

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT made and entered into this 15<sup>th</sup> day of October, 2004, by and among WOTM, LLC, an Alabama limited liability company ("WOTM" or "Buyer") and James Donald Earley ("Earley"), an individual, and WOTM-TV19, Inc., an Alabama corporation ("TV19") collectively hereinafter referred to as the Seller ("Seller").

### RECITALS

**WHEREAS**, Earley is the sole owner of the licenses, permits and authorizations issued by the Federal Communications Commission ("FCC") relating to Class A television station authorized to transmit on television channel 19 at Montevallo, Alabama (the "Station"); and

**WHEREAS**, TV19 owns transmitting equipment and other broadcast related assets and equipment in connection with the operation of the Station; and

**WHEREAS**, Seller is willing to sell to Buyer and Buyer is willing to purchase from Seller all of the assets, business, properties and rights of Seller related to the conduct of the Station on the terms and subject to the conditions set forth herein; and

**WHEREAS**, subject to the prior consent of the FCC, Buyer desires to acquire the Station and all of the broadcast related assets and licenses used or useful in the operation of the Station, and Seller desires to transfer such assets to Buyer.

**NOW THEREFORE**, in consideration of the Recitals, mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

### ARTICLE I PURCHASE AND SALE

**1.1 Licenses.** At the Closing (as defined in Section 7.1), Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase and accept, the FCC Class A television license and any other authorizations associated with the Station which are by their terms transferable or assignable (collectively, the "Licenses") and all of Seller's right, title and interest in the call sign " WOTM-LP". A list of the Licenses (together with their expiration dates is set forth in Schedule 1.1 and copies of all the Licenses are attached thereto.

**1.2 Other Assets.** At the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase and accept, the following assets (collectively, the "Assets"):

(a) All tangible personal property of Seller used in the broadcasting operations of the Station including, but not limited to, all machinery, equipment, supplies, inventory, antenna installations, real property improvements, furniture, fixtures, furnishings, and those assets specifically listed in Schedule 1.2 hereto;

(b) All of Seller's trade accounts receivables relating to the Station including all other rights to payment from customers of Seller and the full benefit of all security for such

accounts or rights to payment, and any claim, remedy or other right related to any of the foregoing;

(c) All of Seller's right, title and interest in and to all service agreements, maintenance agreements, and express and implied warranties of third parties that are transferable and continue in effect with respect to any of the Assets;

(d) All books, records, manuals, files, correspondence, lists and reports of the Seller relating to the Station, whether on hard copy or stored on computer media, including but not limited to, those concerning customers and prospective customers of the Station, all engineering reports, advertiser lists, Station operating or program logs, public inspection file records, political broadcasting records, and documents filed with or received from the FCC;

(e) All intangible rights and property of Seller relating to the Station including Seller's name, know-how, trade secrets, confidential or proprietary information, customer lists, goodwill, and telephone and facsimile listings relating to the Business;

(f) All rights of Seller to deposits, prepaid expenses and claims for refunds relating to the Station;

(g) The Tower Lease (the "Tower Lease") between Seller and Lester Stephens;

(h) The Commercial Lease (the "Conner Lease") between Seller and Conner Properties;

(i) All other property and rights of every kind and nature (whether or not of a kind or nature referred to in clauses (a) through (h) above) owned or held by Seller which may be mutually agreed upon in writing by the parties either on or prior to the Closing;

(j) Except for the Tower Lease, the Conner Lease and the agreements described in Section 1.2(c) hereof, no contracts are to be assigned under this Agreement, nor will Buyer be obligated to accept and/or fulfill any such contracts. Unless otherwise agreed to by the parties subsequent to this Agreement, Seller will satisfy and/or terminate any contracts for the sale of time on the Station and any other contracts relating to the Station no later than the Closing Date (as defined in Section 7.1); and

(k) Notwithstanding anything herein to the contrary, the Assets shall not include the Seller's cash on hand as of the Closing Date and all other cash in the Seller's bank or savings accounts relating to the Business (collectively, the "Excluded Assets"). Such Excluded Assets shall remain the property of Seller after the Closing.

**1.3 Purchase Price.** The purchase price for all of the Licenses and Assets to be sold and purchased hereunder will, subject to Section 1.4(e) hereof, be Two Million Dollars (\$2,000,000) (the "Purchase Price").

**1.4 Method of Payment.** The Purchase Price will be paid as follows:

(a) **Earnest Deposit.** Buyer has made an Earnest Deposit with Seller in the amount of Six Hundred Thousand Dollars (\$600,000). At the Closing, the Earnest Deposit will be applied against the Purchase Price. The Seller shall fully refund the Earnest Deposit to the Buyer if this Agreement is terminated for any reason without the Closing having taken place and such refund shall be paid to the Buyer within ten (10) days following any such termination.

