schedule 1.1.1 hereto (the "Stations"); and

**WHEREAS**, Operating Seller is the owner of the assets (other than the FCC Licenses) used or useful in the operation of the Stations; and

**WHEREAS**, Sellers desire to sell or assign and Buyer desires to purchase the assets of the Stations, including the FCC Licenses, and to assume certain liabilities and obligations of Operating Seller, as more fully described and on the terms and subject to the conditions set forth herein; and

**WHEREAS**, Seller Beneficiaries will receive substantial direct or indirect benefit from the consummation of the transactions contemplated by this Agreement, and as an inducement to Buyer to enter into this Agreement, Seller Beneficiaries are willing to enter into this Agreement and indemnify Buyer to the extent provided herein.

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual agreements and covenants contained in this Agreement, the parties, intending to be legally bound, hereby agree as follows:

## **SECTION 1 ASSETS TO BE SOLD**

1.1. On the Closing Date (as defined in Section 10.1), Seller shall sell, assign, transfer, convey, set over and deliver to Buyer, by instruments in form reasonably satisfactory to the Buyer, certain of the assets and properties of the Sellers, real and personal, tangible and intangible, of every kind and description owned or used by either of the Sellers, that are used, useful, or intended for use, in the business and operation of the Stations, including real and personal property, plant and equipment, rights under contracts and leases, inventories, intangibles and goodwill, but excluding the Excluded Assets (the “Acquired Assets”). Without limiting the generality of the foregoing, the Acquired Assets will include all right, title and interest of either of the Sellers in and to the following:

1.1.1. **Authorizations.** All FCC Licenses, including those listed in Schedule 1.1.1, and other licenses, permits and authorizations issued or granted by any other governmental or regulatory agency or authority.

1.1.2. **Real Property.** All land, leasehold and other interests of every kind and description in real property, buildings, structures, towers and improvements, including all easements, rights of way, permits and consents, if any, relating to or used in connection therewith, that are owned or leased by either Seller (descriptions of which are set forth in the attached Schedule 1.1.2), including each Seller’s rights under any lease (“Assumed Leases”) pursuant to which such Seller or any Station is bound for the use of any real property (each of which is described on in the attached

Schedule 1.1.2) (collectively, the “Real Property”). However, the Acquired Assets shall not include the lease for Sellers’ corporate offices at 512 Via de la Valle, Solana Beach, California, which lease shall be an Excluded Asset.

**1.1.3. Tangible Personal Property.** The fixed and tangible personal property used, useful or intended for use in the operation of the Stations, including, but not limited to, the physical assets and equipment, motor vehicles, leasehold improvements, furniture, fixtures, receivers, programming, tapes, transmitters, switches and related equipment, and music libraries (in whatever medium), including those listed in Schedule 1.1.3, together with replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date and less any retirements or dispositions thereof made between the date hereof and the Closing Date in the ordinary course of business and consistent with past practices of Sellers, provided, however, Sellers agree that the value of all such assets retired or disposed of and not replaced with assets of like kind and quality shall not exceed Fifty Thousand Dollars (\$50,000.00) in the aggregate unless Sellers have obtained the prior written consent of Buyer, which shall not be unreasonably withheld or delayed (the “Tangible Personal Property”).

**1.1.4. Assumed Contracts.** All of Sellers’ rights to: (i) advertising contracts for the sale of time for cash or barter; and (ii) contracts, agreements and leases to which Sellers or the Stations are a party and which are listed in Schedule 1.1.4 (the “Operating Agreements”), together with (a) all cash or barter advertising contracts entered into or acquired by Sellers between the date hereof and the Closing Date in the ordinary course of business consistent with past practices of Sellers and (b) any other Operating Agreements and legally binding contractual rights entered into or acquired by Sellers between the date hereof and the Closing Date which Buyer specifically consents

to assume at the Closing (collectively, the “Assumed Contracts”). Notwithstanding the foregoing sentence, Buyer will assume, without prior consent, any new contract that Sellers enter into between the date of this Agreement and the Closing in the ordinary course of business and consistent with past practices of Sellers, if such contract is for a year or less and requires payment of Twenty Five Thousand Dollars (\$25,000) or less.

1.1.5. **Intangibles.** All intangible property now owned or held by either Seller and used or held or intended for use by either Seller in connection with the operation of or otherwise pertaining to any Station, including the property listed in the Schedule 1.1.5 and that acquired between the date hereof and the Closing (the “Intangibles”), including the call letters of the Stations, an unrestricted right to the use of any copyrights, program rights (including all programs and programming materials and elements of whatever form or nature owned or held by either Seller, whether recorded on tape or other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights owned by or licensed to either Seller or used by either Seller in connection with the business and operations of any Station, together with all such programs, materials, elements, and copyrights acquired through the Closing Date), service marks, trademarks, tradenames, logos, promotions, jingles, slogans, original copy, trade secrets, proprietary technical information, all other intellectual property rights (the “Intellectual Property”), computer programs and software.

1.1.6. **Internet Websites.** All internet Domain leases and Domain names of the Stations, the unrestricted right to the use of HTML content relating to the Stations located and publicly accessible from those Domain names, and the “visitor” email database for those sites.



1.1.7. **Business Records.** All financial records (except those that are Excluded Assets as defined in Section 1.2 hereof), engineering reports, logs, public files (as required by FCC rules), advertising reports, programming studies, consulting reports, marketing data, ledger sheets, and business and personnel records relating primarily to the business or operation of the Stations (the “Business Records”) or to assets or agreements purchased by Buyer.

1.1.8. **Goodwill.** All goodwill in, and going concern value of, the Stations.

1.2. **Excluded Assets.** The Acquired Assets shall not include the following assets (along with all rights, title and interest therein), which shall be referred to as the “Excluded Assets”:

1.2.1. All cash and cash equivalents of Sellers on hand and/or in banks, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, notes or other entitlements evidencing loan receivables, asset or money market accounts and all such similar accounts or investments.

1.2.2. All investment securities and accounts receivable, notes receivable, or other entitlements evidencing notes receivables for services performed by Sellers in connection with the operation of the Stations prior to the Closing Date.

1.2.3. Subject to the limitation set forth in Section 1.1.3 of this Agreement, all tangible and intangible personal property of Seller disposed of or consumed in the ordinary course of business consistent with the past practices of Sellers between the date of this Agreement and the Closing Date.

1.2.4. All contracts that have terminated or expired prior to the Closing Date in the ordinary course of business consistent with the past practices of Sellers and any contract not listed on

Schedule 1.1.4, including the corporate office lease specified in Section 1.1.2, unless Buyer agrees, in writing, to assume any such contract.

1.2.5. Sellers' corporate and limited liability minute books and records, such other books and records as pertain to the organization, existence or capitalization of Sellers and duplicate copies of such records as are necessary to enable Sellers to file their tax returns and reports, as well as any other records or materials relating to Sellers generally and not involving or relating to the Acquired Assets or the operations of the Stations.

1.2.6. Contracts of insurance, and any insurance proceeds or claims made by Sellers relating to property or equipment repaired, replaced or restored by Sellers prior to the Closing Date.

1.2.7. All pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Sellers.

1.2.8. Any and all claims of Sellers for tax refunds.

1.2.9. Sellers' names and the right to the name "Commonwealth" or any variant of the foregoing.

1.2.10. The limited liability company interest owned in License Seller by Operating Seller.

1.2.11. Any right, property or asset described in Schedule 1.2.11 (including, without limitation, any assets personally owned by employees of Sellers and listed on said Schedule).

## SECTION 2 PURCHASE PRICE

2.1. **Purchase Price.** In consideration of Sellers' performance of this Agreement, the sale, assignment, transfer, conveyance, setting over, and delivery of the Acquired Assets to Buyer, the total purchase price (the "Purchase Price") to be paid by Buyer to Sellers shall be FORTY-ONE MILLION DOLLARS (\$41,000,000); provided, however, that if the Closing occurs on or after March 1, 2004 and the latest twelve months broadcast cash flow ("LTM Broadcast Cash Flow") is greater than FOUR MILLION THREE HUNDRED THOUSAND DOLLARS (\$4,300,000) for the last month ended prior to the Closing, then the Purchase Price shall be increased by 10.25 multiplied by the difference between the LTM Broadcast Cash Flow for the last month ended prior to the Closing and FOUR MILLION DOLLARS (\$4,000,000); and provided further that the Purchase Price shall be adjusted pursuant to Section 3 herein. The term "LTM Broadcast Cash Flow" for any period means the net income of the Sellers excluding: (i) any extraordinary income or losses for such period; and (ii) income or expenses arising from barter and trade transactions; (iii) adding back, amounts deducted for: (a) depreciation; (b) amortization; (c) interest, fees and other charges paid or accrued on debt including interest on capital leases that is imputed in accordance with generally accepted accounting principals; (d) casualty losses; (e) Corporate Overhead consistent with the presentations in the Financial Statements and Interim Financial Statements and as defined below; and (f) income taxes which are accrued but not paid. "Corporate Overhead" means sums expended by Sellers in: (a) paying salaries, consulting fees and bonuses to officers of Sellers or affiliates of Sellers; (b) reimbursing officers of Sellers or affiliates of Sellers for customer business expenses, including travel and entertainment and reasonable accounting, office and secretarial expenses which were not allocated to or incurred directly in the operations of the Stations; (c) paying management

fees to parents and affiliates of Sellers; and (d) paying due diligence, legal and accounting fees which are incurred in connection with the acquisition of radio stations, corporate financings and this proposed transaction.

**2.2. Payment of Purchase Price.** The Purchase Price shall be paid to Sellers as follows:

(a) Upon the execution and delivery of this Agreement, Buyer shall deposit ONE MILLION DOLLARS (\$1,000,000) (the “Escrow Deposit”) into escrow. The Escrow Deposit shall be held and disbursed by Wachovia Bank as the Escrow Agent, pursuant to the terms of an Escrow Agreement in the form attached hereto as Exhibit A (the “Escrow Agreement”), which Escrow Agreement shall be signed by Sellers, Buyer, and Escrow Agent simultaneously with the execution of this Agreement. At the Closing, Buyer shall join with Sellers in causing the Escrow Agent to send the Escrow Deposit to Sellers by wire transfer of immediately available funds to a bank designated by Sellers to be credited against the Purchase Price. All interest earned on the Escrow Deposit shall belong to Buyer.

(b) On the Closing Date, Buyer will pay to Sellers by wire transfer of immediately available funds to a bank designated by Seller the sum of FORTY MILLION FIVE HUNDRED THOUSAND DOLLARS (\$40,500,000) less the amount of the Escrow Deposit received by Sellers on the Closing Date, plus or minus the amount of any adjustments made on the Closing Date pursuant to Section 2.1 or Section 3.

(c) On the Closing Date, subject to the terms and conditions of a Post-Closing Escrow Agreement in the form attached hereto as Exhibit B (the “Post-Closing Escrow Agreement”), Buyer will deposit FIVE HUNDRED THOUSAND DOLLARS (\$500,000) of the Purchase Price into escrow (the “Post-Closing Escrow Deposit”) with Wachovia Bank as Escrow Agent, which Escrow Agreement shall be signed by Sellers, Buyer and the Escrow Agent on or before the Closing

Date. The Post-Closing Escrow Deposit shall be governed by the terms of the Post-Closing Escrow Agreement.

2.3. **Allocation of Purchase Price.** Sellers and Buyer have agreed to allocate FIVE THOUSAND DOLLARS (\$5,000) of the Purchase Price to the Non-Compete, Non-Hire Agreement described in Section 18. The parties shall in good faith attempt to agree prior to Closing upon an allocation of the balance of the Purchase Price among the Stations Assets. If the parties are unable to agree, such allocation shall be based upon the book value of the Acquired Assets of the Seller as set forth in the latest balance sheet delivered by Sellers to Buyer pursuant to Section 8.1.11. Sellers and Buyer agree to use the agreed upon allocation, if any, for all tax purposes, including without limitation, those matters subject to Section 1060 of the Internal Revenue Code of 1986, as amended.

### **SECTION 3 ADJUSTMENTS**

3.1. **Adjustment Time.** The “Adjustment Time” as used herein shall be 12:01 a.m. Eastern time on the Closing Date.

3.2. **Adjustment Items.** The following items (the “Adjustment Items”) shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, and monies shall be paid at Closing to reflect the principle that all expenses arising from the operation of the Stations before the Closing Date shall be for the account of Sellers, and all expenses arising from the operation of the Stations from and after the Closing Date shall be for the account of Buyer:

3.2.1. Rentals or other charges, payable or paid in respect of leasehold interests or tenancies, or leased transmitter sites, studios, offices or other Real Property or equipment under any

lease or tenancy of Real Property described in Schedule 1.1.2, and any and all equipment leases described in Schedule 1.1.4.

3.2.2. Real and personal property taxes and assessments (including sewerage assessments and fees), levied or assessed against or otherwise paid or payable with respect to any of the Assets. If the amount of any real or personal property 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.

3.2.3. Transferable license, permit, and registration fees, and like items (including the FCC's annual regulatory fees, which shall be prorated on the basis of fees due and paid in September 2003).

3.2.4. Charges for utilities (including but not limited to electricity, fuel, water, basic monthly telephone charges, long distance telephone calls, and sanitation and garbage disposal) furnished to or in connection with the Stations.

3.2.5. Unpaid obligations of Sellers with respect to any lease, contract, or agreement which Buyer assumes, including, without limitation, prepaid premiums on any insurance policies that Sellers have agreed to assign to Buyer and Buyer elects to assume. Security deposits, if any, shall be fully refunded by Buyer to Sellers at Closing.

