

**ASSET PURCHASE AGREEMENT  
RADIO STATIONS KQYB-FM, KSFF-FM & KHME-FM**

This Asset Purchase Agreement (hereinafter, the "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between Marathon Media Group, L.L.C., a Delaware limited liability company (hereinafter, the "Seller") and Family Radio, Inc., a Wisconsin corporation (hereinafter, the "Buyer").

**R E C I T A L S:**

**A.** The Seller is the holder of authorizations issued by the Federal Communications Commission (hereinafter, the "FCC") for radio stations KQYB-FM, licensed to Spring Grove, Minnesota, KSFF-FM, licensed to Caledonia, Minnesota, and KHME-FM, licensed to Winona, Minnesota, (hereinafter, the "Radio Stations").

**B.** The Buyer desires to purchase from the Seller substantially all of the assets used or held for use primarily in the operation of the Radio Stations, as more particularly described below in this Agreement, upon the terms and conditions set forth herein.

**C.** The Seller desires to sell said assets to the Buyer upon such terms and subject to such conditions.

**A G R E E M E N T:**

***NOW, THEREFORE,*** for and in consideration of the following mutual covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Buyer and the Seller hereby mutually covenant and agree as follows:

**ARTICLE I**

***Transfer of Assets, Payment of the  
Purchase Price and Exchange of Documents***

Upon the basis of the representations, warranties, covenants and agreements and on the terms and subject to the conditions set forth in this Agreement, on the Closing Date (as defined in Section 1.8):

**1.1 Assets.** The Seller shall sell and the Buyer shall purchase substantially all of the tangible and intangible assets owned or leased by the Seller and used or held for use primarily in connection with the operation of the Radio Stations. The assets shall not

include cash, cash equivalent assets, or similar type of investments of Seller, such as certificates of deposit, Treasury bills and other marketable securities or duplicate records of the Seller; nor shall it include the accounts receivable of the Radio Stations or other assets including, but not limited to, those described in the attached Schedule 1.1 (the "Retained Assets"). The assets Seller shall sell and Buyer shall purchase are described as follows (hereinafter, collectively the "Assets"):

(a) ***Personal Property and Equipment.*** All right, title and interest in, to and under all personal property and equipment owned or leased by the Seller and used or held for use primarily in connection with the operation and programming of the Radio Stations, including, but not limited to, the transmitters, transmitting towers, antennas and supporting guy wires and anchor points, studio equipment, office equipment, record libraries, records, cartridge tapes, compact discs, news archives, promotional materials, and all other materials of a commercial nature for use in said operations, together with any replacements thereof and additions thereto made between the date hereof and the Closing Date. A substantially correct and complete inventory summary of these materials by category and quantity is set forth in the attached **Schedule 1.1(a)**. Not less than five (5) business days prior to the Closing Date, the Seller shall deliver to the Buyer an updated listing of any changes to Schedule 1.1(a), which, as so updated, will be substantially correct and complete. Any material changes shall be subject to the express approval of the Buyer, which approval shall not be unreasonably withheld.

(b) ***Advertising Contracts.*** All right, title and interest in, to and under the advertising contracts primarily related to the conduct of the Radio Stations and listed on Schedule 1.1(b). Not less than five (5) business days prior to the Closing Date, the Seller shall deliver to the Buyer an updated list of any changes to Schedule 1.1(b) which are necessary to reflect the termination, expiration or entry into contracts, arrangements and programs occurring following the date hereof. With respect to such advertising contracts, Seller will refrain from making contract rate changes from levels as they exist on the date of this Agreement in excess of 10% from present rates. If Seller accepts prepayments of such advertising contracts prior to Closing, the amount of such prepayments shall be prorated and passed to the Buyer at Closing as a credit against the Purchase Price. Advertising Contracts shall include barter agreements, subject to the provisions of Section 1.6(b)(vi) of this Agreement.

(c) ***Operation and Programming Contracts.*** All right, title and interest in, to and under the contracts and agreements entered into by the Seller primarily in connection with the normal and customary operation and programming of the Radio Stations (the "Contracts"), and all such contracts and agreements entered into by the Seller in the normal and customary operation and programming of the Radio Stations between the date hereof and the Closing Date (without material deviation from existing programming of the Radio Stations) will be assumed by the Buyer. The list of such Contracts as contained in attached Schedule 1.1(c) is a complete and current list of such Contracts. Where the consent to assignment of

other parties of said contracts and agreements is required, the Seller agrees to use commercially reasonable efforts to obtain any required consent in writing by the Closing Date. The Seller shall provide the Buyer with a copy of each such presently existing contract and agreement prior to the execution of this Agreement.

Not less than two (2) business days prior to the Closing Date, the Seller shall deliver to the Buyer an updated list of any changes to Schedule 1.1(c) (together with copies of such contracts and agreements) which are necessary to reflect the termination, expiration or entry into of such contracts and agreements, occurring following the date of execution hereof. Prior to the execution of this Agreement, Buyer will designate, by notation on Schedule 1.1(c), which contracts listed thereon, if any, the valid and enforceable assignment of which are a condition precedent to Buyer's obligation to consummate the transaction.

(d) **Licenses.** All right, title and interest in, to and under permits, authorizations or licenses issued to the Seller by the FCC and any other governmental authority in connection with the operation of the Radio Stations, (the "Licenses" that are listed in the attached **Schedule 1.1(d)**) together with all FCC logs, reports and records relating thereto, and any renewals or modifications of such items between the date hereof and the Closing Date, together with all of Seller's interest in any applications filed by the Seller relating to the Radio Stations and pending on the Closing Date. Not less than two (2) business days prior to the Closing Date, the Seller shall deliver to the Buyer a listing of any changes to Schedule 1.1(d). Schedule 1.1(d) is (and as updated, will be) a correct and complete listing of all such Licenses.