(b) **Cash Payment at Closing.** Subject to Section 1.4(e) hereof, Six Hundred Thousand Dollars (\$600,000) shall be paid to Seller at the Closing ("Closing Payment") by certified or bank cashier's check or wire transfer of immediately available federal funds to a bank account specified by Seller for a total cash payment of One Million Two Hundred Thousand Dollars (\$1,200,000) consisting of the Earnest Deposit plus the Closing Payment.

(c) **Assumption of South Trust Loan.** As of the Closing Date, the Buyer shall assume and undertake to pay, discharge and perform all of the obligations represented by that certain loan by SouthTrust Bank to Seller in the original amount of \$325,000 (the "SouthTrust Loan").

(d) **Twenty-Five Percent Interest in WOTM.** As of the Closing Date, the Buyer shall issue to the Seller a twenty-five percent (25%) membership interest in WOTM, free and clear of any mortgages, pledges, liens, claims, security interests, easements, or other encumbrances or charges.

(e) **Purchase Price Adjustment.** If the outstanding principal and accrued interest on the SouthTrust Loan as of the Closing Date exceeds \$300,000, then, to the extent that such principal and interest exceeds \$300,000, the Purchase Price shall be reduced dollar for dollar by the amount of such excess.

**1.5 Prorations.** All costs and expenses of the Station incurred, accrued or payable up until 11:59 p.m. on the day before the Closing Date shall be for the account of Seller and thereafter for the account of Buyer, and shall be prorated accordingly. For example, items including, but not limited to, accounts payable, power and utilities charges, ad valorem property taxes, FCC regulatory fees, wages, payroll taxes, vacation pay and other fringe benefits of employees of Seller who enter the employment of Buyer, rents and similar prepaid and deferred items, in respect of any period of time up until 11:59 p.m. on the day before the Closing Date, whether payable in installments or otherwise, shall be the responsibility of Seller, and amounts payable therefor in respect of any period of time thereafter shall be the responsibility of Buyer, and shall be prorated as required hereunder.

**1.6 Assumption of Liabilities.** Except for the South Trust Loan and for liabilities and obligations with respect to the Station arising or accruing after 11:59 p.m. on the day before the Closing Date, Buyer will not assume and will not be obligated to pay any of the liabilities or obligations of Seller, and Seller shall pay or provide for the payment of all such liabilities and shall perform and fulfill all such obligations.

**1.7 Purchase Price Allocation.** The Seller and the Buyer shall allocate the Purchase Price among the Assets in conformity with a written allocation to be mutually agreed upon by the Seller and the Buyer (the "Purchase Price Allocation") on or before the Closing Date. After the Closing Date, the Seller and the Buyer do hereby agree to use the allocation and fair market values specified in the Purchase Price Allocation for any IRS report, filing, tax return, tax audit or similar proceeding. Buyer shall prepare and deliver IRS Form 8594 to Seller within forty-five (45) days after the Closing Date to be filed with the IRS.

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

**2.1 Regulatory Representations and Warranties.** Seller represents and warrants to Buyer that the statements contained in this Article II are true, correct and complete as of the date of this Agreement, which representations and warranties will be deemed to have been made again at the Closing Date:

(a) **Licenses.** Seller is the sole holder of the Licenses, a complete list of which is set forth in Schedule 1.1 and true and correct copies of which are attached thereto. The Licenses constitute all of the licenses, permits and authorizations required for the Station to transmit on television channel 19 at the location and with the parameters set forth on the fact of the Licenses. The Licenses are valid and in full force and effect (for a normal full term in the case of FCC licenses), unimpaired by any action or inaction on the part of Seller or condition, which could result in the loss of the Class A status of the Station or have any adverse effect on the operation of the Station. No application, action or proceeding is pending for the renewal or modification of any of the Licenses, or any permits or authorizations (renewal application is due to be filed no later than December 1, 2004). Seller as a Class A Licensee has complied with all FCC Rules and Regulations applicable to Class A Television Stations, including, but not limited to, those rules identified in Section 73.6026 of the FCC's rules.

(b) **Call Sign.** Seller has the right to use the call sign WOTM-LP pursuant to the rules and regulations of the FCC and Seller knows of no challenge or claim with respect to its use of that call sign.

(c) **Good Standing.** Seller is an FCC licensee in good standing. Except for actions or proceedings affecting the broadcasting industry generally, (i) no action or proceeding is pending, or to the best of Seller's knowledge, threatened before the FCC or any other governmental authority to revoke, refuse to renew or materially and adversely modify the Licenses, and (ii) there is no pending, issued or outstanding or, to the best of Seller's knowledge, threatened by or before the FCC any investigations, cease and desist order, notice of violation, notice of apparent liability, notice of forfeiture, petition or complaint with respect to the Station or any of the Licenses.

(d) **Harmful Radiation.** The operation of the Station does not cause or result in exposure of workers or the general public to levels of radio frequency radiation in excess of the American National Standards Institute guidelines referred to in Section 1.1307 of the FCC's

Rules in effect as of the date hereof, and renewal of the Station Licenses would not constitute a major environmental action under Section 1.1307 of the FCC's rules.