3.2.6. Other similar items applicable to the Acquired Assets and attributable to the operations and the business of the Stations.

3.2.7. Prepaid expenses of the Sellers.

3.3. **Advertising.** Any prepayments Sellers have received as of the Closing Date for advertising to be broadcast on any of the Stations on or after the Closing Date shall be paid to Buyer

as an adjustment term. Any and all rebates which, under any of the Contracts in effect on the Closing Date, may be payable after such date to any advertiser or other users of the Stations' facilities, based in part on business, advertising or services prior to the Closing Date, shall be borne by Sellers and Buyer ratably in proportion to revenues received or volume of business done by each during the applicable period. Any and all agency commissions which are subject to adjustment after the Closing based on revenue, volume of business done or services rendered in part before the Closing Date shall be borne by Sellers and Buyer ratably in proportion to the revenue, volume of business done or services rendered, as the case may be, during the applicable period.

3.4. **Taxes.** All federal, state, local and other sales and use taxes applicable to, imposed upon or arising out of the transfer to Buyer of the Acquired Assets as contemplated by this Agreement shall be split equally between Buyer (one-half) and Sellers (one-half). All federal, state, local and other transfer and recordation taxes and fees applicable to, imposed upon or arising out of the transfer to Buyer of the Acquired Assets as contemplated by this Agreement shall be split equally between Buyer (one-half) and Sellers (one-half).

3.5. **Adjustment for Barter.** As of the Closing Date, Buyer shall be entitled to a credit against the Purchase Price for the amount, if any, by which the aggregate net value of the Stations' barter payables as of the Closing Date exceeds the aggregate value of the Stations' barter receivables as of the Closing Date by more than Seventy Five Thousand Dollars (\$75,000) with respect to contracts for the sale of advertising in exchange, in whole or in part, for merchandise or services.

3.6. **Adjustments After Closing Date.** If the amount of any items to be adjusted cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within thirty (30) days after the Closing Date and payment therefor shall be made to the

party entitled thereto within thirty (30) days after notice of such determination thereof has been given to Buyer or Sellers, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section 3 and resolution of such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties; provided however, if Buyer and Sellers cannot agree on a mutually acceptable qualified independent accountant, Buyer and Sellers shall each select an accountant who together shall select a third qualified accountant to resolve any dispute pursuant to this Section 3. Such third accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Sellers and one-half by Buyer. All adjustments made after the Closing shall be paid within five (5) business days after the final determination thereof.

#### **SECTION 4 GOVERNMENT CONSENTS**

4.1. **FCC Consent.** Consummation of the transactions contemplated herein and the performance of the obligations of Sellers and Buyer under this Agreement are subject to the condition that the FCC or its staff shall have given its consent in writing, without any condition materially adverse to Buyer or Sellers, to the assignment of the FCC Licenses from Seller to Buyer.

4.2. **Application For FCC Consent.**

(a) Sellers and Buyer agree to proceed expeditiously, in good faith, and with due diligence and to use their good faith best efforts and to cooperate with each other in seeking the FCC's approval of the assignment of the FCC Licenses from License Seller to Buyer. Within ten (10) days after the date of this Agreement, each party shall prepare and submit its portion of an



application for consent to assign the FCC Licenses (the “Assignment Application”) for electronic filing with the FCC, including all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application. Sellers and Buyer further agree expeditiously to prepare and submit amendments to the Assignment Application whenever such amendments are required by the FCC or its rules. Sellers and Buyer will promptly provide to the other(s) a copy of any pleading, order or other document it receives from other parties relating to the Assignment Application.

(b) Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. All filing fees imposed by the FCC shall be paid one-half (1/2) by Sellers and one-half (1/2) Buyer.

(c) Each of the Sellers and Buyer agrees to comply with any condition imposed on it by the FCC, except that no such party shall be required to comply with a condition that would have a material adverse effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties or covenants in this Agreement. Buyer and Sellers shall oppose any efforts by any third parties for action against the Assignment Application, and for reconsideration or judicial review of the grant by the FCC of the Assignment Application (but nothing in this Section 4 shall limit any party’s right to terminate this Agreement pursuant to Section 4.4 and or Section 19 of this Agreement).

**4.3. Notice of Application.** Sellers shall, at their own expense, give the notice of the filing of the Assignment Application as required by the FCC’s rules.

4.4. **Delay in Approval of Application.** Sellers or Buyer, not then being in default, at their option may terminate this Agreement by providing ten (10) days' prior written notice to the other party, without liability, at any time after June 30, 2004, if the FCC has not granted the Assignment Application by that date, provided that if a Final Order is required pursuant to Section 10.1 of this Agreement, Buyer shall have the right to extend the Closing Date, if the FCC has granted the Assignment Application by June 30, 2004, through a date no later than August 30, 2004. In the event of such termination, each party shall bear its own expenses, and the Escrow Agent shall return to Buyer the Escrow Deposit (including all interest earned thereon) without foreclosing any other remedies the Buyer or Sellers may choose to pursue.

4.5. **Other Governmental Consents.** Promptly following the execution of this Agreement, Buyer and Sellers shall prepare and file with the appropriate governmental authorities any other requests for approval or waiver, if any, that are required from other governmental authorities in connection with the Closing, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

## **SECTION 5 LIABILITIES**

5.1. **Liabilities.** The Acquired Assets shall be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics' and materialmen liens), pledges, conditional sales agreements, easements, covenants, charges, mortgages, security interests, hypothecations, preferences, encumbrances and restrictions of any type or amount (collectively, the "Liens") created or suffered by Sellers prior to the Closing Date, whether existing now or in the future, except liens for property taxes not yet due as of the Closing Date, customary

exceptions to title (including, without limitation, mechanics' and materialmen' liens that secure obligations of less than Ten Thousand Dollars (\$10,000) in the aggregate) and any lien or encumbrance that Buyer agrees to assume.

**5.2. Buyer's Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of Sellers accruing under the Assumed Leases and Assumed Contracts (except to the extent that they have not been validly assigned to Buyer at the Closing or as to which any required consent has not been obtained and the provisions of Section 10.4 shall not be applicable thereto), but only to the extent that such duties accrue on and after the Closing Date based on the operation of the Stations by Buyer following the Closing. Except as provided in the preceding sentence, Buyer is not agreeing to, and shall not, assume any other liability, obligation, undertaking, expense or agreement of Sellers of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement (all of such liabilities and obligations shall be referred to herein as the "Retained Liabilities"). Without limiting the generality of the foregoing, the Retained Liabilities will include, and Buyer will not assume or be liable for:

5.2.1. Any liability, claim or obligation, contingent or otherwise, arising out of the business or operation of any Station or any Acquired Asset prior to the Closing Date.

5.2.2. Any liability or obligation under any contract that is not an Assumed Lease or an Assumed Contract or relating to a breach prior to the Closing Date of any Assumed Lease or Assumed Contract.

5.2.3. Any liability or obligation for any federal, state or local income, franchise, unemployment insurance, withholding, payroll, sales, use, personal property, license, social security or other taxes.

5.2.4. Any liability or obligation with respect to any Excluded Asset.

5.2.5. Any liability or obligation to any employee or former employee of any Seller or any Station attributable to any period of time prior to the Closing Date, including any liability for accrued vacation or holiday pay and allowances.

5.2.6. Any severance or other liability arising out of the termination of any employee's employment with any Seller.

5.2.7. Any duty, obligation or liability relating to any employee benefit, pension, 401(k) or other similar plan, agreement or arrangement provided to employees of any Seller (none of which plans will be assumed by the Buyer).

5.2.8. Any liability or obligation of any Seller arising out of any litigation, proceeding, or claim by any Person relating to the business or operation of any Station prior to the Closing Date, whether or not such litigation, proceeding, or claim is pending, threatened, or asserted before, on, or after the Closing Date.

5.3. **Sellers' Liability.** Other than as specified in Section 5.2 above, Sellers shall remain liable for, and covenant to pay, satisfy, or discharge, all liabilities, payments, obligations, and duties under the Contracts and any leases or other instruments transferred or assigned to Buyer hereunder, accruing prior to or by reason of events occurring prior to the Closing Date.

## **SECTION 6**

### **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers, jointly and severally, represent and warrant to Buyer as of the date hereof and as of the Closing Date as follows:

#### **6.1. Organization and Standing.**

6.1.1. Operating Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and License Seller is a limited liability company duly organized validly existing and in good standing under the laws of the State of Delaware. Sellers are qualified or registered to transact business in all States where such qualification is required for operation of the Stations, except where the failure to be so qualified would have no material adverse effect on the Stations or the Acquired Assets. Sellers have the requisite power to own the Acquired Assets and to carry on the business of the Stations as it now is being conducted.

6.1.2. Sellers have the requisite power and authority to enter into this Agreement and all of Sellers' Closing Documents (as defined in Section 11.1) that require Sellers' signatures. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Sellers' Closing Documents (on the Closing Date) are or will be authorized by all necessary corporate action of the Sellers.

6.2. **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Sellers enforceable against Sellers in accordance with the terms of this Agreement. Upon execution, Sellers' Closing Documents will constitute valid and binding obligations of Sellers enforceable against Sellers in accordance with their terms in all material respects, except to the extent that such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium

and other similar laws relating to creditors' rights generally. The execution, delivery and performance of this Agreement or any of Sellers' Closing Documents does not violate any of Sellers' organizational, constitutional or governing documents, or contract provision or other commitment to which Sellers or the Stations are a party or under which they or their property is bound (subject to obtaining the required third-party consents specified in Schedule 6.2), or any law, rule, regulation, judgment, order or decree, and, except as contemplated herein, will not result in the creation or imposition of any Lien of any nature whatsoever upon any of the Acquired Assets.

6.3. **Assets.** The Acquired Assets include all of the assets, properties and rights of every type and description, real, personal, mixed, tangible and intangible, that are necessary for, used or useable in the conduct of the business of owning and operating the Stations in the manner in which the Stations' business has been and is now conducted. All inventories of supplies, tubes and spare parts necessary or appropriate for the operation of the Stations are at levels consistent with past operations of the Stations.

6.4. **Business Records.** Sellers have maintained the Business Records of the Stations in the usual, regular and ordinary manner in accordance with good business practices.

6.5. **Real and Tangible Personal Property.**

6.5.1. **Real Property.** Schedule 1.1.2 accurately lists and describes all of the Real Property leased or otherwise held or used by the Stations in connection with their operation. The Real Property listed in Schedule 1.1.2 comprises all real property interests necessary to conduct the business or operations of the Stations as now conducted. Attached to Schedule 6.5.1 are true and complete copies of all policies of title insurance currently existing in favor of Sellers with respect to the Real Property. Except as listed on Schedule 6.5.1, there are no parties in possession of the

owned Real Property other than Sellers, whether as lessees, tenants at will, trespassers or otherwise. To Sellers' knowledge, the Real Property, as well as the present uses thereof, conforms in all material respects with all material restrictive covenants and with all applicable zoning, environmental, and building codes, laws, rules and regulations. All improvements on the Real Property are structurally sound, in good condition and repair, and available for immediate use in the conduct of the business and operations of the Stations and there are no structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the buildings located on the owned Real Property; and the roofs of the buildings located on the owned Real Property are free from structural defects and leaks and are in good condition. No condemnation of any of the Real Property has occurred; there is no existing written notice covering future condemnation that has been provided to Sellers; and to Sellers' knowledge, Sellers have no reason to believe that any of the Real Property will be condemned. To Sellers' knowledge, all transmitting facilities of the Stations, including towers, antennas, guy lines, anchors and all other related buildings, structures and appurtenances are located entirely within the confines of the Real Property. The Real Property has adequate access, or Sellers have been granted access easement, to and from completed roads, and there is no pending, or to Sellers' knowledge threatened, governmental proceeding which could impair or curtail such access. All utilities required for the operation of the Stations on the owned Real Property and improvements thereon either enter the Real Property through adjoining public streets or, if they pass through adjoining private land, do so in accordance with valid easements. To Sellers' knowledge, the use of improvements on the Real Property and the conduct of the operations of the Stations in the manner in which they were and are presently conducted have not violated and do not violate any law, statute, ordinance, rule or regulation of any government, governmental body, agency or authority (federal, state or local) in any respect. There are no pending or threatened

eminent domain proceedings or special assessments with respect to the owned Real Property. Sellers have good and marketable title, insurable at standard rates, to all of the fee estates (including the improvements thereon) included in the Real Property, and at closing will transfer the Real Property free and clear of all Liens, mortgages, easements, encroachments, leases, charges, and other claims and encumbrances of any nature whatsoever, except for the permitted encumbrances set forth in Schedule 6.5.1(a) (“Permitted Encumbrances”), customary exception to title and any Lien or encumbrance that Buyer agrees to assume.