(e) **Real Property and Real Property Leases.** All right, title and interest in, to and under all real property and leases and subleases of real property (the "Real Property Leases"), easements, licenses, right of access, rights of way and other real property interests which are held or owned by the Seller and used or held for use primarily in the operation of the Radio Stations, between the Seller and others, together with a copy of each such lease and sublease. A complete legal description of such real estate and a complete and accurate list of such leases and subleases and other real property rights is set forth in and attached to the attached **Schedule 1.1(e)**. To the extent specified by Buyer prior to execution of this Agreement, by notation on Schedule 1.1(e), where the consent of other parties to the Seller's assignment of any Real Property Leases or other real property rights to the Buyer is required, the Buyer's obligation to close is expressly conditioned upon Seller successfully obtaining such consent.

(f) **Intellectual Property.** All right, title and interest in, to and under the call letters "KQYB", "KSFF", "KHME", trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, and slogans or licenses to use same, all Radio Stations' websites, domain names and other internet assets, together with any associated goodwill (including all business goodwill of the Radio Stations) and any additions thereto primarily related to the Radio Stations between the date hereof

and the Closing Date are listed on the attached **Schedule 1.1(f)**, which Schedule is accurate and complete in all material respects. Any changes shall be made only in the ordinary and normal course of business.

(g) **Programs and Programming Material.** All programs and programming materials, in whatever form, all market studies, promotional or advertising materials used or held for use primarily in the operation of the Radio Stations and all copyrights therefore. A complete and accurate list of all material programs and programming material held for use in the operation of the Radio Stations is set forth in the attached **Schedule 1.1(g)**. Not less than two (2) business days prior to the Closing Date, the Seller shall deliver to the Buyer an updated listing of any material changes to Schedule 1.1(g), which, as so updated, will be correct and complete as to material items and such changes shall be subject to the express approval of the Buyer if such changes are outside of the ordinary and normal course of business.

(h) **Other Assets.** Any and all assets not specifically identified on the aforementioned Schedules 1.1(a) through 1.1(g) but which are of the same general category and nature as the assets listed on the respective Schedules and are owned or leased by the Seller and used or primarily related to the operation of the Radio Stations, whether or not located on the premises where the principal operations of the Radio Stations are conducted as of the date of execution of this Agreement, as set forth in the attached **Schedule 1.1(h)**.

At the Closing, the Assets shall be transferred to the Buyer free and clear of all liens, liabilities and encumbrances whatsoever, except Permitted Liens (as defined in Section 1.9(c)).

## 1.2 **Purchase Price.**

(a) The Buyer agrees to purchase all of the Assets from the Seller and the Seller agrees to sell all of the Assets to the Buyer for the Purchase Price of Three Million Nine Hundred Thousand and no/100 Dollars (\$3,900,000.00) (hereinafter, the "Purchase Price").

(b) The parties hereto shall allocate the Purchase Price between tangible and intangible assets on a basis as detailed as is reasonable according to the business standards of this industry. Attached hereto as Schedule 1.2(b) is the allocation of the Purchase Price as proposed by the Buyer. The parties and their accountants shall then promptly negotiate and mutually agree upon the final allocation to be delivered at Closing. In the event that the Seller and Buyer are unable to reach an agreement on allocation by the time of the Closing Date, they will jointly select a qualified, independent and nationally recognized appraiser of broadcast properties to determine the appropriate allocation (provided that the engagement of such appraiser will not commence prior to the FCC Consent (as defined in Section 7.1) becoming a Final Order), and that appraiser's decision shall

be binding upon the parties. The fees and expenses of the appraiser shall be borne equally by Buyer and Seller. The parties shall file federal and other income tax returns reflecting the allocation so determined.

### **1.3 *Earnest Money; Escrow Agent; Payment of Purchase Price.***

(a) On the date of execution of this Agreement and the Escrow Agreement (referred to in Section 1.3(b) below), the Buyer shall deposit into escrow pursuant to the terms of said Escrow Agreement, its Earnest Money payment in the amount of Two Hundred Thousand and no/100 Dollars (\$200,000.00) (the "Escrow" or the "Earnest Money"). Such payment shall be made payable to the order of Theodore C. Widder, Esq., in his capacity as Escrow Agent by Buyer's certified or bank check, subject to collection.

(b) The Escrow Agent shall be Theodore C. Widder, Esq., a Madison, Wisconsin attorney who shall represent and covenant that he is neutral and independent from both Buyer and Seller and their respective attorneys. The escrowed Earnest Money payment shall be deposited by the Escrow Agent at Associated Bank South Central, 1720 Monroe Street, Madison, Wisconsin, subject to the terms of the Escrow Agreement attached hereto as **Schedule 1.3(b)** (the "Escrow Agreement"). Associated Bank South Central is a federally insured, Wisconsin chartered banking corporation. Interest earned on the Escrow balance shall accrue to the benefit of the Buyer. If this Agreement is terminated without the Closing of the transaction contemplated herein, the Earnest Money, together with all accrued interest, shall be paid to the Buyer or to the Seller as provided in Article IX of this Agreement and the terms of the Escrow Agreement.

(c) On the Closing Date as defined herein, the Buyer shall pay to the Seller, or its assignee, by certified or official bank check payable to the Seller (in each case subject to collection) or by wire transfer, the Earnest Money (together with all accrued interest) and the Purchase Price, subject to appropriate deduction and credits for the Earnest Money, earned interest on the Earnest Money, prorated real and personal property taxes, other items in the Assets which are appropriate to prorate and other mutually agreed items.