(e) **Compliance with FCC Requirements.** The Station, its physical facilities, electrical and mechanical systems and transmitting and studio equipment are and have been operated in all material respects in accordance with the Communications Act of 1934, as amended. All obligations, reports, regulatory fees, statements and other documents required to be filed by Earley with the FCC relating to the Station, including, but not limited to, the Children's Television Programming Report (FCC Form 398) have been filed and are complete and accurate in all material respects and copies of same will be provided to Buyer at least thirty (30) days prior to Closing.

**2.2 Additional Representations and Warranties.** Seller represents and warrants to Buyer as follows, which representations and warranties will be deemed to have been made again at Closing Date:

(a) **Organization, Good Standing.** TV19 is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted, and TV19 is not in violation of any provisions of its Articles of Incorporation, as amended, and Bylaws, as amended.

(b) **Authority.** That (i) Seller has all requisite power and authority to enter into this Agreement, the Bill of Sale, Assignment and Assumption Agreement (as hereinafter defined), and each other agreement, document, and instrument required to be executed by TV19 in accordance herewith (collectively, the "Seller's Transaction Documents"), and to consummate the transactions contemplated hereby or thereby, (ii) the execution and delivery of the Seller's Transaction Documents by the Seller and the consummation by the Seller of the transactions contemplated hereby or thereby have been duly authorized by all necessary action on the part of the Seller, and (iii) the Seller's Transaction Documents have been, or upon execution and delivery will be, duly executed and delivered and constitute the valid and binding obligations of Seller's enforceable against Seller in accordance with its respective terms, subject as to enforceability to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and similar laws affecting creditors' rights and remedies generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(c) **No Conflicts.** The Seller does hereby represent and warrant that the execution and delivery by Seller of Seller's Transaction Documents do not and the performance by Seller of the transactions contemplated hereby or thereby will not violate any order, writ, judgment, injunction, decree, statute, law, rule, or regulation, of any governmental entity applicable to Seller or by which or to which any of the Assets is bound or subject.

(d) **Clear Title.** Except for the security interest in certain assets of the Seller granted to SouthTrust Bank in connection with the SouthTrust Loan (the "SouthTrust Encumbrance"), Seller has good, clear, record and marketable title to the Assets, free and clear

of any mortgages, pledges, liens, claims, security interests, easements, or other encumbrances or charges (collective, the "Encumbrances"); any Encumbrances now existing will be removed on or prior to delivery of the Assets to Buyer; and Buyer will acquire good, marketable and insurable title to, and all right, title and interest in, the Assets, free and clear of all Encumbrances, including, but not limited to, the SouthTrust Encumbrance.

**(e) Authority to Transfer.** All of the Assets to be transferred hereunder by Seller are transferable by Seller's sole act and deed, and, except for the consent of the FCC as to the transfer of the Licenses, no consent on the part of any other person or entity is necessary to validate the transfer to Buyer.

**(f) Transmitter.** The Station's transmitter is a type accepted and approved by the FCC and is capable of operating the Station in accordance with the terms of the Licenses.

**(g) Access and Information.** Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer, Seller shall (a) afford Buyer and its counsel, accountants, engineers and other authorized representatives full and free access, during regular business hours, to Seller's personnel, properties, contracts, governmental authorizations, books and records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Seller; (b) furnish Buyer and its counsel, accountants, engineers and other authorized representatives with copies of all such contracts, governmental authorizations, books and records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer and its counsel, accountants, engineers and other authorized representatives with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Seller. Buyer agrees to treat all information provided pursuant to this Section as confidential.

**(h) Condition of Assets.** All of the tangible personal property included in the Assets has been made available for inspection by Buyer and will, on the Closing Date, be in the same condition as existed at the time of the inspection, subject to ordinary wear and tear. Since December 31, 2003, (i) Seller has conducted the Station only in the ordinary course consistent with past practice, (ii) there has not occurred, and Seller has not incurred or suffered, any event, circumstance, or fact that could result in a material adverse effect on the Station, the Assets, the condition (financial or otherwise), results of operations or prospects of the Seller, and (iii) there has not occurred, and Seller has not incurred or suffered, any event, circumstance, or fact that materially impairs the Assets. All of the tangible Assets will be at Closing in good operating condition and will enable the Station to operate in compliance with the Licenses and in compliance in all material respects with all laws, regulations, and ordinances, including but not limited to the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC. No Assets have been or will be sold or disposed of unless replaced by similar assets of equal or greater value and the prior written consent of Buyer is obtained.

(i) **Operation of Business.** Subject to the provisions of this Agreement, Seller shall continue to operate the Station in the normal and ordinary course and shall use all reasonable efforts to avoid any acts which might have a material adverse effect on the Assets or the transaction contemplated herein. From the date of this Agreement, Seller will not, without Buyer's prior written consent, enter into any new or renewed or extended contract relating to the Station, which requires performance by the Station or Buyer after the Closing Date.