**6.5.2. Patents, Trademarks, Copyrights.** Schedule 1.1.5 sets forth a true and complete list of all Intellectual Property and all material other Intangible Property, including all call signs, slogans and logos used to promote or identify the Stations. None of the Intellectual Property was granted to a Seller pursuant to any licensing or sublicensing agreement under which a Seller is the licensee. The Intellectual Property is all of the intellectual property necessary to operate the Stations. No Person has a right to receive a royalty or similar payment in respect of any Intellectual Property pursuant to any contractual arrangements entered into by any Seller. No Seller has granted to any other Person any right to use any Intellectual Property pursuant to any licensing agreement. No Seller's use of any intellectual property has infringed, is infringing upon or is otherwise violating the rights of any Person in or to any intellectual property or any asserted proprietary rights of any Person, and no Seller has received notice alleging that any Seller's use of any intellectual property infringes upon or otherwise violates any rights of any Person in or to any intellectual property or any asserted proprietary rights of any Person. Each Seller's rights with respect to the Intellectual Property are free and clear of all Liens. Sellers have no knowledge of any infringement or unlawful or unauthorized use of those promotional rights, including without limitation the use of any call sign, slogan or logo by any broadcast Stations in the Stations' communities of license as listed on



Schedule 1.1.1 which may be confusingly similar to the call signs, slogans, and logos currently used by the Stations.

6.5.3. **Tangible Personal Property.** Schedule 1.1.3 attached hereto accurately lists all the material Tangible Personal Property owned, leased, or otherwise held by the Stations and/or Sellers which is intended to be conveyed hereunder, except as disclosed in Schedule 1.1.3. Sellers are the owner of and at Closing will have good, clear, marketable, and indefeasible title to all of the Tangible Personal Property listed in Schedule 1.1.3, free and clear of all Liens.

6.5.4. **Condition of Property.** The Tangible Personal Property listed in Schedule 1.1.3 is in good maintenance and operating condition, subject to ordinary wear and tear, in accordance with generally accepted standards of practice in the broadcasting industry and, to Sellers' knowledge, is free from defects in materials and workmanship in all material respects. Except for the Excluded Assets, Sellers do not have any material assets used, held for use or required for the conduct of the business of the Stations which are not set forth in the schedules hereto or otherwise described in Section 1.1 hereof, and the Acquired Assets include all assets necessary for the conduct of the business of the Stations as it is currently conducted by Sellers.

6.6. **Contracts.**

6.6.1. Schedule 1.1.4 accurately lists all agreements and other contracts (or, when the same are oral, complete and correct descriptions thereof) with respect to the Stations to be conveyed hereby (except for contracts for the sale of advertising time for cash). Seller has furnished true and complete copies of the Assumed Contracts, including all amendments, modifications and supplements thereto.

6.6.2. The Assumed Contracts listed in Schedule 1.1.4 are in full force and effect and valid, binding, and enforceable in accordance with their terms, and, except and to the extent as therein stated, are assignable by Sellers to Buyer on the same terms and conditions as Sellers now enjoy, and Sellers have performed in all material respects all the obligations imposed upon Sellers under any such Contracts. All contracts which require consent of a third party for assignment pursuant to this Agreement are marked with an asterisk (\*).

6.6.3. Schedule 1.1.2 fairly describes all of the Assumed Leases. All Assumed Leases are in full force and effect and are valid, binding, and enforceable in accordance with their terms, and Sellers have duly performed all of their material obligations under such Assumed Leases. To Sellers' knowledge, there is no default by or claim of default against Sellers or against any other party to the Assumed Leases, or any event or circumstance that with the passage of time or the giving of notice or both would result in a default by Sellers or any other party, or any notice of termination existing with respect to any of such Assumed Leases. All Assumed Leases which require consent of a third party for assignment pursuant to this Agreement are marked with an asterisk (\*). Except as specified in Schedule 1.1.2, the assignment to Buyer of each Assumed Lease to which a Seller is a party as tenant will not permit the landlord to accelerate the rent or cause such Assumed Lease's terms to be renegotiated, or constitute a default under such Assumed Lease. There are no amendments or changes to any Assumed Lease that affect the full use and enjoyment of the leasehold premises, access, parking and use of common areas specified in an Assumed Lease. All improvements, roads, parking facilities and other construction, if any, specified in the Assumed Leases have been fully constructed, paid for and accepted and approved by the requisite parties.

**6.7. Authorizations.**

6.7.1. Sellers are the authorized legal holder of all licenses, permits, and authorizations reasonably necessary to operate the business of the Stations lawfully and as it is now being conducted, including, without limitation, the FCC Licenses listed in Schedule 1.1.1, none of which is subject to any restrictions or conditions (other than conditions or restrictions stated on the face of the FCC Licenses or matters affecting the radio broadcasting industry generally) which would limit in any respect the operation of the Stations as now operated. All such FCC Licenses are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended (the “Communications Act”). Except as stated in Schedule 6.7.2, to Sellers’ knowledge, Sellers are operating the Stations in all material respects in accordance with the FCC Licenses, their underlying construction permits, and all rules and published policies of the FCC (collectively, with the Communications Act, the “Communications Laws”). There is no action pending, or to Sellers’ knowledge threatened, before the FCC or other body to revoke, refuse to renew, suspend or modify any of the FCC Licenses; and there is no action pending, or to Sellers’ knowledge threatened, before the FCC or other body which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Stations or their operation.

6.7.2. Except as set forth on Schedule 6.7.2, to Sellers’ knowledge, the Stations, their physical facilities, electrical and mechanical systems and transmitting and studio equipment are being and have been operated in all material respects in accordance with the specifications of the FCC Licenses and with each document submitted in support of such FCC Licenses. To Sellers’ knowledge, Sellers have complied in all material respects with all requirements of the Communications Laws and the Federal Aviation Administration with respect to the construction and/or alteration of the Stations’ antenna structures. Where required, “no hazard” determinations for

antenna structures have been obtained; and where required, each antenna structure has been registered with the FCC. Except as set forth on Schedule 6.7.2, to Sellers' knowledge, all material obligations, reports and other filings required by the Communications Laws with respect to the Stations, including, without limitation, all regulatory fee payments and all materials required to be placed in the Stations' public inspection files, have been duly and currently filed as of the date hereof, and are true and complete in all material respects; and after the Closing Date, Sellers shall furnish to Buyer all information required by the FCC relating to the operation of the Stations prior to the Closing Date. Sellers are aware of no matters that might result in the suspension or revocation of any FCC Licenses pertaining to the Stations.

6.7.3. Sellers are qualified under the Communications Act to assign the FCC Licenses to Buyer. Neither Seller knows of any fact that could cause the FCC to withhold its consent to the assignment of the FCC Licenses to Buyer.

## **6.8. Litigation and Insurance.**

6.8.1. **Litigation; Compliance With Law.** Except as set forth on Schedule 6.8.1, to Sellers' knowledge, the Stations are in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including compliance with the Communications Laws. Other than proceedings affecting the radio broadcasting industry in general, there is no complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending or, to Sellers' knowledge, threatened, against the Stations, Sellers, or any of the Acquired Assets, including, without limitation, any proceeding which would reasonably be expected to (a) materially adversely affect the Acquired Assets or the FCC Licenses, or the operation of the Stations, or the ability of Buyer to own and operate the Stations, or the use, ownership, or operation

of any of the Acquired Assets by Buyer, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of any of the FCC Licenses, or the issuance or imposition of any administrative sanction that would reasonably be expected to materially adversely affect the Acquired Assets or the FCC Licenses, or the operation of the Stations or the ability of Buyer to own and operate the Stations or the use, ownership, or operation of any of the Acquired Assets by Buyer. Sellers will give Buyer prompt notice of their discovery of the institution or the threat of any such litigation, investigation, or proceeding. Sellers are not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default would reasonably be expected to have a materially adverse effect on the Acquired Assets or the Stations.

6.8.2. **Insurance.** All of the Tangible Personal Property listed in Schedule 1.1.3 is insured under the policies listed and described in Schedule 6.8.2, including, without limitation, public liability and broadcaster's liability insurance for the Stations; and all such policies are in full force and effect, and all premiums for all such insurance policies have been paid when due.

6.9. **Financial Statements and Interim Financial Statements.**

6.9.1. Attached as Schedule 6.9.1 are true and complete copies of the audited balance sheets of Sellers, as at December 31, 2002 and December 31, 2001, and the related statements of income and changes in cash flow for the fiscal years then ended (collectively, the "Financial Statements"). The Financial Statements (i) were prepared in accordance with the books of account and other financial records of Sellers, which are accurate and complete in all material respects, (ii) fairly and accurately present the assets, liabilities and financial condition of Sellers as of the respective dates thereof, and the results of operation and cash flows for the periods then ended,

(iii) have been prepared in accordance with GAAP applied on a consistent basis with Sellers' past practices, and (iv) include all adjustments (consisting only of normally recurring accruals) that are necessary for a fair presentation of the financial condition and results of operation of the business of Sellers as of the dates thereof and for the periods covered thereby.

6.9.2. Attached as Schedule 6.9.2 are true and complete copies of the unaudited balance sheets of Sellers as at the fiscal month ended August 31, 2003, and the related statement of income and change in cash flows for the period then ended (together with the financial statements to be provided to Buyer pursuant to Section 8.1.11, the "Interim Financial Statements"). The Interim Financial Statements, which were prepared in good faith and in accordance with the books and records of Sellers which are accurate and complete in all material respects, have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Financial Statements and present fairly the financial condition of Sellers as at each of the dates indicated and the results of its operations and changes in financial position for each of the periods then ended; subject, however, to year-end adjustments which, in the aggregate, are not materially adverse.

6.10. **No Changes.** Except as set forth on Schedule 6.10 since December 31, 2002, and prior to the date hereof, there has not been any:

6.10.1. transaction by Sellers except in the ordinary course of business conducted as of that date;

6.10.2. material adverse change in the financial condition, liabilities, assets, prospects or results of operation of the Stations;

6.10.3. default under any indebtedness of Sellers, or any event which, with the lapse of time, giving of notice or both, could constitute such a default;

6.10.4. amendment or termination of any Assumed Contract, Assumed Lease or FCC License to which Sellers are a party, except in the ordinary course of business;

6.10.5. increase in compensation paid, payable or to become payable by Sellers to any of their employees, except customary increases not in excess of five percent (5%) in connection with annual employee reviews;

6.10.6. extraordinary losses (whether or not covered by insurance) or waiver by Sellers of any extraordinary rights of value;

6.10.7. lowering of the advertising rates of the Stations in a manner not consistent with past practices or reflective of current market conditions;

6.10.8. notice from any sponsor or customer as to that sponsor's or customer's intention not to conduct business with the Stations, the result of which loss or losses of business, individually or in the aggregate, has had, or could reasonably be expected to have, a material adverse effect on the Stations;

6.10.9. write down of the value of any assets or write off as uncollectible of any Receivable except in the ordinary course of business, none of which, individually or in the aggregate, has or might reasonably have a material adverse effect on Sellers' or the Stations' financial condition;

6.10.10. change in Sellers' method of accounting;

6.10.11. other event or condition of any character that has or would reasonably be expected to have a material adverse effect on the Stations or the Acquired Assets;

6.10.12. sale, assignment, lease or other transfer or disposition of any of the assets or properties of the Stations except in the ordinary course of business;

6.10.13. distribution, transfer, sale, exchange, loan or disposition to a related or affiliated Person; or

6.10.14. agreement by Sellers to do any of the foregoing.

6.11. **Undisclosed Liabilities.** Sellers have no debt, liability or obligation of any kind, whether accrued, absolute, contingent or otherwise, including, without limitation, any liability or obligation on account of taxes or any governmental charges or penalty, interest or fines, except: (i) those liabilities reflected in the Financial Statements and Interim Financial Statements; (ii) liabilities disclosed on Schedule 6.11; (iii) liabilities incurred in the ordinary course of business (other than contingent liabilities) since December 31, 2002; and (iv) liabilities incurred in connection with the transactions provided for in this Agreement.

**6.12. Employees and Labor Relations.**

6.12.1. Schedule 6.12.1 lists the names of and current annual salary rate or hourly rate of all employees of Sellers, which list includes for each such employee the amounts paid or payable as base salary and describes any other compensation arrangements for employees for the years 2002 and 2003, including bonuses, severance or other perquisites. Except as set forth on Schedule 6.12.1, there are no employment agreements between Sellers and their employees or professional service Contracts not terminable by the employer at will relating to the Stations or the business and operations thereof. The consummation of the transactions contemplated hereby will not cause Buyer



to incur or suffer any liability relating to, or obligation to pay, severance, termination or other payments to any employee or any liability or obligation to pay with respect to any station employee benefit plan which any current, former, or retired employee of Sellers participates or has participated.

6.12.2. Sellers: (a) are not a party to any collective bargaining agreement covering or relating to any of the Stations' employees and have not recognized, and to Sellers' knowledge, are not required to recognize, and have received no demand for recognition by any contract with any of the employees of the Stations or to any other employment contract, labor agreement, or union agreement, written or oral; (b) other than as disclosed in the schedules hereto, have not promulgated any policy or entered into any agreement relating to the payment of pensions, profit sharing, or bonuses to any of their employees; and (c) to Sellers' knowledge, have not committed any unfair labor practices.

6.12.3. Sellers have complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those relating to rates, hours, equal employment opportunity, collective bargaining, and the withholding and payment of taxes and contributions, have withheld all amounts required by law or agreement to be withheld from the wages or salaries of the Stations' employees, and are not liable to any employees or any government body for arrears of wages or for any tax or penalty for failure to comply with the foregoing.