### **1.4 *Proration of Income and Expenses.***

(a) ***Adjustment Time and Items.*** Except as otherwise provided herein, all income and expenses arising from the conduct of the business and operation of the Radio Stations prior to the Closing Date shall be prorated between the Buyer and the Seller in accordance with generally accepted accounting principles as of 11:59 p.m., Minnesota time, on the date immediately preceding the Closing Date. Such prorations shall include, without limitation, all ad valorem, real estate and other property taxes, business and license fees, music and other license fees (including any retroactive adjustments thereof, which retroactive adjustments shall not be subject to the sixty day limitation set forth in Section 1.5(b) hereof), utility

expenses, rents and similar prepaid and deferred items attributable to the ownership and operation of the Radio Stations. Salaries, wages, sales commissions, fringe benefit accruals, vested leave time (i.e. earned sick leave and vacation) and termination or severance pay for employees arising or accruing prior to the Closing Date shall not be pro-rated but shall be the sole responsibility of the Seller.

(b) **Determination.** The prorations contemplated by this Section, to the extent practicable, shall be made as set forth in subsection (a), above, and shall be implemented on the Closing Date. As to those prorations not capable of being ascertained on the Closing Date, an adjustment and proration as of the time stated in subsection (a) above shall be made within sixty (60) days of the Closing Date. In the event of any disputes between the parties as to such adjustments, the amounts not in dispute shall nonetheless be paid at such time and any disputed amounts shall be submitted to the accounting firms of the respective parties which shall endeavor to resolve all disputed amounts to the mutual satisfaction of the parties. If the parties' accountants cannot reach such agreement, those accountants shall choose a third accountant who shall then make final and binding adjustments and prorations of any amounts remaining in dispute. The fees and expenses of each party's accounting firm shall be paid by each such party and the fees and expenses of the "third accountant" shall be paid one-half (1/2) by the Seller and one-half (1/2) by the Buyer.

#### 1.5 **Retained Assets; Accounts Receivable; Assumed Liabilities.**

(a) **Retained Assets; Accounts Receivable.** All right, title and interest in, to and under all trade (cash) Accounts Receivable (the "Accounts Receivable") for the Radio Stations shall remain with and be retained by the Seller for such collection and disposition as Seller decides, subject to the provisions of Section 11.15. The Seller shall also retain all right, title and interest in, to and under all cash on hand and cash equivalent assets for the Radio Stations. (Collectively the "Retained Assets").

(b) **Assumed Liabilities.** On the Closing Date, the Buyer shall assume and undertake to pay, satisfy or discharge when due the following liabilities, obligations and commitments of the Seller arising or to be performed on or after the Closing Date under:

- (i) personal property and equipment leases listed on Schedule 1.1(a), as supplemented;
- (ii) the advertising contracts listed on Schedule 1.1(b), as supplemented;
- (iii) the Contracts listed on Schedule 1.1(c), as supplemented;
- (iv) the Licenses set forth on Schedule 1.1(d), in each case as of the date hereof, as supplemented;

- (v) the real property and Real Property Leases listed on Schedule 1.1(e), as supplemented;
- (vi) the barter agreements, except that, the parties agree that barter obligations assumed by Buyer will not exceed Five Thousand and no/100 Dollars (\$5,000.00) on the Closing Date; and
- (vii) any other contracts entered into between the date hereof and the Closing Date that are usual and customary in the operation and programming of the Radio Stations, subject to the provisions of Section 1.1(c) of this Agreement (collectively, the "Assumed Liabilities").

#### 1.6 ***Transfer of Assets and Delivery of Documents.***

(1) At the Closing, the Seller shall deliver, or cause to be delivered, to the Buyer the following documentation:

(a) ***Bill of Sale.*** A bill of sale in the form attached hereto as **Schedule 1.6(1)(a)** ("Bill of Sale"), transferring to the Buyer all of the personal property and equipment identified on Schedules 1.1(a) and 1.1(h), including, but not limited to, the transmitting towers and antennas with existing hardware, guy wires and anchor points listed on Schedules 1.1(a) and 1.1(h) all free and clear of all liens and encumbrances.

(b) ***Warranty Deeds.*** Warranty deeds in the forms attached hereto as **Schedule 1.6(1)(b)** ("Warranty Deeds") in recordable form and stating that title to the owned real estate described on Schedule 1.1(e) is free and clear of all liens and encumbrances, except for easements, restrictions, rights-of-way of record (none of which shall prevent or restrict the continuation of the present use of said real estate) and property taxes for the current year which are not yet due and payable (the "Permitted Real Estate Liens").

(c) ***Assignment and Assumption Agreements.*** Assignment and Assumption Agreements in the forms attached hereto as **Schedule 1.6(1)(c)** ("Assignment and Assumption Agreements"), assigning to the Buyer and by which the Buyer assumes, the liabilities, obligations and commitments of the Seller arising or to be performed on or after the Closing Date under:

- (i) personal property and equipment listed on Schedule 1.1(a);
- (ii) the advertising contracts listed on Schedule 1.1(b);
- (iii) the Contracts on Schedule 1.1(c);
- (iv) the Licenses set forth on Schedule 1.1(d), in each case as of the date hereof;
- (v) the real property and Real Property Leases on Schedule 1.1(e);

- (vi) the barter agreements and obligations up to but not exceeding the amount of Five Thousand and no/100 Dollars (\$5,000) on the Closing Date; and
- (vii) any other contracts entered into between the date hereof and the Closing Date that are usual and customary in the operation and programming of the Radio Stations, subject to the provisions of Section 1.1(c) of this Agreement.