(j) **Employees.** Seller will terminate all employees of the Station or make arrangements for employees such that Buyer will have no responsibility to employ or other liability to, any employee of Seller after the Closing, except that if so specified by both parties. Seller has no knowledge of any basis for any claim(s) by past or current employees of Seller, or applicants for employment, that Seller or its management has discriminated based on each individual's race, sex, national origin, religion, ethnicity, handicap, or any other protected characteristics under applicable law. With regard to the Station, TV19 hereby represents and warrants that TV19 has no written, oral, or implied employment contracts with any employees, no union contracts, and no provisions requiring the payment of profit sharing, pension, retirement or other fringe benefits to any employee.

(k) **Third-Party Consents.** Seller will use Seller's best efforts to secure, as soon as practicable after the date hereof, all approvals or consents of third persons as may be necessary to consummate the transactions contemplated hereby.

### 2.3 Litigation.

(a) **Absence of Litigation.** There is no claim, action, suit, inquiry, judicial, or administrative proceeding, grievance or arbitration pending or, to the Knowledge of Seller, threatened against Seller or any of the Assets by or before any court, arbitrator or other governmental entity. To the Knowledge of Seller, there are no investigations relating to Seller or any of the Assets pending or threatened by or before any arbitrator or governmental entity. There is no judgment, decree, injunction, order, determination, award, finding or letter of deficiency of any governmental entity or arbitrator outstanding against Seller or any of the Assets. There is no claim, action, suit, inquiry, judicial or administrative proceeding, grievance or arbitration pending or, to the Knowledge of the Seller, threatened against the Seller relating to the transactions contemplated by this Agreement.

(b) **No Violation or Default.** Seller is not in violation of or in default with respect to any judgment, order, writ, injunction, decree or rule of any court, administrative agency, or governmental authority.

(c) **Compliance with Licenses, Laws, Regulations and Orders.** All references to Seller in this Section are limited to his operation of the Station and/or of his activities that affect the Station or the Assets; they exclude activities of Seller that do not affect the Station or the Assets. Seller is not charged with violating, or threatened with a charge of violating, or under investigation with respect to a possible violation of, any provision of any License or permit or any federal, state or local law or administrative ruling or regulation relating to any aspect of its business. All of the buildings, premises, transmitter sites, towers and

equipment used in connection with the operation of the Station on the Closing Date and owned or leased by Seller conform in all material respects with all building, zoning and other laws and regulations relating to such use.

## **2.4 Existence and Powers.**

**(a) No Bankruptcy/Insolvency Pending.** No voluntary or involuntary petition in bankruptcy, insolvency or to appoint or trustee of the property has been filed by or against Seller; Seller will not have on the Closing Date made any assignment for the benefit of its creditors, or admitted in writing its insolvency or that its property at fair valuation will not be sufficient to pay its debts, or permitted any judgment, execution, attachment or levy against it or against any of the Assets to remain outstanding or unsatisfied for more than thirty (30) days.

**(b) Taxes.** Seller has filed all United States, Alabama and local tax returns required to be filed with respect to the Station on or before the dates or which such returns were due to be filed, and there are not now any extensions of time in force with respect to the dates on which any of such returns were or are due to be filed. All such tax returns were prepared in all material respects in accordance with the requirements of applicable law. All United States, Alabama and local taxes with respect to Seller or the Station (including, without limitation, employees' income withholding taxes and property taxes) due and payable on or before the date hereof have been paid. There are no liens for federal, state or local taxes, assessments or government charges or levies upon any of the Assets or the Licenses. There are no claims for taxes pending against Seller or the Station, Seller does not know of any threatened claims for taxes, and there are not now in force any waivers or agreements with respect to Seller or the Station for the extension of time for the assessment of any tax.

**(c) Regulatory Approvals.** No consents, approvals or other authorizations are prescribed or required by any law, rule, or regulation for Seller to consummate the transactions contemplated by this Agreement except for the prior consent of the FCC.

**(d) Truth and Completeness of Statements.** No representation or warranty made by Seller herein contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained therein not misleading. Seller does not have knowledge of any development of any kind which would materially adversely affect the business or prospects of the Station.

**2.5 Leases.** The Tower Lease and Conner Lease (hereinafter in this Section 2.5 the "Leases") described in Section 1.2 hereof constitutes all of the lease agreements between the Seller and third parties relating to the operation of the Station or the Assets;

**(a)** Seller has performed each material term, covenant and condition of the Leases which is required to be performed by Seller at or before the date hereof, and no material default or event which with the passing of time or giving of notice or both would constitute a default on the part of the Seller;

(b) the Leases are in full force and effect, unimpaired by an acts or emissions of Seller, and constitute the legal and binding obligation of, and are legally enforceable against, Seller;

(c) Seller has furnished or made available to Buyer and true and complete copies of the Leases, including all amendments thereto.