**6.13. Taxes and Other Matters.**

6.13.1. **Payment of Taxes.** All returns and reports concerning income taxes, franchise taxes, unemployment insurance, withholding and payroll taxes, sales and taxes, personal property taxes, license taxes, social security taxes, and all other reports required to have been filed by Sellers on or prior to the date hereof that relate to the Acquired Assets, the Stations, and/or their

operations pursuant to any law or regulation have been duly filed; all taxes, interest, assessments, and penalties which are due to any taxing authority, federal, state, or local, with respect to any tax period ending on or prior to the making of this warranty have been duly paid; and all taxes, levies and other assessments that any Seller is required by law to withhold or to collect have been duly withheld and collected and have been paid to the proper governmental authorities or held by such Seller for such payment if not yet payable. All of such returns, reports, estimates are true and complete in every material respect. There are, and after the date of this Agreement will be, no tax deficiencies (including penalties and interest) of any kind assessed against or relating to Sellers with respect to any taxable periods ending on or before, or including, the Closing Date of a character or nature that could result in Liens or claims on any of the Acquired Assets or on Buyer's title or use of the Acquired Assets or that could result in any claim against Buyer. There is no pending or, to the knowledge of any Seller, threatened, investigation or claims against any Seller for or relating to any liability in respect of taxes and, to the knowledge of any Seller, no facts or circumstances exist which indicate that any such investigations or claims in respect of taxes may be brought or are under discussion with any governmental authorities.

6.13.2. **Insolvency Proceedings.** No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Sellers or the Acquired Assets are pending or threatened. Sellers have not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings.

6.13.3. **Intangibles.** Except as provided in Schedule 6.13.3, Sellers have full and exclusive right, title to or interest in and to all of the Intangibles, including, without limitation, the call letters of the Stations and all copyrights, patents, program rights, trade names, trade marks, logos, service marks, proprietary information, and other similar rights or symbols associated therewith, together with all goodwill associated therewith, and all intellectual properties, as described on Schedule 1.1.5, are free from infringements, interference, litigation and disputes of any kind or nature whatsoever.

#### **6.14. Environmental Matters.**

##### **6.14.1. Definitions.**

(a) “Hazardous Materials” means any substance, material, liquid or gas defined or designated as hazardous or toxic (or by any similar term) under any Environmental Law, including petroleum or petroleum products and friable materials containing more than one percent (1.0%) asbestos by weight.

(b) “Environmental Law” means any federal, state, or local law, statute, ordinance, order, rule, or regulation relating to contamination, pollution, protection of workers, the public, or the environment, or relating to actual or threatened releases, discharges, or emissions into the environment.

(c) “Environmental Condition” means any contamination or damage to the environment caused by or relating to the use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injection, escaping, leaching, disposal, dumping or threatened release of Hazardous Materials by any Seller or its predecessors in interest. With respect to claims by employees, Environmental Condition also includes the exposure of persons to Hazardous Materials at a workplace of a Seller.

(d) “Environmental Lien” means any Lien imposed on or attaching to any Acquired Asset by a federal, state, or local court, agency, or regulatory body, pursuant to any Environmental Law.

(e) “Environmental Noncompliance” means any violation of any Environmental Law.

#### **6.14.2. Sellers' Compliance with Environmental Laws.**

(a) Except as set forth in Schedule 6.14, to Sellers' knowledge, each Seller and the Acquired Assets (including the Stations, the Real Property and the Tangible Personal Property) are in compliance in all material respects with the Environmental Laws. Except for lubricants, cleaners or other consumer products that are maintained in limited quantities for routine maintenance purposes, to Sellers' knowledge, there are no Hazardous Materials located at or upon the Acquired Assets (including the Stations, the Real Property and the Tangible Personal Property), nor, to Sellers' knowledge, have any Hazardous Materials been stored, deposited, or otherwise released there at any time in the past. To Sellers' knowledge, each Seller has, with respect to the Stations and the Acquired Assets, obtained all required permits, licenses, approvals, and other authorizations that are required under Environmental Law and any orders, licenses, codes, plans, decrees, judgments, injunctions, notices or demand letters in any way relating thereto arising or promulgated thereunder. Schedule 6.14 contains a complete list of all permits, licenses, and other authorizations required to be obtained for the operation of the Stations under the Environmental Laws.

(b) To Sellers' knowledge, each Seller has complied in all material respects with and is currently in compliance in all material respects with all terms and conditions of the required permits, licenses, approvals, and authorizations and is in compliance in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables contained in any Environmental Law, including any regulation, license, rule, code, plan, order, decree, judgment, injunction, notice, or demand letter issued, entered, promulgated, or approved thereunder with respect to its business.

(c) There is no civil, criminal, or administrative action, suit, order, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or, to

Sellers' knowledge, threatened against any Seller or the operation or properties currently or previously owned, leased, or used with respect to any Station relating in any way to any Environmental Law, including any license, code, plan, order, decree, judgment, injunction, notice, or demand letter issued, entered, promulgated, or approved thereunder.

(d) No Environmental Lien has attached to any Acquired Asset.

(e) Except as set forth in Schedule 6.14, to Sellers' knowledge, no storage tank, including any above-ground or underground storage tank or associated piping, is now or, to any Seller's knowledge, has ever been located on any Real Property. Schedule 6.14 contains a complete description of each tank now or, to any Seller's knowledge, formerly located on any Real Property, including the location, size, use, installation, removal, registration, and remediation associated with each tank and its contents.

(f) To Sellers' knowledge, except as set forth in Schedule 6.14, no asbestos or asbestos-containing-material is located on or, to any Seller's knowledge, has been located on any Real Property. Schedule 6.14 contains a complete description of the asbestos now or, to Sellers' knowledge, formerly located on any Real Property, including its location, use, quantity, condition, inspection, release, disposal, and remediation.

(g) Except as set forth in Schedule 6.14, no PCBs or PCB-containing equipment, including electrical transformers and capacitors, are located on or, to Sellers' knowledge, have been located on any Real Property. Schedule 6.14 contains a complete description of all PCBs or PCB-containing equipment now or, to any Seller's knowledge, formerly located on any Real Property, including their location, use, installation, inspection, size, disposal, and condition along with full details on the quantity, release, disposal, and remediation of the PCBs.

(h) To Sellers' knowledge, none of the Real Property is a wetlands under any Environmental Law, and no current or planned activities at any Real Property are affected by, will adversely impact upon, or are within 500 feet of, any wetlands.

(i) To Sellers' knowledge, the operation of each Station and Acquired Asset is in compliance in all material respects with standards concerning radio frequency radiation exposure recommended in ANSI Standards C95.1 - 1982 or any subsequently adopted standards to the extent the same are required to be met under applicable rules and regulations of the FCC or the Occupational Safety and Health Administration, and no unresolved claims known to any Seller have been made to the contrary.

(j) The parties hereto agree that the listing of any exception or exceptions in Schedule 6.14 is for notification purposes only and will not constitute an acceptance by Buyer of any responsibility or liability for the subject of the exception, nor a release of any Seller from responsibility or liability for that exception.

**6.15. No Untrue Statements or Omission.** No representation or warranty made by Sellers in this Agreement or any Schedule, exhibit, statement, certificate, or other document furnished by Sellers to Buyer pursuant to this Agreement or in connection with the transactions contemplated hereby contains any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Sellers set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

**SECTION 7**  
**REPRESENTATIONS AND WARRANTIES**  
**OF BUYER**

Buyer represents and warrants to Sellers as of the date hereof and as of the Closing Date as follows:

7.1. **Organization and Standing.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and as of the Closing Date, will be duly qualified to do business and be in good standing in the States in which the Stations operate.

7.2. **Authorization and Binding Obligation.** Buyer has all necessary limited liability company power and authority to enter into this Agreement and all of Buyer's Closing Documents (as defined in Section 11.2) that require Buyer's signature. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary action of Buyer. This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement. Upon execution, Buyer's Closing Documents will constitute valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms.

7.3. **No Contravention.** The execution, delivery and performance of this Agreement do not violate any provision of Buyer's organizational documents, or any contract provision or other commitment to which Buyer or any of its officers or directors is bound, or any judgment or order.

7.4. **Litigation.** Except for administrative rule makings or other proceedings of general applicability to the radio broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint, before the FCC, other governmental body, or court, of any nature



pending or, to the best of Buyer's knowledge, threatened against or affecting Buyer which would adversely affect Buyer's authority or ability to carry out this Agreement.

7.5. **Buyer's Qualifications.** There is no fact that would, under present law (including the Communications Laws), disqualify Buyer from being the assignee of the Stations or that would delay FCC approval of the Assignment Application. Should Buyer become aware of any such fact, it will so inform Sellers within five (5) business days of its awareness and will use its best efforts to remove any such disqualification. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification.

7.6. **Buyer's Financing.** Buyer has equity and debt funding available from committed sources sufficient to consummate the transaction contemplated in this Agreement; such debt funding contains conditions and qualifications normal in such commitments. This Section 7.6 does not create any rights with regard to any third parties.

7.7. **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Sellers pursuant to this Agreement or in connection with the transactions contemplated hereby contains any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading.

7.8. **Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Buyer, or any of Buyer's respective assets or properties are now, or on the Closing Date will be, pending. Buyer has not, and at the Closing Date shall not have made any

assignment for the benefit of creditors, or have taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

**SECTION 8**  
**SELLERS' CONDUCT OF BUSINESS PRIOR**  
**TO CLOSING, BUYER'S ACCESS TO INFORMATION AND BUYER'S COVENANTS**

8.1. **Affirmative Covenants of Sellers.** From the date of this Agreement until the Closing Date, Sellers shall have complete control and supervision of and sole responsibility for the Stations and their operation, and during such period, Sellers shall:

8.1.1. Conduct the business and operations of the Stations in good faith and in the ordinary and normal course of business, consistent with past practice, including without limitation preserving the ongoing operations and assets of the Stations and the goodwill of each Station's customers and others having business relations with each Station, and in accordance with the Communications Laws and the FCC Licenses.

8.1.2. Maintain in full force and effect through the Closing Date adequate property damage, liability, and other insurance with respect to the Acquired Assets providing coverage against such risks in at least the amounts provided for by the insurance policies currently maintained by Sellers with respect thereto.

8.1.3. Maintain the Tangible Personal Property in good operating condition and, at Sellers' expense, keep in a good state of repair and operating efficiency all of the Acquired Assets.

8.1.4. Continue all planned advertising and promotional activities and capital expenditures in amounts consistent with expenditures incurred during the year ended December 31, 2002.

8.1.5. Keep and preserve the Business Records in accordance with good business practice.

8.1.6. Make reasonable efforts to endeavor to protect the service areas of the Stations, as currently authorized by the FCC, from interference from other stations, existing or proposed, to the extent such interference is prohibited by the Communications Laws, and promptly give Buyer notice of any such interference.

8.1.7. Deliver to Buyer within five (5) days after filing thereof with the FCC copies of any and all reports, applications, and/or responses relating to the Stations which are filed with the FCC on or prior to the Closing Date, including a copy of any FCC inquiries to which the filing is responsive, and cure, prior to the Closing and at Sellers' sole expense, any violations, deficiencies or conditions with respect thereto of which Sellers are aware or made aware.

8.1.8. Use their commercially reasonable efforts to obtain the consent of any third party necessary for the assignment to Buyer of any Assumed Lease or Assumed Contract and to obtain any and all other consents, transfers, authorizations, or approvals required for the consummation of the transactions contemplated hereby.

8.1.9. At their sole expense, use their commercially reasonable efforts to obtain estoppel certificates from lessors under the Leases.

8.1.10. **Notice of Adverse Changes.** Prior to the Closing Date, Sellers shall give Buyer prompt written notice of the occurrence of any of the following:

(a) the commencement of any proceeding or litigation at law or in equity or before the FCC or any other commission, agency or administrative or regulatory body or authority involving any of the FCC Licenses or which would reasonably be expected to have an adverse effect on the

Stations or the Acquired Assets, other than proceedings or litigation of general applicability to the radio broadcasting industry that do not have a disproportionate impact on the Stations;

(b) any material labor grievance, controversy, strike or dispute affecting the business or operation of the Stations and the scheduling of any bargaining discussions with the certified bargaining unit;

(c) any violation by Sellers or the Stations of any federal, state or local law, statute, ordinance, rule or regulation which would reasonably be expected to have an adverse effect on the business or operation of the Stations;

(d) any notice of breach, default, claimed default or termination of any Assumed Contract or Assumed Lease.

(e) any event that would cause or constitute a breach of any of Sellers' representations or warranties contained in this Agreement;

(f) the entry of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of the transactions contemplated by this Agreement, or receipt of any notice from any governmental department, court, agency, or commission of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of, any such transactions, or to nullify or render ineffective this Agreement or such transactions if consummated;

(g) any unusual and significant problems or developments or any competing offers with respect to any of the Stations or the Acquired Assets;

(h) any damage to the Acquired Assets on account of fire, explosion or other cause of any nature which is sufficient to prevent or adversely affect the operation of any Station; or

(i) any event, occurrence, circumstance or condition that has had, or could reasonably be expected to have, a material adverse effect on the Stations or the Acquired Assets.

8.1.11. Within the earlier of thirty (30) days after the end of each month ending after the date hereof, or five (5) days of their preparation, Sellers will furnish Buyer with a copy of Sellers' monthly financial reports for the Stations prepared after the date of the Interim Financial Statement (including balance sheet and operating statement) for each such month, the fiscal year to the end of such month and for the twelve (12)-month period ended at the end of such month. All of the foregoing financial statements shall comply with the requirements concerning financial statements set forth in Section 6.9. In addition, Sellers will furnish Buyer with copies of regular management reports, if any, concerning the operation of the Stations within ten (10) days after such reports are prepared, and with copies of all weekly pacing reports and weekly collection reports within five (5) days of Sellers' receipt of any such reports.