The Seller shall also use commercially reasonable efforts to obtain any consents required from the parties to those contracts and agreements being assigned hereunder which by their terms require such consents for assignment to the Buyer, and shall deliver to the Buyer all consents so obtained, subject to the conditions established by Sections 1.1(c) and 1.1(e).

(d) ***Covenant Not to Compete.*** A non-competition agreement in the form and containing the provisions set forth in and attached as **Schedule 1.6(1)(d)**.

(e) ***Certificate of General Partner of Manager.*** A certificate, dated as of the Closing Date, by the manager of the Seller approving the execution and delivery of this Agreement and each of the other documents authorizing the consummation of the transactions contemplated hereby and thereby, together with copies of the Seller's certificate of formation and all certificates of amendment.

(f) ***Certificate of Officer.*** A certificate, dated as of the Closing Date, by an officer of the Seller to the effect that the representations and warranties of the Seller contained in this Agreement are true, accurate and complete in all material respects on and as of the Closing Date as if made on and as of that date, that, to Seller's knowledge (as to pending matters as to which Seller has not been served with process), there is no litigation, claim or proceeding pending against the Seller with respect to the transactions described in this Agreement, and that the Seller has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(g) ***Evidence of Discharge of Liens.*** Evidence of discharge of all liens on the Assets or the Radio Stations except the Permitted Real Estate Liens and the Permitted Liens.

(h) ***Opinion of the Seller's Counsel.*** An opinion of the Seller's counsel in the form of **Schedule 1.6(1)(h)** attached hereto.



(i) **Records.** To the extent available, originals or copies of all program, operations, transmissions, or maintenance logs and all other records required to be maintained by the FCC with respect to the Radio Stations, including the public file for each of the Radio Stations, left at each of the Radio Stations and thereby delivered to Buyer (it being understood and agreed that Seller may retain copies of such of the records included within the Assets as it may require for tax and other legal compliance purposes).

(j) **Allocation of Purchase Price.** Schedule 1.2(b) reflecting the parties' final agreement with respect to the allocation of the Purchase Price.

(k) **Other Documents.** Such other documents, instruments and agreements as the Buyer shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for the Buyer.

(2) At the Closing, the Buyer shall deliver or cause to be delivered to the Seller the following money and documentation:

(a) **Purchase Price.** The amount of the Purchase Price as defined in Section 1.2 (a) and as adjusted pursuant to the terms of Sections 1.3(c), 1.4(a) and (b) of this Agreement by certified or official bank check or wire transfer payable to the Seller.

(b) **Assignment and Assumption Agreements.** The Assignment and Assumption Agreements.

(c) **Certificate of Secretary.** A certificate, dated as of the Closing Date, by the Secretary of the Buyer certifying the resolutions of the Board of Directors and shareholders of the Buyer approving the execution and delivery of this Agreement and each of the other documents authorizing the consummation of the transactions contemplated hereby and thereby, together with copies of the Buyer's Articles of Incorporation, Bylaws (each as amended) and a listing of the Buyer's officers and directors.

(d) **Certificate of Officer.** A certificate, dated as of the Closing Date, by an officer of the Buyer to the effect that the representations and warranties of the Buyer contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date, that there is no litigation claim or proceeding pending against the Buyer with respect to the transactions described in this Agreement, and that the Buyer has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(e) **Allocation of Purchase Price.** Schedule 1.2(b) accepted by both parties hereto (see Section 1.6(1)(j)) as reflecting their final agreement with respect to the allocation of the Purchase Price.

(f) **Opinion of the Buyer's Counsel.** An opinion of the Buyer's counsel in the form of **Schedule 1.6(2)(f)** attached hereto.

(g) **Other Documents.** Such other documents, instruments and agreements as the Seller shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for the Seller.

1.7 **Closing.** The Closing, subject to the conditions set forth herein, shall take place at the law offices of Lathrop & Clark LLP, 740 Regent Street, Suite 400, Madison, WI 53701-1507, or at such other place as the parties may mutually agree. For purposes of this Agreement, the "Closing" shall mean and describe the full consummation of the transaction described herein. The "Closing Date" shall mean a date fixed by the Buyer and Seller upon which Closing shall occur and which is no more than ten (10) days after the date on which the FCC Consent (as defined in Section 7.1 hereof) shall have become a Final Order provided however that the Buyer may elect to waive finality by providing written notice to Seller; in which event, the Closing Date shall be the fifteenth business day after the date such notice is given, or at such earlier date that the Seller and Buyer agree. At the request of either party to the other, by written notice to such party and to the Escrow Agent given before or upon the Closing Date, the Closing Date shall be extended by up to five (5) business days in order to prevent an anticipated default or to cure an actual default. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to the assignment of a license issued by the FCC which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for reconsideration or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired.

1.8 **Employer and Employee Benefits.** Attached hereto as **Schedule 1.8** is a correct and complete listing of all employees of the Seller, working at, or primarily in connection with, the Radio Stations (excluding members of Seller's management based in Chicago, Illinois), setting forth their respective positions, job descriptions, salaries or wages, and all other forms of material compensation paid to them for their work at the Radio Stations. Upon written notice to the Seller, and at mutually agreeable times, the Seller shall permit the Buyer to meet with the employees listed on Schedule 1.8 prior to the Closing Date. The Buyer may, at its option, extend offers of employment to all or any of the Seller's employees listed on Schedule 1.8 effective on the Closing Date. The Seller will not take any action to preclude or discourage any of the Seller's employees listed on Schedule 1.8 from accepting any such offer of employment extended by the Buyer.