**2.6 Brokers.** Neither this Agreement nor the sale and purchase of the Assets or any other transaction contemplated by the Agreement with induced or procured through any person acting on behalf of or representing Buyer as broker, finder, investment banker, financial advisor or in any similar capacity.

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

**3.1 Buyer's Representations and Warranties.** Buyer represents and warrants as follows, which representations and warranties will be deemed to have been made at the Closing:

**3.2 Buyer's Qualifications.** Buyer is a limited liability company organized and existing under the laws of the State of Alabama and has full power to purchase the Assets pursuant to the Agreement.

**3.3 Buyer's Power.** Buyer is not a party to any contract, lease or agreement and there is no litigation, court or administrative proceeding or investigation pending or, to Buyer's knowledge, threatened, that would in any way impair its ability to fulfill all of its obligations with this Agreement in a timely manner.

**3.4 Absence of Conflicting Laws and Agreements.** Neither the execution, delivery or performance of this Agreement by Buyer or the consummation of the sale and purchase of the Assets or any other transaction contemplated by the Agreement does or will, with or without giving notices or the lapse of time, or otherwise:

(a) conflict, result in a breach of, or constitute a default under, Buyer's limited liability company agreement, or any federal, state or local law, statute, ordinance, rule or regulation, or any court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer or its assets is bound;

(b) require the consent, waiver approval, permit, license, clearance or authorization of, or any declaration or filing with , any court or governmental or public agency other than the FCC;

(c) require the consent of any person under any material agreement, material arrangement or material commitment of any nature to which Buyer is a party or by which it is bound.

**3.5 Brokers.** Neither this Agreement nor the sale and purchase of the Assets or any other transaction contemplated by the Agreement with induced or procured through any person acting on behalf of or representing Buyer as broker, finder, investment banker, financial advisor or in any similar capacity.

**3.6 FCC Qualification.** Except for proceedings of general applicability to the television industry, Buyer knows of no facts that would, under the Communications Act or the present or pending rules or regulations of the FCC, disqualify Buyer as an assignee of the Licenses or as an owner or operator of the Station. Buyer is now and as of the Closing Date will be legally and financially qualified under the Communications Act to become the assignee of the Licenses.

**3.7 Financing.** The Buyer will have at the Closing adequate funds or financing to consummate the transactions contemplated by this Agreement.

#### **ARTICLE IV INDEMNIFICATION**

**4.1 Indemnification by Seller.** The Seller (for purposes of this Section 4.1, the "Indemnitor"), shall indemnify and hold the Buyer, and its respective officers, directors, shareholders, agents and employees harmless from and against any and all liabilities, losses, claims, damages, suits, costs, deficiencies and expenses (including reasonable attorneys' fees and disbursements through appeal) arising from or by reason of or resulting from (i) any breach by the Indemnitor of any representation, warranty, agreement or covenant contained in this Agreement and each document or other instrument furnished or to be furnished by the Indemnitor hereunder, (ii) any negligent or wrongful action by the Company occurring prior to the effective date of this Agreement, or (iii) the operation of the Station prior to 11:59 p.m. on the day before the Closing Date; provided, however, that such indemnification will be required only if written notice with respect to any matter for which indemnification is claimed is given.

**4.2 Indemnification by Buyer.** The Buyer (for purposes of this Section 4.2, the "Indemnitor"), shall indemnify and hold the Seller, and its respective officers, directors, shareholders, agents and employees harmless from and against any and all liabilities, losses, claims, damages, actions, suits, costs, deficiencies and expenses (including reasonable attorneys' fees and disbursements through appeal) arising from or by reason of or resulting from (i) any breach by the Indemnitor of any representation, warranty, agreement or covenant contained in this Agreement and each document or other instrument furnished or to be furnished by the Indemnitor hereunder, (ii) any negligent or wrongful action by the Buyer occurring subsequent to the effective date of this Agreement, or (iii) the operation of the Station on and after the Closing Date; provided, however, that such indemnification will be required only if written notice with respect to any matter for which indemnification is claimed is given.

**4.3 Indemnification Procedure.** In the event of any claim for indemnification, the claiming party will promptly notify the indemnifying party of the basis for the amount of the claim, including the name of any third party involved. The indemnifying party will have the right to be exercised within thirty (30) days of notice, if liability to a third party is involved, to defend or compromise such matter at the sole cost and expenses of the indemnifying party, and the indemnified party must cooperate fully in such defense. The indemnified party will not settle or compromise any claim by a third party for which it is entitled to indemnification without the prior consent of the indemnifying party, unless suit has been instituted and the indemnifying party has not assumed control of the suit.

**4.4 Cure of Default.** In the event either party seeks to terminate this Agreement because any breach or failure has not been cured or substantially satisfied or complied with by the Closing Date (other than Buyer's failure to pay the Purchase Price), and such failure is reasonably capable of being cured by the other party, such other party will have a period of twenty (20) days following written notice requesting such cure to effect the cure; and if necessary, the time for Closing will be extended from the Closing Date for that number of days necessary to provide said twenty (20) cure days, but not beyond the time when FCC approval of the transaction expires.