8.1.12. Prepare all tax returns, estimates and reports required to be filed by Sellers prior to the Closing Date or timely file an application for any extension thereof with the appropriate governmental agency. All taxes pertaining to the ownership of the Acquired Assets or operation of the Stations prior to the Closing Date will be paid when due and payable.

8.1.13. Promptly disclose in writing to Buyer any information contained in Sellers' representations and warranties of Schedules hereto which, because of an event occurring after the date of this Agreement, is incomplete or no longer correct as of all times after the date of this Agreement and until the Closing Date. Any such disclosure shall be in the form of an updated Schedule, marked to reflect the new or amended information.

8.2. **Negative Covenants of Sellers.** Between the date hereof and the Closing Date, Sellers shall not, with respect to the Acquired Assets, the Stations, or the operation thereof, without the consent of Buyer:

8.2.1. Cancel, modify, alter, amend, encumber, or in any way discharge, terminate, or impair any Assumed Contract or Assumed Lease other than in the ordinary course of business or commit any act or fail to take any action that would cause a breach of any such Assumed Contract or Assumed Lease.

8.2.2. Other than in the usual and ordinary course of business, sell or dispose of any of the Acquired Assets unless Sellers replace such Acquired Assets with replacement assets having an aggregate value at least equal to the aggregate value of the Acquired Assets sold or otherwise disposed of, subject to the terms and conditions of Section 1.1.3.

8.2.3. Create or suffer or permit the creation of any Lien on any of the Acquired Assets or with respect thereto.

8.2.4. Take any action that would prevent Sellers from consummating the transactions contemplated in this Agreement.

8.2.5. Apply to the FCC for any construction permit or modification of license that would materially restrict any Station's operation, or make any material change in any Station's buildings, leasehold improvements or fixtures.

8.2.6. Offer any Station or (except in accordance with Section 8.2.2) any Acquired Asset for sale, entertain an offer to purchase the Acquired Assets or membership interests of any Seller, enter into any negotiations with any Person other than Buyer for the assignment and transfer of the Acquired Assets or the membership interests of any Seller, give an option to any other Person

to acquire any assets or membership interests of any Seller or enter into any agreement or understanding, whether oral or written, that would prevent the consummation of the transactions contemplated hereby.

8.2.7. Enter into any trade or barter agreement, or modify or amend any existing such agreements or understandings, if such trade or barter arrangements in the aggregate will result in an adjustment pursuant to Section 3.5, without consultation with the Buyer.

8.2.8. By any act or omission of Sellers or of their officers, directors, managers, members, employees or agents, surrender, modify adversely, forfeit or fail to seek timely renewal of any FCC License from the FCC or cause the FCC to institute any proceedings for revocation, suspension or modification of any FCC License, or fail to prosecute with due diligence, or participate in the prosecution of, the Assignment Application or any other pending application, including all amendments thereto as necessitated by the rules of the FCC or as requested by the FCC's staff.

8.2.9. From the time of execution of this Agreement through the ninetieth (90th) day after the Closing Date, commence a voluntary case under any provision of any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or take any action to assist in or consent to the entry of an order for relief in an involuntary case under any such law or consent to the appointment of or taking possession by a receiver, or trustee or other custodian for all or a substantial part of their property.

8.2.10. Knowingly violate, or remain in violation of, any law, statute, rule, governmental regulation or order of any court or governmental regulatory authority (whether federal, state or local), provided, however, Buyer shall not have the right to terminate this Agreement unless such violation would have a material adverse affect on the Stations or the Acquired Assets.

8.3. **Access to Information.** Between the date hereof and the Closing Date, subject to confidentiality restrictions in Section 23.14 hereof, Sellers will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers, and other representatives, reasonable access during business hours to the Acquired Assets. Sellers shall furnish to Buyer such information and materials concerning the Stations' affairs as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Stations.

8.4. **Restrictions on Buyer.** Nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Stations prior to the Closing Date and Sellers shall have complete control of the programming and operation of the Stations between the date hereof and the Closing Date and shall operate the Stations in conformity with the requirements of law and this Agreement.

8.5. **Buyer's Covenants.**

8.5.1. From the date of this Agreement until the Closing Date, Buyer covenants that it will not take any action, or fail to take any action, that would disqualify it from becoming the licensee of the Stations or delay the grant of the Assignment Application by the FCC. Furthermore, Buyer shall give prompt notice to Sellers of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer contained in this Agreement.

8.5.2. Buyer covenants to use its commercially reasonable efforts as reasonably requested by Sellers to assist Sellers in obtaining the consent of any third party necessary for the assignment to Buyer of any Assumed Lease or Assumed Contract and to obtain any and all other



consents, transfers, authorizations, or approvals required by the consummation of the transactions contemplated hereby.

## **SECTION 9 OTHER AGREEMENTS**

### **9.1. Station Employees.**

9.1.1. Buyer specifically reserves to itself the right to employ or not employ any and all current employees of Sellers at Buyer's sole and absolute discretion. Nothing in this Agreement shall be construed as a commitment or obligation of Buyer to offer employment to, accept for employment, or otherwise continue the employment of, any of Sellers' employees, or to continue the terms and conditions of employment previously enjoyed by Sellers employees.

9.1.2. To the extent any of the Stations' employees accept employment with Buyer (collectively, the "Transferred Employees"), such Transferred Employees will be included in Buyer's then-existing employee welfare benefit plans (if any) and will be subject to Buyer's then-existing employment policies, as generally applicable to Buyer's employees. In addition, Buyer will offer to any employee of Sellers who does not become a Transferred Employee the right to medical coverage under COBRA pursuant to Buyer's health insurance plan.

9.1.3. Nothing herein shall restrict Buyer's ability to change or terminate the benefits or benefit plans provided to Buyer's employees (including Transferred Employees), nor shall Buyer be required to provide to any employee any of the terms and conditions of employment provided by Sellers, subject, however, to the requirements of any written employment agreements of Sellers which Buyer agrees to assume. This Section 9.1.3. shall operate exclusively for the benefit of the parties to this Agreement and not for the benefit of any other Person, including, without limitation, any current, former or retired employee of Sellers or Buyer.

9.1.4. Sellers agree that they shall be solely responsible and liable for any medical, disability, severance, vacation, sick leave or other benefits owed under Sellers' benefit plans, including, without limitation, any expenses for health or dental benefits incurred but not submitted for reimbursement prior to the Closing that are covered under Sellers' benefit plans. Sellers will be solely responsible for providing, at their cost, all life and other insurance coverage and benefits, and disability benefits to which any employee of Sellers who retired or was terminated from service with Sellers on or prior to the Closing Date or who was disabled prior to the Closing Date is entitled.

9.1.5. Sellers and Buyer acknowledge and agree that Buyer shall not assume any liability whatsoever for any compensation arrangement or bonus plan for any Transferred Employees, except to the extent liabilities in respect of any such amounts have been included in calculating the adjustments pursuant to Section 3. Notwithstanding the foregoing in this Section 9.1.5, all bonuses paid to Sellers' employees in accordance with past practices and based on the Stations achieving certain goals as set forth in Sellers' budget (which has been provided to Buyer) shall be shared by Buyer and Sellers pro rata based on the number of days Buyer and Sellers each owned the Stations in the year for which the bonuses are paid.

9.1.6. Sellers agree that they will not enter into any collective bargaining agreement that would be contractually binding on Buyer without Buyer's prior written consent. Any such collective bargaining agreement will not be effective as to Buyer until on or after the Closing Date. Sellers further agree that, upon Buyer's request and with the consent of the labor organization, Sellers will allow Buyer or its designated representative to engage in negotiations for a collective bargaining agreement with the labor organization certified by the NLRB as the representative of a group of included employees.

9.2. **WARN Act.** Sellers shall be responsible for compliance with applicable provisions of the Worker Adjustment and Retraining Act, as amended (the “WARN Act”). To the extent any obligations under the WARN Act might arise as a consequence of the transactions contemplated by this Agreement, Sellers shall be responsible for, and indemnify Buyer and its Affiliates (as hereinafter defined) against any losses caused by, arising from, incurred in connection with or relating in any way to, any obligations under the WARN Act arising as a result of any employment losses occurring prior to, on or after the Closing Date.

## **SECTION 10 CONDITIONS FOR CLOSING**

10.1. **Closing.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at a location and on a date set by the parties, provided that unless the parties agree to another date, such date to be within ten (10) days after the grant by the FCC of the Assignment Application becomes a Final Order (the “Closing Date”) (or, if Buyer waives “finality” of said FCC grant, within ten (10) days after the later of the effective date of said FCC grant or notice to Sellers of Buyer’s waiver of “finality”). For purposes of this Agreement, a “Final Order” means an action by the FCC as to which (a) no request for stay by the FCC is pending, no such stay is in effect, and the deadline for filing a request for any such stay has passed; (b) no appeal, petition for rehearing or reconsideration, or application for review is pending before the FCC and the deadline for filing any such appeal, petition or application has passed; (c) the FCC has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, of the FCC’s action is pending or in effect, and the deadline for filing any such appeal or request has passed. The

Closing shall take place at the Washington, DC office of the law firm of Drinker Biddle & Reath, or such other place as the parties may designate.

10.2. **Conditions Precedent to Obligations of Buyer.** The performance of the obligations of Buyer under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Buyer may, at its election, waive any of such conditions on the Closing Date, notwithstanding that such condition is not fulfilled on the Closing Date):

10.2.1. The FCC shall have consented to the Assignment Application and the consent shall, at Closing, be a Final Order and in full force and effect and shall contain no provision that has a material adverse effect on Buyer or the operation of any Station. All other material authorizations, consents or approvals of any and all other governmental regulatory authorities necessary in connection with this Agreement shall have been obtained on terms and conditions acceptable to Buyer and shall be in full force and effect.

10.2.2. Between the date of this Agreement and the Closing, there shall have been no material adverse change in the financial condition, liabilities, assets, prospects, or results of operations of the Stations, or any material adverse change in the condition of the Acquired Assets, including, without limitation, any defaults under the Assumed Contracts or Assumed Leases (unless expressly waived in writing by Buyer) which could permit the acceleration of any material amounts due thereunder or termination of any material Assumed Contracts or material Assumed Leases. For the purposes of this Section 10.2.2, a material adverse change as it relates to results of operations or the financial condition of the Stations is defined as LTM Broadcast Cash Flow of less than \$3,700,000 as of the last day of any month ended prior to the Closing. A material adverse change relating to an Operating Agreement or Assumed Lease shall mean a default or termination of: (i) an

Operating Agreement involving a total expenditure in excess of Seventy Five Thousand Dollars (\$75,000.00) or the loss of which will increase the cost of the Stations' operations in excess of Seventy Five Thousand Dollars (\$75,000.00); or (ii) any Assumed Lease for any Station's transmitting equipment (including microwave relays), in either case where the default is not cured or the Operating Agreement or Assumed Lease is not restored or replaced on substantially similar terms within ninety (90) days.

10.2.3. Sellers shall have delivered to Buyer the Sellers' Closing Documents as described in Section 11.1 below.

10.2.4. Each of Sellers' representations and warranties contained in this Agreement or in any schedule, certificate, or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true and correct in all material respects at and as of the Closing Date, except to the extent that such representation or warranty is qualified by a term such as "material" or "material adverse effect," in which case such representation or warranty shall be true and correct in all respects, with the same force and effect as if each such representation or warranty was made at and as of the Closing Date.

10.2.5. Sellers shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date and shall be in compliance therewith on the Closing Date.

10.2.6. License Seller shall be the holder of the FCC Licenses listed in Schedule 1.1.1.

10.2.7. Except as specified in Schedule 10.2.7, all outstanding Liens on the Assets shall have been discharged and satisfied, or arrangements made to discharge same at Closing.

10.2.8. Sellers shall have delivered to Buyer an inventory of the Tangible Personal Property to be conveyed, current as of the Closing Date. There shall be no material changes between Schedule 1.1.3 and said inventory of Tangible Personal Property as of the Closing Date other than changes pursuant to Section 8.2.2 or that have been agreed to and accepted by Buyer, in its reasonable discretion.

10.2.9. Sellers shall have obtained all required material third party consents to the assignment of the Assumed Contracts and Assumed Leases that are marked with a double asterisk (\*\*) on Schedules 1.1.4 and 1.1.2, and shall use reasonable efforts to obtain estoppel certificates in form and substance reasonably satisfactory to Buyer with respect to all Assumed Leases.

10.2.10. **The Real Property.** Sellers shall cooperate fully with Buyer and Buyer will use its good faith commercially reasonable efforts so that as soon as practicable, the following shall have been obtained by Buyer:

(a) One or more owner's policies issued by a title insurer reasonably satisfactory to Buyer (and Chicago Title Insurance is acceptable) in an amount equal to the fair market value of the owned Real Property (including all improvements located thereon) insuring at standard rates over the standard preprinted exceptions and insuring title to such owned Real Property in the Buyer as of the Closing subject only to Permitted Encumbrances, together with such endorsements for zoning, public access and extended coverage, as Buyer may reasonably request. Buyer shall bear the costs of said commitments and policies. Sellers shall deliver title commitments at Buyer's expense for material tower leases, except for those specified in Schedule 10.2.10.

(b) ALTA-ACSM Surveys of the owned Real Property, at Buyer's expense, as of a date subsequent to the date hereof which shall (i) be prepared by a registered land surveyor; (ii)

be certified to the Title Company, Buyer's lender and Buyer; and (iii) show with respect to such Real Property: (A) the legal description of such parcel(s) of Real Property (which shall be the same as the Title Policies pertaining thereto); (B) all building, structures and improvements thereon and all restrictions of record and other restrictions that have been established by an applicable zoning or building code or ordinance and all easements or rights of way; (C) no encroachments upon such parcel or adjoining parcels by buildings, structures or improvements; and (D) access to a public street from such parcel.