1.9 **Conduct of Business Prior to Closing.** Between the date hereof and the Closing Date, the Seller shall have complete control and supervision of and sole responsibility for the Radio Stations and their operation and during such period and will conduct the business of the Radio Stations in the ordinary course, consistent with its past practices, including but not limited to the following:

(a) the Assets will be maintained in reasonable good working condition so that as of the Closing Date they shall satisfy all the warranties in all material respects on the part of the Seller as set forth herein, subject to reasonable wear and tear;

(b) no Assets used or intended for use in the operation of the Radio Stations will be sold, transferred or otherwise disposed of except for dispositions made in the normal and ordinary course of business. In addition, Seller shall not solicit or entertain any offer from any other party for the purchase of some or all of the Assets, except as permitted under the preceding sentence;

(c) Seller shall not create, suffer or permit the creation of any mortgage, conditional sales agreement, security interest, lien, hypothecation, pledge, encumbrance, restriction, liability, charge, claim or imperfection of title on any of the Assets or with respect thereto, except if a lien claim is the result of work in process on any Asset which is not completed and paid for by the Closing Date, any resulting lien shall be a "Permitted Lien" for which Seller shall remain liable and funds sufficient to pay such lien in full shall be set aside at Closing in an escrow account to assure payment of the lien in full in a timely fashion. A Permitted Lien shall include a Permitted Real Estate Lien as defined in section 1.6(b);

(d) Seller shall not cancel, modify, alter, amend, encumber or in any way discharge, terminate or impair any advertising contracts, leases or other agreements pertaining to the normal operation of the Radio Stations except in the normal and ordinary course of business and the Seller shall continue all promotional efforts for the Radio Stations in a manner consistent with the normal operations of the Radio Stations prior to the execution of this Agreement;

(e) the Seller will take all commercially reasonable actions to preserve and maintain the Licenses and the intellectual property listed on Schedule 1.1(f) and will operate the Radio Stations in good faith and in a manner consistent with the normal and prudent operation of commercial broadcast stations and in compliance in all material respects with all provisions of the FCC Licenses, Communications Act and the rules and regulations of the FCC;

(f) the Seller will not alter in any material respect its credit and collection policies or its accounting policies and will keep and preserve its business records in accordance with its past business practices;

(g) the Seller will not alter the compensation or benefits available to its employees with respect to the Radio Stations and as listed on Schedule 1.8 except in the normal and customary course of business;

(h) the programming of the Radio Stations will not be materially altered from the current formats;

(i) the Seller will use commercially reasonable efforts to preserve relationships with employees, advertisers, vendors, and others currently dealing with the Radio Stations;

(j) the Seller will not enter into or agree to any barter agreements relating to the Radio Stations other than in the normal and ordinary course of business without the prior written consent of the Buyer and subject to the limitations of Sections 1.5(b)(vi) and 1.6(1)(c)(vi) with respect to Buyer's assumption obligations;

(k) the Seller shall maintain the existing inventory levels of the Radio Stations (including spare parts, all electronic parts and components, equipment and the like) and shall replace inventory items expended, depleted or worn out;

(l) the Seller shall make reasonable efforts to protect the service area of the Radio Stations from interference from other stations, existing or proposed, of which Seller has actual knowledge, to the extent such interference is prohibited by the FCC's rules and regulations and promptly give Buyer notice of any proposed interference;

(m) The Seller shall give prompt notice to Buyer of any occurrence that comes to Seller's attention that is reasonably likely to constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of the Seller contained in this Agreement, and

(n) The Seller shall not knowingly take any action that would prevent Seller from consummating the transactions contemplated by this Agreement.

## **ARTICLE II**

### **Representations and Warranties of the Seller**

In addition to representations and warranties made elsewhere in this Agreement, the Seller represents and warrants to and with the Buyer as of the date of this Agreement as follows (it being understood and agreed that the representations and warranties set forth in this Article II and elsewhere in this Agreement are limited by the exceptions and other matters set forth in the Disclosure Schedule delivered by Seller to Buyer concurrently herewith, notwithstanding the absence of references in the text of this Article

II or Seller's other representations and warranties in this Agreement to any such schedule):

**2.1 Organization and Standing of Seller.** The Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to: (i) own, lease, operate and sell the Assets; and (ii) carry on the business of the Radio Stations as now being conducted and as proposed to be conducted by the Seller between the date of this Agreement and the Closing Date. In addition, the Seller is fully authorized to conduct and transact its business in the State of Minnesota.

**2.2 Authorization and Binding Obligation.** The undersigned officer of the general partner of the manager of the Seller has the power and authority to enter into and perform, and to bind the Seller to, this Agreement and the transactions contemplated hereby, and the Seller's execution, delivery and performance of this Agreement, and the transactions contemplated hereby have been duly and validly authorized by all necessary company action on its part. This Agreement has been duly executed and delivered by the Seller and this Agreement constitutes, and the agreements to be executed in connection herewith will constitute, subject to approval by the FCC, the valid and binding obligations of the Seller enforceable in accordance with their terms, except as may be limited by the laws of bankruptcy and general principles of equity.

**2.3 Condition of Personal Property.** The Seller represents and warrants to the Buyer that all of the assets described in Sections 1.1(a) and 1.1(h) are in reasonable good working condition, repair and order for the normal operations of the Radio Stations, and are in compliance with all FCC and the Federal Aviation Administration requirements.

**2.4 Ownership of Assets.** The Seller now owns and on the Closing Date will own the Assets and has and will have, subject to FCC approval, full power and authority to sell, transfer and assign such Assets to the Buyer in the manner provided herein, free and clear of any and all liens except for Permitted Liens. Other than the consent of Seller's institutional lenders, the consent of the FCC, and consents to the assignment of the Contracts listed on Schedule 1.1(c), no consent or approval of any party is necessary for the Seller's performance of this Agreement in accordance with its terms. There are no other assets used or held for use primarily in the operation of the Radio Stations other than the Assets, except for the Retained Assets as defined in Section 1.6(a) (which are excluded from the definition of Assets under the terms of this Agreement). It is an express condition of Buyer's obligation to conclude this transaction that the Seller's institutional lenders release their liens on the Assets as of the Closing.