## **ARTICLE V RISK OF LOSS**

**5.1 Risk of Loss.** The risk of any loss, damage, impairment, confiscation, or condemnation of any of the Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing. In the event of any such loss, damage, impairment, confiscation, or condemnation, whether or not covered by insurance, Seller shall promptly notify the Buyer of such loss, damage, impairment, confiscation, or condemnation. Upon receipt of such notice, the Buyer may either (i) notify Seller of its intent to terminate the purchase of the Assets, or (ii) purchase the Assets for the Purchase Price herein, provided that Seller agrees to use any insurance or condemnation proceeds received with respect to the Assets as a credit against the Purchase Price.

## **ARTICLE VI APPLICATION FOR FCC APPROVAL**

**6.1 Filing and Prosecution of Application.** Seller will, within twenty (20) days from the date of this Agreement, file an application with the FCC requesting its written consent to the assignment of the Licenses of the Station from Seller to WOTM. Seller and WOTM will each proceed with due diligence and promptly take all steps necessary to the expeditious prosecution of such application to a favorable conclusion, using their best efforts throughout, subject to Section 6.3 hereof.

**6.2 Expenses.** The Buyer and the Seller will each bear one-half of the expenses in connection with the assignment of the Licenses, including but not limited to, the preparation of

the application sections of the FCC application and the prosecution of such application and all filing and other fees required by the FCC or any other governmental authority.

**6.3 Designation for Hearing.** If, for any reason, the application for assignment of the Licenses is designated for hearing by the FCC, or if the parties are notified by the FCC in writing of its intention to designate the application for hearing, Buyer, if not then in default, will have the right by written notice to the Seller within ten (10) days of such designation of notification, to terminate this Agreement, in which event neither party will have any further rights or liabilities hereunder except that Buyer shall be entitled to have the Earnest Deposit refunded to it within ten (10) days of such written notice by the Buyer to the Seller. If Buyer elects not to terminate within the allowed time, both parties will diligently prosecute the application through the hearing process and participate in the hearing as appropriate; but neither party will be obligated to pursue any appeal from an adverse decision at any level of the hearing or appeal process.

**6.4 Control Prior to Closing.** This Agreement will not be consummated until the FCC has given its written consent to the assignment of the Licenses of the Station to Buyer. Until the Closing, Buyer will not, directly or indirectly, control, or attempt to control, the operation of the station which shall remain the responsibility of Seller.

## **ARTICLE VII CLOSING**

**7.1 Closing.** Subject to the terms and conditions herein stated, the consummation of the transactions contemplated herein (the "Closing") shall take place within ten (10) business days after the FCC order approving the assignment of the Licenses from Seller to WOTM becomes a Final Order (the "Closing Date"). A Final Order is one which is in effect, not stayed, not the subject of a pending petition for reconsideration or review, and beyond the time for further administrative or judicial review or appeal. Notwithstanding the foregoing, Buyer may elect to close the transactions contemplated hereby after FCC approval of the assignment of the Licenses but before such approval becomes a Final Order by providing written notice to Seller. The Closing will take place within ten (10) business days after the date of such notice. The Closing will take place at the offices of Held, Hyde in Birmingham, Alabama, starting at 10:00 am local time, or such other place and time as mutually agreed.

### **7.2 Closing Date Deliveries of Seller.**

(a) At the Closing, Seller shall deliver to Buyer a signed document conveying all of its right, title, and interest in the Licenses and the call sign WOTM-LP along with its original FCC license documents as identified in Schedule 1.1 attached hereto.

(b) At the Closing, Seller shall also deliver to Buyer the following:

(i) A bill of sale, assignment and assumption agreement (the "Bill of Sale, Assignment and Assumption Agreement") for all the assets described in Sections 1.2(a) through 1.2(f) and 1.2(i) hereof. UCC clearance, dated not more than ten (10) days prior to the Closing

Date, from the office of the Secretary of State of Alabama, indicating that there are no security interests filed against the Assets, and a statement from the offices of the county Clerk of Jefferson County to the effect that there are no security interests filed against the Assets.

(ii) Certificates of Title in accord with applicable law whereby title to each item of the Assets which is a titled asset may be transferred, conveyed and assigned to the Buyer.

(iii) Assignment of the Tower Lease to Buyer.

(iv) Assignment of the Conner Lease to Buyer.

(v) A copy of the resolutions of the shareholders and board of directors of the Seller authorizing the execution, delivery and performance of this Agreement by Seller, and a certificate of the Secretary of Seller, dated the Closing Date, that such resolutions were duly adopted and are in full force and effect.

(vi) Such other documents or instruments as Buyer may reasonable request to carry out the provisions of this Agreement.