10.2.11. With regard to the Acquired Assets other than the Real Property, Sellers shall provide Buyer with a report in form and substance satisfactory to Buyer, to the effect that: (i) none of the Acquired Assets is subject to any record lien for federal, state or local taxes or assessments, excepting only a lien for property taxes not yet due and payable; and (ii) there are no then-effective financing statements pertaining to the Acquired Assets, except for financing statements that will be released at or before the Closing.

10.2.12. **Environmental Site Assessment.** Following the execution of this Agreement, at Buyer's expense, Buyer, within sixty (60) days following the date hereof, may obtain Phase I Environmental Assessments for any or all of the Real Property (the "Environmental Assessment"), and Sellers shall cooperate with Buyer and such firm in performing such Environmental Assessment. If Buyer fails to obtain the Environmental Assessment within said period, it shall be deemed to have waived the foregoing right. Buyer shall deliver a copy of the Environmental Assessment to Sellers within ten (10) days of receipt of the same and shall give Sellers notice of any matter requiring remediation on Environmental Laws. Delivery of the Environmental Assessment to Sellers shall not relieve Sellers of any obligation with respect to any

representation, warranty or covenant of Sellers in this Agreement or waive any condition to Buyer's obligations under this Agreement. If the Environmental Assessment reveals the existence of any Environmental Condition or Environmental Non-Compliance at the Real Property, Buyer shall have the right, exercisable by giving written notice to Sellers within fifteen (15) days of the receipt by Buyer of the Environmental Assessment specifying the nature of the Environmental Conditions or Non-Compliance revealed by the assessment, to terminate this Agreement. Notwithstanding the foregoing, in the event the Environmental Assessment discloses Environmental Conditions or Non-Compliance ("Environmental Problems") that can be remedied by the expenditure in the aggregate of One Hundred Thousand Dollars (\$100,000) or less, Sellers will either remedy the problems, at their expense, prior to the Closing or, failing that, the Purchase Price will be reduced by the amount, as estimated in the Environmental Assessment, that will be required to remedy the Environmental Problems (but not more than One Hundred Thousand Dollars (\$100,000), and the Closing will otherwise take place in the manner, and at the time, provided for herein. In the event that the cost of remedying the Environmental Problems will exceed One Hundred Thousand Dollars (\$100,000), Sellers shall have the option to agree to reduce the Purchase Price by the full amount of what it will cost to remedy the problem, in which event the Closing will take place at the reduced price, or to terminate this Agreement, unless Buyer agrees to be responsible for the remediation costs in excess of One Hundred Thousand Dollars (\$100,000).

10.2.13. Sellers shall have furnished to Buyer an affidavit of Sellers, in a form reasonable satisfactory to Buyer, stating under penalty of perjury Sellers' United States taxpayer identification numbers and that no Seller is a foreign person within the meaning of Section 1445(b)(2) of the Internal Revenue Code.



10.2.14. (a) No action or proceeding will have been instituted before any court or governmental body to restrain or prohibit, or to obtain substantial damages in respect of, the consummation of the transactions contemplated by this Agreement that, in Buyer's reasonable judgment, may be expected to result in an injunction against such consummation or, if consummated, an order to nullify or render ineffective this Agreement or such consummation or to recover against Buyer substantial damages and (b) no party will have received written notice from any governmental body of its intention to institute any action or proceeding to restrain or enjoin or nullify this Agreement or the transactions contemplated hereby, or to commence any investigation (other than a routine letter of inquiry) into the consummation of such transactions.

10.3. **Conditions Precedent to Obligations of Sellers.** The performance of the obligations of the Sellers under this Agreement is subject to the satisfaction of each of the following express conditions precedent, provided that Sellers may, at their election, waive any of such conditions at Closing (other than Section 10.3.1), notwithstanding that such condition is not fulfilled on the Closing Date:

10.3.1. The FCC shall have consented to the Assignment Application.

10.3.2. Buyer shall have delivered to Sellers the Buyer's Closing Documents (as described in Section 11.2 below).

10.3.3. Each of Buyer's representations and warranties contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true in all material respects at and as of Closing Date (except to the extent that such representation or warranty is qualified by a term such as "material" or "material adverse effect," in which case such representation or warranty shall be true and correct in

all respects) with the same force and effect as if each such representation or warranty was made at and as of such time.

10.3.4. Buyer shall perform all of the obligations set forth in Section 2.2 of this Agreement with respect to the payment of the Purchase Price.

10.3.5. Buyer shall have agreed in form reasonably acceptable to Sellers to assume all obligations arising on or after the Closing Date under the Assumed Contracts assigned to Buyer.

10.3.6. No action or proceeding will have been instituted before any court or governmental body to restrain or prohibit, or to obtain substantial damages in respect of, the consummation of the transactions contemplated by this Agreement that, in Sellers' reasonable judgment, may be expected to result in an injunction against such consummation or, if consummated, an order to nullify or render ineffective this Agreement or such consummation or to recover against Sellers substantial damages; and no party will have received written notice from any governmental body of its intention to institute any action or proceeding to restrain or enjoin or nullify this Agreement or the transactions contemplated hereby, or to commence any investigation (other than a routine letter of inquiry) into the consummation of such transactions.

10.4. **Consents to Assignment.** To the extent that any Assumed Contract or Assumed Lease identified in the Schedules is not capable of being sold, assigned, transferred, delivered or subleased without the waiver or consent of any third person (including a government or governmental unit), or if such sale, assignment, transfer, delivery or sublease or attempted sale, assignment, transfer, delivery or sublease would constitute a breach thereof or a violation of any law or regulation, this Agreement and any assignment executed pursuant hereto shall not constitute a sale, assignment, transfer, delivery or sublease or an attempted sale, assignment, offer, delivery or

sublease thereof. In those cases where consents, assignments, releases and/or waivers have not been obtained at or prior to the Closing relating to the assignment to the Buyer of any Assumed Contracts or Assumed Leases, this Agreement and any assignment executed pursuant hereto, to the extent permitted by law, shall constitute an equitable assignment by Sellers to Buyer of all of Sellers' rights, benefits, title and interest in and to such Assumed Contracts and Assumed Leases, and where necessary or appropriate, Buyer shall be deemed to be Sellers' agent for the purpose of completing, fulfilling and discharging all of Sellers rights and liabilities arising after the Closing Date under such Assumed Contracts and Assumed Leases. Sellers shall use their reasonable best efforts to provide Buyer with the financial and business benefits of such Assumed Contracts and Assumed Leases (including, without limitation, permitting Buyer to enforce any rights of Sellers arising under such Assumed Contracts and Assumed Leases), and Buyer shall, to the extent Buyer is provided with the benefits of such Assumed Contracts and Assumed Leases, assume, perform and in due course pay and discharge all debts, obligations and liabilities of Sellers under such Assumed Contracts and Assumed Leases to the extent that Buyer was to assume those obligations pursuant to the terms hereof.

**10.5. Failure of Conditions Precedent to Obligations of Buyer.** In case of the failure of any of the conditions precedent described in Section 10.2 hereof, and if Sellers have failed to cure same within thirty (30) days after notice from Buyer, Buyer shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent constitutes a material default by Sellers, Buyer shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 19 hereof. Buyer shall not be deemed to have waived any failure by Sellers to fulfill any of the conditions precedent described in Section 10.2 if Buyer does not have actual knowledge of such failure at the time of Closing.

**10.6. Failure of Conditions Precedent to Obligations of Sellers.** In case of the failure of any of the conditions precedent described in Section 10.3 hereof, and if Buyer has failed to cure the same within thirty (30) days after notice from Sellers, Sellers shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent results from a material default by Buyer, Sellers shall have the right, at their option, to exercise any or all of their rights or remedies for default provided in Section 19 hereof. Sellers shall not be deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 10.3 if Sellers do not have actual knowledge of such failure at the time of Closing.

## **SECTION 11 OBLIGATIONS AT CLOSING**

**11.1. Closing Documents to be Delivered by Sellers.** At the Closing, Sellers shall deliver to Buyer the following (“Sellers’ Closing Documents”):

11.1.1. One or more executed bills of sale in form and substance reasonably satisfactory to Buyer transferring to Buyer all Tangible Personal Property.

11.1.2. One or more warranty deeds in the usual form in the states in which the Stations operate conveying good and marketable title to the owned Real Property with all required documentary stamps attached and in proper form for recording.

11.1.3. Title insurance commitments in the form of ALTA Owners Policy Form B.

11.1.4. One or more executed assignment and assumption agreement(s) in form and substance reasonably satisfactory to counsel for Buyer assigning to Buyer the Assumed Contracts and Assumed Leases to be assigned hereunder.

11.1.5. An executed assignment and transfer in form and substance reasonably satisfactory to counsel for Buyer assigning and transferring to Buyer all of the Intangibles and FCC Licenses, together with any and all other related governmental authorizations.

11.1.6. Certified copies of the resolutions of Operating Seller's and License Seller's members authorizing the execution, delivery, and performance of this Agreement by Sellers and the consummation of the transactions provided for herein.

11.1.7. An executed assignment and assumption of the Intellectual Property.

11.1.8. A certificate executed on behalf of Operating Seller and License Seller by an officer thereof stating that (a) all of the representations and warranties of Sellers set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, except to the extent that such representations and warranties are qualified by terms such as "material" or "material adverse effect," in which case such representations and warranties shall be true and correct in all respects as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Sellers on or prior to the Closing Date have been performed in all material respects.

11.1.9. All Business Records not retained by Sellers pursuant hereto.

11.1.10. Possession and/or ownership of and all right, title and/or interest in and to the Acquired Assets.

11.1.11. Motor vehicle title certificates as shall be effective to vest in Buyer title to any motor vehicles owned by Sellers, including those listed on Schedule 1.1.3.

11.1.12. An assignment of the Accounts Receivable for collection only pursuant to Section 12 hereof.

11.1.13. Copies of all material consents required for the assignment of licenses, Assumed Contracts and Assumed Leases that are marked with a double asterisk (\*\*) on Schedules 1.1.4 and 1.1.2, respectively.

11.1.14. The Non-Competition, Non-Hire Agreement as described in Section 18 and as in Exhibit C attached hereto.

11.1.15. Instructions executed on behalf of Sellers directing the Escrow Agent to apply the Escrow Deposit toward payment of the Purchase Price.

11.1.16. Sellers' Opinion of Counsel and Sellers' FCC Opinion of Counsel as set forth in Exhibits D and E attached hereto.

11.1.17. Such certificates, instruments and other documents as Buyer shall reasonably request.

**11.2. Closing Documents to be Delivered by Buyer.** At the Closing, Buyer shall deliver to Sellers the following ("Buyer's Closing Documents"):

11.2.1. The Purchase Price as provided in Section 2.2.

11.2.2. A certificate executed by Buyer's chief executive officer stating that (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, except to the extent that such representations and warranties are qualified by terms such as "material" or "material adverse effect," in which case such representations and warranties shall be true and correct in all respects as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects.

11.2.3. One or more assignment and assumption agreement(s) assigning the Assumed Contracts and Assumed Leases to be assigned hereunder executed by Buyer, in form and substance reasonably satisfactory to Sellers.

11.2.4. An assignment and assumption agreement assigning the FCC Licenses and Intangibles to Buyer executed by Buyer, in form and substance reasonably satisfactory to Sellers.

11.2.5. A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein.

11.2.6. Instructions executed on behalf of Buyer directing the Escrow Agreement to apply the Escrow Deposit toward payment of the Purchase Price.

11.2.7. Such other documents as Sellers shall reasonably request.

## **SECTION 12 ACCOUNTS RECEIVABLE**

Sellers shall assign to Buyer at Closing all of the Accounts Receivable for purposes of collection only. Buyer shall use such efforts as are reasonable and in the ordinary course of business to collect the Accounts Receivable for a period of one hundred eighty (180) days following the Closing Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. During the Collection Period, unless authorized by Buyer, neither Sellers nor their agents shall make any solicitation for collection purposes or institute litigation for the collection of any amounts due thereunder, except for contested accounts which are not paid within ninety (90) days of the Closing ("Delinquent Accounts"). Delinquent Accounts shall be assigned to Seller and Seller shall have the

right to collect Delinquent Accounts, including instituting litigation. All payments received by Buyer during the Collection Period from any Person obligated with respect to any of the Accounts Receivable shall be applied first to Sellers' account and only after full satisfaction thereof to Buyer's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any Account Receivable, then Buyer may return that Account Receivable to Sellers after which Sellers shall be solely responsible for the collection thereof. Except for the payment of all salesperson's, agency, and representative commissions due and not paid prior to the Closing Date with respect to the Accounts Receivable (which commissions Buyer may pay and deduct from the Accounts Receivable), Buyer shall not incur or cause to be incurred any collateral or outside fees, costs or charges in connection with its efforts at collection of the Accounts Receivable without first having obtained the authorization in writing of Sellers. Buyer shall remit all amounts collected on Sellers' behalf (minus any commissions Buyer pays pursuant to the prior sentence) no less often than the tenth (10th) day after the close of each month during which Buyer receives any amounts due to Sellers. Within five (5) business days following the expiration of the Collection Period, Buyer shall furnish Sellers with a list of the Accounts Receivable collected during the Collection Period. Any of the Accounts Receivable that are not collected during the Collection Period shall be reassigned to Sellers after which Buyer shall have no further obligation to Sellers with respect to the Accounts Receivable; provided, however, that all funds subsequently received by Buyer that can be specifically identified, whether by accompanying invoice or otherwise, as a payment on any Account Receivable shall be promptly paid over or forwarded to Sellers. Buyer shall not have the right to compromise, settle, or adjust the amounts of any of the Accounts Receivable without Sellers' prior written consent, or to withhold any proceeds of the Accounts Receivable or to retain any uncollected Accounts Receivable after the expiration of the Collection



Period. Sellers shall be responsible for the payment of all salesperson's, agency, and representative commissions due with respect to the Accounts Receivable and shall defend and hold Buyer harmless against any claims for such commissions.