**2.5 FCC Licenses and Compliance with FCC Requirements.**

(a) All licenses, permits, authorizations, franchises, certificates of compliance, and consents of governmental bodies, including, without limitation, the FCC Licenses, used or intended for use in the operation of the Radio Stations as they are being operated as of the date of this Agreement are detailed in Schedule

1.1(d), are in full force and effect, are, to the best of Seller's knowledge, unimpaired by any acts or omissions of the Seller or the Seller's employees or agents, and are not subject to conditions or restrictions (other than requirements for periodic renewal in the normal course) that would preclude the Radio Stations from operating in all material respects as they are operated as of the date of this Agreement. . Except as set forth in Schedule 1.1(d), no condition exists or event has occurred that permits, or after notice or lapse of time, or both, would permit, the revocation or termination of any such license, permit, consent, franchise, or authorization (other than pursuant to their express expiration date) or the imposition of any material restriction or limitation upon the operation of the Radio Station as now conducted. Except as set forth in Schedule 1.1(d), the Seller is not aware of any reason relating to the Seller why the Licenses might not be renewed in the ordinary course.

(b) The Radio Stations are in material compliance with the FCC's policy on exposure to radio frequency radiation. Seller has no knowledge that any renewal of any License would constitute a major environmental action under the FCC's rules or policies as in effect on the date of this Agreement. Access to each Radio Station's transmission facilities is restricted in accordance with the policies of the FCC.

(c) Except as set forth in Schedule 1.1(d), (i) the Seller is not the subject of any FCC or other governmental investigation or any written notice of violation or order, or any material complaint, objection, petition to deny, or opposition issued by or filed with the FCC or any other governmental authority in connection with the operation of or authorization for the Radio Stations, and (ii) there are no proceedings (other than rulemaking proceedings and other proceedings of general applicability to the radio broadcasting industry) before the FCC or any other governmental authority that reasonably can be expected to have a material and adverse effect upon any of the Licenses or the authorizations listed in Schedule 1.1(d).

(d) The Seller has filed with the FCC and all other governmental authorities having jurisdiction over the Radio Stations all material reports, applications, documents, instruments, and other information, required to be filed in connection with the Radio Stations, and will continue to make such filings until the Closing Date.

2.6 **Insurance.** There is presently in force commercially reasonable fire, theft and general casualty insurance covering the Assets together with general liability insurance covering the business and operation of the Radio Stations. Seller will maintain such insurance in force until the Closing Date. Such policies are valid and enforceable, and provide commercially reasonable insurance coverage for the Assets and operations of the Radio Stations. A list of such policies showing the names of the insurers, the property or liability insured and the amounts of coverage is attached hereto as **Schedule 2.6.**

## **2.7 Title to Properties; Absence of Liens and Encumbrances.**

(a) The Seller has good and marketable title to all of the properties and Assets described in this Agreement free and clear of all liens and encumbrances (except Permitted Liens), and has not sold or otherwise disposed of any such properties or Assets referred to in Section 1.1 (except for the Retained Assets and the Assets acquired or disposed of in the normal and customary course of business). The Buyer, at its option and expense, prior to the Closing Date, may conduct a Uniform Commercial Code name search under the name of the Seller, with the Minnesota Secretary of State and the Register of Deeds of the county where each individual Radio Station is located. If the written reports from such searches (which Buyer agrees to provide to Seller at least five (5) business days prior to the Closing Date) indicate the presence of liens on any of the Seller's Assets, the Seller shall cause such liens to be removed, satisfied or otherwise released at or prior to the Closing. In the alternative, if Seller cannot remove, satisfy or otherwise obtain the release of such liens prior to or at closing, the Buyer and Seller shall establish an escrow of sufficient funds from the Purchase Price to pay the entirety of such liens (including interest, costs of collection, etc.) so as to place the Seller in a position to convey said Assets free and clear of all liens and encumbrances except Permitted Liens.

(b) Each lease of real and personal property listed in Schedule 1.1(a) and 1.1 (e) is in full force and effect and Seller is not in default under such leases.

(c) With respect to each Radio Station's transmitter and tower site (the "Site"), (i) there are no encroachments on any portion of each Site owned or used by the Seller by any buildings, structures, or improvements located on adjoining real estate; (ii) none of the buildings, structures or improvements (including any guy wires or anchors) owned, leased or used by the Seller on each Site encroach upon adjoining real estate and all such buildings, structures and improvements conform to all "setback" lines, easements, and other restrictions or rights of record established by applicable building, zoning or safety ordinances; (iii) the radio transmission facilities owned, leased or used by the Seller at each Site substantially conform in all material respects to all regulations, codes, ordinances, and statutes of all applicable governmental authorities, including, without limitation all environmental protection and sanitary laws and regulations, occupational safety and health regulations and electrical codes. All towers and other structures owned, leased or used by the Seller at each Site are painted and lighted in material compliance with the rules and requirements of the FCC, the Federal Aviation Administration, and all applicable requirements of state and local law.

**2.8 Absence of Conflicts.** Assuming that the Buyer is fully qualified to hold the Licenses and that Buyer obtains all requisite consents and approvals of the FCC as contemplated by this Agreement, neither the Seller's entry into this Agreement, nor its sale of the Assets and the transfer of the Radio Stations as contemplated by this

Agreement will (a) violate any law, regulation, judgment, order or restriction applicable to the Assets or the Radio Stations; (b) violate the provisions of the Seller's Operating Agreement; (c) conflict with or cause a breach or termination of or give rise to any lien under any agreement, lease, license or instrument of indebtedness relating specifically to the Radio Stations. Other than the filings with and approvals by the FCC contemplated hereby, the Seller does not need to give notice to or obtain the consent of any governmental agency or unit to conclude the transactions contemplated hereby.