**7.3 Buyer's Obligations at Closing.** At the Closing, Buyer will deliver to Seller the following:

(a) Cashier's or certified checks payable to the order of Earley/TV19 or wire transfers of immediately available federal funds to a bank account specified by Seller in the total amount of Six Hundred Thousand Dollars (\$600,000), subject however to Section 1.4(e) hereof.

(b) Membership certificate or such other evidence satisfactory to Seller evidencing the issuance of a 25% membership interest in WOTM to Seller.

(c) A copy of the resolutions of the members of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer, and a certificate of the Manager of Buyer, dated the Closing Date, that such resolutions were duly adopted and are in full force and effect.

(d) All documents necessary to release the Buyer's security interest in Seller's stock in ACN, Inc., an Alabama corporation, which has been pledged in accordance with that certain Stock Pledge Agreement by and between Seller and Buyer dated of even date herewith.

(e) All documents necessary to release the Buyer's security interest in Seller's stock in WOTM-TV19, Inc., an Alabama corporation, which has been pledged in accordance with that certain Stock Pledge Agreement by and between Seller and Buyer dated of even date herewith.

(f) All documents necessary to release the Buyer's security interest in Joseph Vincent Earley's stock in WOTM-TV19, Inc., an Alabama corporation, which has been pledged in accordance with that certain Stock Pledge Agreement by and between Joseph Vincent Earley and Buyer dated of even date herewith.

(g) Such other documents or instruments as Seller may reasonably request to carry out the provisions of this Agreement.

## ARTICLE VIII CONDITIONS PRECEDENT

**8.1 Conditions Precedent to Obligations of Seller.** The obligation of Seller to consummate the transactions herein contemplated at the Closing shall be subject to the fulfillment of all of the following conditions precedent at or prior to the Closing (any of which may be waived by Seller at or prior to the Closing):

(a) Approval of the FCC of the assignment to Buyer of the Licenses with no condition materially adverse to Buyer, but without regard to whether the FCC order for such approval shall have become a Final Order (as defined in Section 7.1), and the consent, authorization or approval of any other governmental authority required for consummation of this Agreement;

(b) The representations and warranties of the Buyer set forth in this Agreement shall be true and correct in all material respects (provided that any representation or warranty of the Purchaser contained herein that is qualified by a materiality standard shall not be further qualified hereby) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date;

(c) Subject to Section 1.4(e) hereof, Payment of the \$600,000 Closing Payment at Closing and evidence of the issuance of a 25% membership interest in WOTM to Seller;

(d) The satisfaction at or prior to the Closing of all material obligations, conditions, and agreements of Buyer hereunder required to be performed at or before the Closing;

(e) No action or proceeding by or before any court or other governmental body will restrain, prohibit or invalidate the transactions contemplated by this Agreement; and

(f) The delivery of the certified resolutions and other documents required to be delivered by Buyer pursuant to Section 7.3.

**8.2 Conditions Precedent to Obligations of Buyer.** The obligation of Buyer to consummate the transactions herein contemplated at the Closing shall be subject to the fulfillment of all of the following conditions precedent (any of which may be waived by Buyer at or prior to the Closing) at or prior to Closing:

(a) A Final Order of the FCC (as defined in Section 7.1) approving the assignment to Buyer of the Licenses with no condition materially adverse to Buyer (except that the requirement of a Final Order may be waived by Buyer), and the consent, authorization or approval of any other government authority required for consummation of this Agreement;

(b) The Tower Lease shall have been assigned to Buyer which shall include, if necessary, at Seller's expense, any required landlord consents;

(c) The Conner Lease shall have been assigned to Buyer which shall include, if necessary, at Seller's expense, any required landlord consents.

(d) The satisfaction at or before the Closing of all material obligations, conditions, and agreements of Seller required to be performed at or before Closing;

(e) The representations and warranties of the Seller set forth in this Agreement shall be true and correct in all material respects (provided that any representation or warranty of the Seller contained herein that is qualified by a materiality standard shall not be further qualified hereby) as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date;

(f) No action or proceeding by or before any court or other governmental body will have been instituted or threatened by any governmental body or person whatsoever which seeks to restrain, prohibit or invalidate the transactions contemplated by this Agreement or which might affect the right of Seller to transfer free and clear title to the Licenses and Assets to Buyer.

## **ARTICLE IX TERMINATION; MISCELLANEOUS**

**9.1 Termination.** This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date, as follows:

(a) By mutual written agreement of Seller and Buyer; or

(b) By the Buyer, if any one or more of the conditions to the obligation of the Seller to close have not been fulfilled as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Buyer to comply with its obligations under this Agreement) and the Buyer has not waived such condition on or before the Closing Date; or

(c) By Seller, if any one or more of the conditions to the obligation of the Buyer to close have not been fulfilled as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date; or

(d) By Seller, if a material breach of this Agreement has been committed by the Buyer and such breach has not been waived;

(e) By the Buyer, if a material breach of this Agreement has been committed by Seller and such breach has not been waived;

(f) By the Buyer within sixty (60) days following this Agreement, if Buyer, in its sole discretion, is dissatisfied with the financial operation of Seller.