### **SECTION 13 BROKERAGE**

Sellers and Buyer each represents and warrants to the other that it knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions, except that Buyer has retained Explorer Communications, whose fee Buyer shall pay. Buyer and Sellers hereby agree to indemnify each other from and against any claim of any such obligation or liability by any Person, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

### **SECTION 14 INDEMNIFICATION**

14.1. **Breach of Sellers' Agreements, Representations, and Warranties.** Sellers and Seller Beneficiaries (collectively, the "Seller Indemnifying Parties"), jointly and severally, shall reimburse Buyer and its respective stockholders, general partners, limited partners, members, managers, directors, officers employees, agents, affiliates and subsidiaries (the "Buyer Indemnified Parties") for, and indemnify and hold harmless the Buyer Indemnified Parties from and against, any loss, cost, proceeding (whether formal or informal), damage, liability, obligation, deficiency, claim, suit, cause of action, judgment, or expense (including, without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, or whether asserted by

third parties against a party hereto or incurred or sustained by a party hereto in the absence of a third-party claim (collectively, “Damages”) sustained by the Buyer Indemnified Parties and resulting from the following:

14.1.1. any breach of any warranty, representation, or agreement of Sellers contained in this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement;

14.1.2. any nonfulfillment of any covenant, obligation or agreement of Sellers under this Agreement or the agreements and instruments contemplated herein;

14.1.3. the operation of the Stations or the ownership of the Acquired Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed prior to the Closing Date under any lease, contract, or agreement);

14.1.4. any transaction entered into by Sellers or arising in connection with the Stations or the operation of the business thereof or any of the Acquired Assets prior to the Closing;

14.1.5. any taxes, payments, claims for salaries, wages, bonuses, vacation, severance, amounts payable under station employee benefit plans, or otherwise to employees or agents of Sellers, and other liabilities and obligations of Sellers, in each case relating to and incurred with respect to the periods on or prior to the Closing Date, whether or not due or payable on or prior to the Closing Date;

14.1.6. the failure to comply with statutory provisions relating to bulk sales and transfers or similar laws, if applicable;

14.1.7. any claims made by third parties alleging facts, which if true, would entitle Buyer to indemnification pursuant to Sections 14.1.1 through 14.1.6 above;

14.1.8. any Retained Liabilities of Sellers; or

14.1.9. any and all actions, suits, or proceedings, incident to any of the foregoing.

**14.2. Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall reimburse Sellers and their respective stockholders, general partners, limited partners, members, managers, directors, officers employees, agents, affiliates and subsidiaries (the "Seller Indemnified Parties"), and indemnify and hold harmless the Seller Indemnified Parties from and against, any and all Damages sustained by the Seller Indemnified Parties and resulting from the following:

14.2.1. any breach of any warranty, representation, or agreement of Buyer contained under this Agreement or any certificate or other instrument furnished by Buyer pursuant to this Agreement;

14.2.2. any nonfulfillment of any covenant, obligation or agreement by Buyer under this Agreement or in the agreements and instruments contemplated herein;

14.2.3. the operation of the Stations or the ownership of the Acquired Assets by Buyer subsequent to Closing (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed subsequent to the Closing under any lease, contract or agreement);

14.2.4. any transaction entered into by Buyer or arising in connection with the Stations or the operation of the Stations subsequent to the Closing;

14.2.5. any and all liabilities or obligations of Sellers specifically assumed by Buyer pursuant to this Agreement;

14.2.6. any and all actions, suits, or proceedings incident to any of the foregoing;

14.2.7 any taxes, payments, claims for salaries, wages, bonuses, vacation, severance, amounts payable under station employee benefit plans, or otherwise to employees or agents of Buyer, and other liabilities and obligations of Buyer, in each case relating to and incurred with respect to the periods on or after the Closing Date, whether or not due or payable on or after the Closing Date; or

14.2.8 any claims made by third parties alleging facts, which if true, would entitle Seller Indemnified Parties to indemnification pursuant to Sections 14.2.1 through 14.2.7 above.

14.3. **Notice of Claim.** A party seeking indemnification pursuant to Section 14.1 or 14.2 (the "Indemnified Party") for any Damages, including any Damages arising from a claim, action or proceeding asserted by a third party (a "Third Party Claim"), shall give written notice ("Notice of Claim") to the party from whom indemnification is sought ("Indemnifying Party"), which notice shall describe in reasonable detail the facts and circumstances upon which the asserted claim for indemnification is based and the amount of Damages believed to have been or that may be suffered by the Indemnified Party. The Indemnified Party shall give written notice to the Indemnifying Party of the existence of a Third- Party Claim promptly after it first receives an assertion of liability from the third party, and in any event within fifteen (15) days of such assertion; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Section 14 except to the extent the Indemnifying Party is materially prejudiced by such failure.

14.4. **Procedures.**

14.4.1. In case any Third Party Claim is brought against any Indemnified Party, the Indemnifying Party shall have the right, subject to Section 14.4.4, to assume, conduct and control the defense, compromise or settlement thereof, with counsel, whose engagement for such purpose would

be consistent with the then prevailing ethical rules applicable to attorneys-at-law and who is reasonably satisfactory to the Indemnified Party, at the Indemnifying Party's own expense, and thereupon to prosecute in the name and on behalf of the Indemnified Party any available cross-claims, counter-claims or third-party claims arising with respect to such Third Party Claim. The Indemnifying Party shall exercise such right, if at all, by delivering written notice thereof within thirty (30) days after its receipt of the Notice of Claim with respect to such Third Party Claim.

14.4.2 If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall , subject to the limitations of Section 14.7, hold the Indemnified Party harmless from and against the Damages caused by or arising out of any settlement approved by the Indemnifying Party or any judgment in connection with such matter. The Indemnified Party may participate in the defense of any such Third Party Claim and employ counsel therefore at its own expense; provided, however, that the Indemnifying Party and its counsel shall retain final decision making authority on all matters relating to the conduct of the defense or settlement of such Third Party Claim. The Indemnified Party shall cooperate fully in such defense as and to the extent reasonably requested by the Indemnifying Party, including, without limitation, making available to the Indemnifying Party all books, records and other information reasonably necessary and useful in connection with such defense and making the Indemnified Employees available to provide additional information and explanation of all such materials. Except with the prior written consent of the Indemnified Party, the Indemnifying Party shall not, in the defense of such matter, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost), or enter into any settlement, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Damages in respect of such matter.

14.4.3 If the Indemnifying Party does not or is not permitted to assume the defense of any such matter, the Indemnified Party may, but shall have no obligation to, defend against such matter in such manner as it may deem appropriate, and the Indemnified Party may compromise or settle such matter without the Indemnifying Party's consent; provided, however, if the Indemnifying Party is precluded from assuming the defense of such Third Party Claim in accordance with Section 14.4.4, then the Indemnified Party shall not be entitled to recover from the Indemnifying Party any Damages arising in connection therewith if the Indemnified Party agrees to settle such Third Party Claim without the Indemnifying Party's prior written consent, which consent may not be unreasonably withheld or delayed by the Indemnifying Party. Notwithstanding anything to the contrary set forth herein, in no event shall the determinations made in any litigation with respect to a Third Party Claim the defense of which is conducted by the Indemnified Party or any settlement thereof made without the Indemnifying Party's consent preclude the Indemnifying Party from disputing the Indemnified Party's claim hereunder for indemnification with respect thereto. The failure of the Indemnifying Party to assume the defense of any Third Party Claim shall not be deemed a concession by the Indemnifying Party that it is required to indemnify the Indemnified Party for the subject matter of such Claim.

14.4.4 The Indemnifying Party shall not be entitled to assume the defense or settlement of any matter pursuant to Section 14.4.1 if the remedy sought or asserted in connection with such matter is not limited solely to the payment of money damages.

14.4.5 Any dispute arising between the parties as to their respective rights or duties with respect to any claim for indemnification hereunder, or the amount of Damages recoverable hereunder, shall be resolved in accordance with the governing law contemplated by Section 22.7 and the procedures thereunder.

**14.5. Tax Treatment of Indemnity Payments.** The parties agree that any indemnity payments made pursuant to this Section 14 shall be treated by the parties on all applicable tax returns as an adjustment to the Purchase Price for the Acquired Assets.

**14.6. Sole Remedy.** Except for a suit seeking specific performance or other equitable relief, the right to indemnification pursuant to Section 14 shall be the sole and exclusive remedy of each party in lieu of any other remedies to which the parties might be entitled in connection with any breach or other violation by any other party of any such other Party's obligations under this Agreement.

**14.7. Limitation on Liability.** Except with respect to (i) the adjustments contemplated by Section 3, (ii) the collection of Accounts Receivable as contemplated by Section 12 and (iii) the recovery of the Escrow Deposit as contemplated by Section 19.3 (as to each of which exceptions there shall be no limitation on the amount of Damages recoverable upon the breach thereof), liability for Damages under this Section 14 shall be subject to the following limitations:

14.7.1. The Seller Indemnifying Parties and Buyer shall have no liability for Damages under, respectively, Section 14.1 or Section 14.2, and neither the Seller Indemnified Parties nor the Buyer Indemnified Parties shall have the right to seek indemnification under, respectively, Section 14.1 or Section 14.2 until the aggregate amount of the Damages incurred exceeds One Hundred Fifty Thousand Dollars (\$150,000) (the "Minimum Loss"). After the Minimum Loss is exceeded, the Indemnified Party shall be entitled to indemnification for the entire amount of its Damages in excess of the Minimum Loss, subject to the limitations on recovery and recourse set forth in this Section 14;

14.7.2. The aggregate liability of the Seller Indemnifying Parties and the Buyer, respectively, for all Damages under Section 14.1 or Section 14.2, as the case may be, shall not

exceed Five Million Dollars (\$5,000,000), except for breaches of representations and warranties relating to taxes or fraud matters, for which the limit shall be the Purchase Price.

14.7.3 No claim may be made more than three (3) years after the Closing Date for breaches of representations, warranties, covenants and indemnities relating to Section 6.14. No claim may be made more than eight (18) months after the Closing Date for breaches of representations, warranties, covenants and indemnities relating to Section 6.2, the fifth sentence of 6.5.2, Section 6.5.3, Section 6.8, and Section 6.9. Claims for breaches of representations, warranties, covenants and indemnities relating to taxes or fraud matters may be made until ninety (90) days after the expiration of the applicable statute of limitations. In all other cases, no claims may be made more than one (1) year after the Closing Date for breaches of representation, warranties, covenants and indemnities under this Agreement.

14.7.4 The amount of either party's losses (and resulting Damages for which it may seek indemnity hereunder) shall be reduced by the amount of any tax benefit attributable to such party's losses as, when and only to the extent that such party actually realizes such tax benefit and the net amount such party recovers from any insurer or other party liable for such losses, and the responsible party shall use all reasonable efforts to effect such recovery. If a tax benefit attributable to any party's losses is subsequently disallowed in any tax audit or administrative or court proceeding, the affected party shall promptly make a payment to the other party equal to the amount by which the losses were reduced as a result of the subsequently disallowed tax benefit.

## **SECTION 15 RISK OF LOSS**

The risk of any loss or damage to the Acquired Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or



cause, reasonable wear and tear excepted, prior to the Closing Date, is assumed and shall be borne by the Sellers at all times before the Closing Date, and thereafter by Buyer. If any such loss or damage occurs prior to the Closing Date, Sellers shall give prompt written notice of the loss or damage to Buyer. Such notice shall specify with particularity the loss or damage incurred, the cause (if known or reasonably ascertainable) and the insurance coverage applicable thereto. Sellers then shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at their own cost and expense. In the event that Sellers do not fully replace or restore any such lost or damaged Acquired Asset or Assets by the Closing Date, Buyer may, at its option, upon written notice to Sellers, either (i) terminate this Agreement, whereupon the Escrow Deposit shall be returned to Buyer, (ii) elect to close without restoration, in which event Sellers will assign all insurance proceeds paid or payable by reason of the loss or damage to Buyer, (iii) elect to postpone the Closing until such time as the property has been completely repaired, replaced or restored to the Buyer's reasonable satisfaction and, if necessary, Sellers shall join Buyer in requesting any FCC or other extensions that may be required in order to complete such repairs, or (iv) elect to consummate the transactions contemplated hereby and accept such property in its then condition and make a deduction from the Purchase Price in the dollar amount necessary to restore the Acquired Assets to their prior condition.. If Buyer terminates this Agreement under this Section 15, each party shall bear its own expenses, and the Escrow Agent shall deliver to Buyer the Escrow Deposit and all interest earned thereon.

## **SECTION 16 FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. All filing or grant

fees imposed by any governmental authority the consent of which is required to the transactions contemplated hereby shall be borne one-half by Sellers and one-half by Buyer.