**2.9 Litigation.** There is no litigation, action, suit, investigation or proceeding pending or, to the Seller's knowledge, threatened against or affecting the Seller (with respect to the Radio Stations) or the Radio Stations, or involving any of the Assets, at law or in equity, or before any federal, state, municipal, local, or other government or authority, and there has been no assertion and, to the Seller's knowledge, no grounds to assert any claim against the Seller before any administrative agency or arbitrator (including, without limitation, any proceeding which seeks the forfeiture of, or opposes the renewal of any of the Licenses) (a) could reasonably be expected to have a material adverse affect on the financial condition, Assets, or operations of the Radio Stations taken as a whole or (b) seeks to enjoin or prohibit, or otherwise questions the validity of, any action to be taken pursuant to or in connection with this Agreement.

**2.10 Absence of Adverse Agreements.** The Seller is not a party to any agreement or instrument or subject to any judgment, order or decree, or rule or regulation of any court or governmental agency or authority which adversely affects or, to the best knowledge of the Seller, in the future may materially and adversely affect the financial condition, operation, or assets of the Radio Stations taken as a whole.

**2.11 Contracts.** Schedules 1.1(b), 1.1(c) and 1.1(e) attached hereto contain lists of all of the agreements, leases and other contracts to be assigned pursuant to this Agreement to which the Radio Stations and the Seller (with respect to the Radio Stations) are a party or by which, as of the date hereof, the Radio Stations and the Seller (with respect to the Radio Stations) may be bound or obligated in any way or which are required to operate the Radio Stations in the manner in which they are currently operated. All of such agreements, leases and other contracts are valid, binding and enforceable by the Seller in accordance with their respective terms, unless specifically excepted and listed on attached Schedule 2.10. The aforescribed agreements, contracts and leases shall not be rendered unenforceable by their assignment and transfer to the Buyer. The Seller is not in material breach or default thereof, there is no claim of breach or default, and the Seller has no knowledge of any act or omission which has occurred or which has been threatened which could result in a breach or default thereof. The Seller has delivered complete and accurate copies of all such agreements, contracts, and leases to the Buyer as they are currently in effect.

**2.12 Intellectual Property.** Schedule 1.1(f) attached hereto contains a list of all intellectual property, other than know-how and ideas applied for, issued to or owned by the Seller or under which the Seller is a licensee and used in the conduct of the business and operation of the Radio Stations. Such intellectual property is all of the material



intellectual property used in connection with the operation of the Radio Stations in the manner conducted by the Seller, other than know-how and ideas.

2.13 ***Insolvency.*** No insolvency proceedings of any character, including but not limited to bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting the Seller or any of the Assets is pending or, to the best knowledge of the Seller, threatened, and the Seller has made no assignment for the benefit of creditors, nor taken any actions with a view to, or which would constitute the basis for, the institution of any insolvency proceedings.

2.14 ***Commission or Finder's Fee.*** The Seller has not employed any broker, or incurred any commission, finder's fee or similar payment obligation in connection with this Agreement or any matter related hereto and Seller shall indemnify and hold harmless the Buyer from and against any person claiming any such payment through Seller.

2.15 ***Environmental; Environmental Audit.*** The Seller has complied in all material respects with all laws (including rules and regulations thereunder) of federal, state, and local governments (and all agencies thereof) concerning the environment, public health, and safety, and employee health and safety relating to the Radio Stations, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or written notice has been filed or commenced against the Seller relating to the Radio Stations alleging any failure to comply with any such law or regulation. The Seller has not unlawfully generated, stored, released or disposed of any hazardous waste or hazardous substance including Polychlorinated Byphenyls ("PCBs") in connection with the operation of the Radio Stations. To Seller's knowledge no hazardous waste has been unlawfully generated, stored or disposed of by any other person on the real estate occupied by the Seller, the Radio Stations or the transmitters. If any hazardous waste is found by the Phase I audit or otherwise before the Closing Date to be contaminating said real estate, Seller shall credit Buyer for up to \$25,000 in reasonable, actual out-of-pocket expenses to be incurred by Buyer following the Closing to remove the hazardous waste and remediate the real estate as needed to comply with applicable law. In the event such cost of removal and remediation is estimated to be more than said amount, unless Seller elects in its sole discretion to afford Buyer a greater credit, then, upon written notice to the Seller, the Buyer shall have the right to terminate this Agreement without any liability, and the entirety of the Earnest Money, together with earned interest, shall be refunded to the Buyer. As used herein, the term "hazardous waste" shall have the same meaning as federal and state environmental statutes define it. To Seller's knowledge, the technical equipment included in the Assets does not contain any PCBs and there is no asbestos insulation or other asbestos-containing materials at the Radio Stations. The Buyer may conduct, at its expense, a Phase I Environmental Audit as soon as reasonably practicable and in no event more than sixty (60) days after the date hereof, by a qualified engineer of all the real property owned by the Seller that is subject to this Agreement.

2.16 ***Warranties True and Correct.*** No warranty or representation by the Seller contained in this Agreement or in any certificate to be furnished pursuant hereto contains or will contain any untrue statement of fact or omits or will omit to state any fact required

to make the statement therein contained not misleading. The Seller shall provide the Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Article II hereof.