(g) By Buyer or Seller if the FCC has not issued by December 1, 2005 a Final Order (as defined in Section 7.1 approving the assignment of the Licenses from Seller to WOTM or if the Closing has not taken place by December 31, 2005 for any reason terminate this Agreement.

(h) If this Agreement terminates in accordance with Section 9.1 hereof, it shall become null and void and have no further force and effect, except that Seller shall refund the Earnest Deposit to Buyer within ten (10) days following such date of termination.

**9.2 Sales and Transfer Taxes.** All filing and recording fees and sales and other transfer taxes, if any, in connection with any instrument of conveyance or transfer delivered pursuant to this Agreement will be paid by Seller.

**9.3 Survival.** Regardless of any investigation at any time made by or on behalf of any party hereto or of any information any party may have in respect thereof, each of the representations and warranties made hereunder or pursuant hereto or in connection with the transactions contemplated hereby shall survive the execution and delivery of this Agreement for a period of two (2) years. To the extent that such are performable after the date hereof, each of the covenants and agreements contained in each of the Transaction Documents shall survive the execution and delivery of this Agreement indefinitely.

**9.4 Notices.** All notices and other communications hereunder must be in writing and will be deemed to have been duly given if delivered or mailed by express or certified first class mail, postage prepaid, evidenced by a postal delivery receipt, addressed as follows or to such other address(es) as either party may specify from time to time:

**If to Earley:**

James Donald Early  
3447 Lorna Lane  
Hoover, Alabama 35216

**With a Copy to:**

Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.  
Attn: David L. Hill, Esq.  
1120 20<sup>th</sup> Street, N.W.  
Suite 700, North Building  
Washington, D.C. 20036-3406

**If to Buyer:**

WOTM, LLC  
Attn: Michael A. Plaia

1012 Lake Heather Road  
Birmingham, Alabama 35242

**With a Copy to:**

Feld, Hyde, Wertheimer Bryant & Stone, P.C.  
Attn: James J. Coomes, Esq.  
2000 SouthBridge Parkway, Suite 500  
Birmingham, Alabama 35209

**9.5 Section Headings.** The headings contained in this Agreement are for reference purpose only and will not affect in any way the meaning or interpretation of this Agreement.

**9.6 Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and may not be changed, modified, amended, extended, terminated, waived or discharged except by an instrument in writing signed by the party against which enforcement is sought.

**9.7 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if the signature to each counterpart were on the same document, and all such counterparts will be deemed one and the same Agreement.

**9.8 Successors and Assigns.** No rights or obligations under this Agreement may be assigned by Seller without the consent of Buyer or by Buyer without the consent of Seller, which consents shall not be unreasonably withheld. If such assignment is made with the requisite consent, this Agreement will be fully binding on the successor, as well as any successor to either party by operation of law.

**9.9 Governing Law; Jurisdiction; Prevailing Party.** Except as governed by federal law, this Agreement will be governed by, construed (both as to validity and performance and enforced in accordance with the laws of the State of Alabama applicable to agreements made and to be performed wholly therein. If either party should bring legal action against the other under this Agreement, the prevailing party shall be entitled to recover from the other party all its costs and expenses relating to the action (including, without limitation, reasonable attorneys' fees, court costs and enforcement of judgment costs).

**9.10 Severability.** If any provision of this Agreement is declared unlawful or invalid by any authority of competent jurisdiction, the remainder of this Agreement will continue to be in effect, and this Agreement will be construed to effectuate the intent of the parties to the extent possible.

**9.11 Non-Material Breaches.** Except as provided for herein, only material breaches and defaults, and not non-material events or matters, should constitute a reason for termination of this Agreement.

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**9.12 Exhibits.** The Schedules and Exhibits to this Agreement are a material part hereof and should be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein.

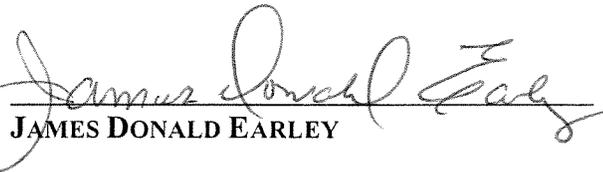
**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the date first written above.

**BUYER:**

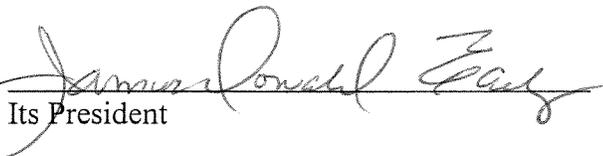
**WOTM, LLC**

By:   
Its Manager

**SELLER:**

By:   
**JAMES DONALD EARLEY**

**WOTM-TV19, INC.**

By:   
Its President