#### **SECTION 17 BULK SALES LAW**

Buyer and Sellers hereby waive compliance with the bulk transfer provisions of the Uniform Commercial Code and all similar laws. Sellers shall promptly pay and discharge when and as due all liabilities and obligations arising out of or relating to Sellers' ownership, operation and sale of the Stations. Sellers hereby agree to indemnify, defend and hold Buyer harmless from and against any and all Damages arising out of or relating to claims asserted against Buyer pursuant to the bulk transfer provisions of the Uniform Commercial Code or any similar law.

#### **SECTION 18 NON-COMPETE, NON-HIRE AGREEMENT**

On the Closing Date, Dex Allen, a principal of Sellers, and Sellers, shall enter into a five (5)-year Non-Compete, Non-Hire Agreement in the form and substance of Exhibit C attached hereto for no additional consideration. In connection with the allocation under Section 2.3, Two Thousand Five Hundred Dollars (\$2,500) of the Purchase Price shall be allocated and paid directly to Dex Allen and an equal amount shall be allocated and paid directly to Sellers (One Thousand Two Hundred Fifty Dollars (\$1,250) to each Seller) as consideration for said Non-Compete, Non-Hire Agreement.

#### **SECTION 19 DEFAULT AND TERMINATION**

19.1. A party shall be in "default" under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement.

Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

19.2. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within thirty (30) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to initiate a cure of the default within such thirty (30) day period and continues such efforts thereafter), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings. Notwithstanding the foregoing, neither party shall have any right to cure such party's wrongful failure to consummate this transaction, as provided herein, on the Closing Date.

19.3. Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, Sellers would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that (i) if this Agreement is not consummated due to the default of Buyer and (ii) Sellers are not then in default and (iii) no material adverse change as defined in Section 10.2.2 above has occurred, Sellers shall be entitled to receive as liquidated damages the Escrow Deposit except for all interest earned thereon. Such liquidated damages shall be Seller's sole and exclusive remedy and shall be in lieu of any other remedies at law or in equity to which Sellers might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement. All interest or other proceeds from the investment of the Escrow Deposit, less any compensation due the

Escrow Agent, shall be paid to Buyer. Buyer and Sellers each acknowledge and agree that the liquidated damage amount is reasonable in light of the anticipated harm which would be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder. The parties agree that the liquidated damages provided in this Section are intended to limit the claims that Sellers may have against Buyer in the circumstances described herein.

19.4. Sellers agree that the Acquired Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Sellers' performance under this Agreement, and Sellers agree to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event Buyer elects to terminate this Agreement as a result of Sellers' default instead of seeking specific performance (or if Buyer is denied the remedy of specific performance of Sellers' obligations under this Agreement), Buyer shall be entitled to the return of the Escrow Deposit and all interest earned thereon and to recover from Sellers Buyer's actual costs occasioned by Sellers' default, including without limitation, attorneys fees and costs, bank commitment fees, due diligence costs and other expenses reasonably incurred by Buyer in attempting to consummate the transaction contemplated by this Agreement, Buyer also shall be entitled to recover its actual damages including damages for loss of business opportunity, plus all costs of enforcement and reasonable attorney's fees and expenses.

19.5. Buyer or Sellers may terminate this Agreement without penalty or liability therefor (except in the event of a breach or default hereunder by the party seeking such termination) if the Closing shall not have occurred on or before June 30, 2004, except as provided in Section 4.4.

## **SECTION 20 SURVIVAL OF WARRANTIES**

20.1. All representations, warranties, covenants and indemnities made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for the same periods specified in Section 14.7.3.

20.2. Neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Sellers or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors and assigns.

## **SECTION 21 NOTICES**

All notices, requests, demands, waivers, consents and other communications required or permitted hereunder shall be in writing and be deemed to have been duly given when delivered in person (against receipt) to the party to be notified at the address set out below or sent by registered or certified mail, or by express mail or courier, postage prepaid, return receipt requested, addressed to the party to be notified, as follows:

If to Sellers:

Commonwealth Communications, LLC  
Commonwealth License Subsidiary, LLC  
512 Via de la Valle, Suite 206  
Solana Beach, California 92075

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

Barton P. Blumberg, Esq.  
205 Lexington Avenue  
New York, NY 10016

If to Seller Beneficiaries:

Claude C. Turner a/k/a Dex Allen  
Commonwealth Communications, LLC  
512 Via de la Valle  
Suite 206  
Solana Beach, California 92075

Timothy Dibble  
Alta Communications  
10 Post Office Square  
Boston, Massachusetts 02109

With a copy to:

Lee Slap, Esq.  
Edwards & Angell  
101 Federal Street  
Boston, Massachusetts 02110

If to Buyer:

Cherry Creek Radio LLC  
c/o Mr. Joe Schwartz  
542 Garfield Street  
Denver, CO 80206

and

Mr. Perry Steiner  
Arlington Capital Partners  
600 New Hampshire Avenue, NW  
Suite 660  
Washington, DC 20037

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

Howard M. Liberman, Esq.  
Drinker Biddle & Reath LLP  
1500 K Street, N.W., Suite 1100  
Washington, DC 20005

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

## **SECTION 22 MISCELLANEOUS**

22.1. **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret or construe the meaning of the Sections themselves or the intentions of the parties.

22.2. **Entire Agreement; Amendment.** This Agreement and any other agreements entered into pursuant to this Agreement set forth the entire agreement of the parties and are intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed or modified in any respect or particular unless each such alteration, amendment, change or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. Sellers' only representations and warranties are those expressly stated in this Agreement. No provision, condition or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and

signed by the party consenting to and to be charged with such waiver. No waiver of any right or waiver of any breach will constitute a waiver of any other or similar right or breach and no failure to enforce any right under this Agreement will preclude or affect the later enforcement of such right.

**22.3. Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the prior written consent of the other, except that Buyer may assign its rights and delegate its duties under this Agreement to an entity (or entities) which is (are) controlled by Buyer or an Affiliate of Buyer at any time prior to the Closing Date, provided that the Closing Date is not unreasonably delayed or postponed as a result of such assignment. In the event of such an assignment by Buyer, the provisions of this Agreement shall inure to the benefit of and be binding upon Buyer's assigns. Nothing in this Agreement, express or implied, is intended to or shall confer on any Person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement. For purposes of this Agreement, an "Affiliate" of Buyer shall mean with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person. "Control" shall mean having the power to direct the affairs of a person by reason of either (i) owning or controlling the right to vote a sufficient number of shares of voting stock or other voting interests of such person or (ii) having the right to direct the general management of affairs of such person by contract or otherwise.

**22.4. Additional Documents.** The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be



reasonably necessary to implement, consummate and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Acquired Assets, and/or the successful processing by the Commission of the Assignment Application to be filed with it, as provided in Section 4 hereof.

22.5. **Knowledge.** As used herein with respect to any Person, the “knowledge” of that Person or words to that effect shall mean (a) with respect to any Seller, the actual knowledge of any director, manager, officer or management personnel of such Seller (including the Chief Engineers and Chief Operators of all Stations), and (b) with respect to Buyer, the actual knowledge of any director, manager, officer or management personnel of Buyer. The terms “know” and “knows” and like terms will have correlative meanings.

22.6. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall comprise one and the same instrument.

22.7. **Legal Actions.**

(a) If either Sellers or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorneys’ fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy as a result of the breach of this Agreement or any if its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by the law.

(b) **EACH OF THE PARTIES HERETO HEREBY VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING**

**BROUGHT IN CONNECTION WITH THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY. NO PARTY HAS AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

**(c) EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AS WELL AS TO THE JURISDICTION OF ALL COURTS TO WHICH AN APPEAL MAY BE TAKEN FROM SUCH COURTS, FOR THE PURPOSE OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE NOTES OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

**(d) EACH PARTY HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS TO BRING ANY SUIT, ACTION OR OTHER PROCEEDING IN OR BEFORE ANY COURT OR TRIBUNAL OTHER THAN THE COURTS OF THE STATE OF DELAWARE AND COVENANTS THAT SUCH PARTY SHALL NOT SEEK IN ANY MANNER TO RESOLVE ANY DISPUTE OTHER THAN AS SET FORTH HEREIN OR TO CHALLENGE OR SET ASIDE ANY DECISION, AWARD OR JUDGMENT OBTAINED IN ACCORDANCE WITH THE PROVISIONS HEREOF.**

**(e) EACH OF THE PARTIES HERETO HEREBY EXPRESSLY WAIVES ANY AND ALL OBJECTIONS SUCH PARTY MAY HAVE TO VENUE, INCLUDING THE INCONVENIENCE OF SUCH FORUM, IN ANY OF SUCH COURTS. IN ADDITION,**

**EACH OF THE PARTIES CONSENTS TO THE SERVICE OF PROCESS BY PERSONAL SERVICE OR ANY MANNER IN WHICH NOTICES MAY BE DELIVERED HEREUNDER IN ACCORDANCE WITH SECTION 11.4.**

(f) **Governing Law.** The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of Delaware without giving effect to the conflict or choice of law provisions thereof that would give rise to the application of the domestic substantive law of any other jurisdiction.

22.8. **Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

22.9. **Time is of the Essence.** Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

22.10. **Severability.** If any term or provision of this Agreement shall, to any extent, be declared to be invalid, illegal or unenforceable, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable.

22.11. **Publicity.** Sellers and Buyer agree that all public announcements relating to this Agreement or the transactions contemplated hereby, including announcements to employees, will be made only as may be agreed upon by the parties or as required by law.

22.12. **Singular/Plural, Gender, Person.** Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes any and all genders. The term “Person” as used in this Agreement shall

mean an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity.

**22.13. Disclosure in Exhibits and Schedules.** Notwithstanding anything to the contrary contained in this Agreement or in any of the Exhibits and Schedules, any information disclosed in one Exhibit or Schedule, as the case may be, shall be deemed to be disclosed in all Exhibits and Schedules.

**22.14. Confidentiality**

22.14.1. Buyer agrees that prior to Closing, Buyer and its agents and representatives shall not use for its or their own benefit (except when required by law and except for use in connection with Buyer's financing of the transaction and Buyer's investigation of the Stations and their assets in connection with this Agreement), and shall hold in strict confidence and not disclose: (i) any data or information relating to Sellers, their affiliates or the Stations obtained from Sellers or any of their directors, officers, employees, agents or representatives in connection with this Agreement; or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Station, in each case which is confidential in nature and not generally known to the public (clauses (i) and (ii) together, "Sellers' Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Buyer shall return to Sellers all data, information and any other written material obtained by Buyer from Sellers in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Sellers' Information to any third party or using any of Sellers' Information for its own benefit or that of any other person.

22.14.2. Sellers agree that Sellers and their respective agents and representatives shall not use for their own benefit (except when required by law and except for use in connection with their respective investigations and reviews of the Buyer in connection with this Agreement), and shall hold in strict confidence and not disclose: (i) any data or information relating to Buyer or its affiliates obtained from Buyer, or from any of its directors, officers, employees, agents or representatives, in connection with this Agreement; or (ii) any data and information relating to the business, customers, financial statements, conditions or Operations of the Buyer which is confidential in nature and not generally known to the public (clauses (i) and (ii) together “Buyer’s Information”). If the transactions contemplated in this Agreement are not consummated for any reason, Sellers shall return to Buyer all data, information and any other written material obtained by Sellers from Buyer in connection with this transaction and any copies, summaries or extracts thereof and shall refrain from disclosing any of Buyer’s Information to any third party or using any of Buyer’s Information for its own benefit or that of any other person.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized as of the day and year first above written.

**SELLERS:**

**Commonwealth Communications, LLC**

By: Commonwealth II, LLC, its sole member

By: ALTA/Commonwealth, Inc., its Manager


By:   
Claude C. Turner (a/k/a Dex Allen)  
President

**Commonwealth License Subsidiary, LLC**

By: Commonwealth Communications, LLC, its sole member

By: Commonwealth II LLC, its sole member

By: ALTA/Commonwealth, Inc., its Manager

By:   
Claude C. Turner (a/k/a Dex Allen)  
President

**BUYER:**

**Cherry Creek Radio LLC**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized as of the day and year first above written.

**SELLERS:**

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By: Commonwealth II, LLC, its sole member

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President

**Commonwealth License Subsidiary, LLC**

By: Commonwealth Communications, LLC, its sole member

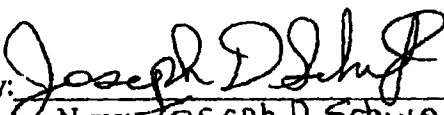
By: Commonwealth II LLC, its sole member

By: ALTA/Commonwealth, Inc., its Manager

By: \_\_\_\_\_  
Claude C. Turner (a/k/a Dex Allen)  
President

**BUYER:**

**Cherry Creek Radio LLC**

By:  \_\_\_\_\_  
Name: JOSEPH D. SCHWARTZ  
Title: PRESIDENT/CEO

**SELLER BENEFICIARIES:**

A handwritten signature in black ink, appearing to read "Claude C. Turner", is written over a horizontal line.

Claude C. Turner (a/k/a Dex Allen)

**Alta Communications VII, L.P.**

**By: Alta Communications VII Managers, LLC, its general partner**

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



**SELLER BENEFICIARIES:**

---

Claude C. Turner (a/k/a Dex Allen)

**Alta Communications VII, L.P.**

By: Alta Communications VII Managers, LLC, its general partner

By:  

Name: TIMOTHY DIBBLE

Title: MEMBER