**2.17 Financial Statements.** The financial statements of the Seller with respect to the Radio Stations provided to the Buyer as of December 31, 2000 ("Financial Statements") have been prepared in accordance with generally accepted accounting principles (GAAP) applied on a consistent basis throughout the period covered thereby, are correct and complete in all material respects and are consistent with the books and records of the Seller (which books and records are correct and complete in all material respects), except that the Financial Statements do not contain any notes thereto. The Seller has strictly complied with GAAP in the determination of the income and expenses as reflected in the Financial Statements.

**2.18 Tax Matters.** The Seller has filed all tax returns that it was required to file. Except for 2001 real and personal property taxes (which are payable in 2002) and other taxes not yet due and payable, all taxes owed by the Seller have been paid (including payroll withholding taxes). There are no security interests on any of the Assets that arose in connection with any failure (or alleged failure) to pay a tax.

**2.19 Employee Benefits.** Each employee benefit plan (and each related insurance contract) complies in form and operation in all material respects with the applicable requirements of ERISA and the Internal Revenue Code. **Schedule 2.19** lists all employee benefit plans that the Seller maintains or to which the Seller contributes for the benefit of any current employee of the Seller with respect to the Radio Stations.

**2.20 Employees and Labor Relations.** The Seller is not a party to any collective bargaining agreement covering or relating to any of the Radio Stations' employees and has not recognized and is not required to recognize, and has received no demand for recognition by any contract with any of the employees of the Radio Stations or to any other employment contract, labor agreement, or union agreement, written or oral.

**2.21 Covenant Not to Compete.** The Seller and the principals of Seller who have executed this Agreement covenant to enter into and deliver to Buyer at the Closing the Covenant Not to Compete attached to this Agreement as Schedule 1.6(1)(d) for no additional consideration except as set forth herein and in such agreement.

## ARTICLE III

### ***Representations, Warranties and Covenants of Buyer***

The Buyer hereby represents, warrants and covenants to the Seller that both as of the date of this Agreement and as of the Closing Date, each of the following statements are, and shall be, correct and complete:

3.1 ***Buyer's Organization.*** The Buyer is a corporation duly organized, validly existing and in good standing under and by virtue of the laws of the State of Wisconsin and has all requisite power and authority to (i) own, lease, and operate its properties and carry on its business, and (ii) enter into this Agreement and perform the transactions contemplated hereby. In addition, the Buyer is duly authorized to conduct business in the State of Minnesota.

3.2 ***Authorization and Binding Obligation.*** The undersigned officer of the Buyer has the power and authority to enter into and perform, and to bind the Buyer to, this Agreement and the transactions contemplated hereby, and the Buyer's execution, delivery and performance of this Agreement, and the transactions contemplated hereby have been duly and validly authorized by all necessary company action on its part. This Agreement has been duly executed and delivered by the Buyer and this Agreement constitutes, and the agreements to be executed in connection herewith will constitute, subject to approval by the FCC, the valid and binding obligations of the Buyer enforceable in accordance with their terms, except as may be limited by the laws of bankruptcy and general principles of equity.

3.3 ***Approvals.*** The execution and delivery of this Agreement by the Buyer and the performance of its obligations hereunder has been validly authorized by all necessary corporate action of the Buyer and this Agreement constitutes, subject to approval by the FCC, a valid and binding obligation of the Buyer in accordance with its terms.

3.4 ***Absence of Conflicts.*** Assuming that Buyer obtains requisite consents and approvals of the FCC as contemplated by this Agreement neither the Buyer's entry into this Agreement, nor its purchase of the Assets and the acquisition of the Radio Stations as contemplated by this Agreement will (a) violate any law, regulation, judgment, order or restriction applicable to the Assets or the Radio Stations; (b) violate the provisions of the Buyer's Articles of Incorporation or Bylaws; or (c) conflict with or cause a breach or termination of or give rise to any lien under any agreement, lease, license or instrument of indebtedness relating specifically to the Radio Stations. Other than the filings with and approvals by the FCC contemplated hereby, the Buyer does not need to give notice to or obtain the consent of any governmental agency or unit to conclude the transactions contemplated hereby.

3.5 **Capability.** There are no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify the Buyer as an assignee of the Licenses.

3.6 **Warranties True and Correct.** No warranty or representation by the Buyer contained in this Agreement or in any certificate to be furnished pursuant hereto contains or will contain any untrue statement of fact or omits or will omit to state any material fact required to make the statement therein contained not misleading.

3.7 **FCC Fee and Indemnity.** Broadcast Asset Management Corporation is the exclusive broker (hereinafter, the "Broker") in connection with this transaction. The Buyer is responsible, exclusively, for the payment of any brokerage commission in accordance with its Listing Agreement with the Broker for this transaction. The Buyer agrees to indemnify and hold the Seller harmless from and against any obligation, loss, cost, damage or expense (including legal fees) arising out of any claim by the Broker against the Seller in all events.

## ARTICLE IV

### ***Dealings Between Date of this Agreement and Closing***

The Buyer and the Seller hereby agree as follows:

4.1 **Examination by Buyer.** From the date of this Agreement until the Closing Date, the Seller will accord to the Buyer, its officers, counsel, accountants, engineers and other representatives full access to its properties, contracts, commitments and FCC, financial and other related records related to the Radio Stations, at all reasonable times during normal business hours upon reasonable prior written notice, and such representatives will be furnished true and complete copies of the same as such representatives may reasonably request; provided, however, that such review shall be conducted so as to not interfere unreasonably with or disrupt the business and broadcast operations of the Seller. Upon at least 24 hours notice to the Seller, the Seller shall cause the General Manager of the Radio Stations and the officers of the Seller, or employees listed in Schedule 1.8 designated by any of them to furnish and discuss with the Buyer and its representatives the information described in this Section 4.1.

4.2 **Confidentiality.** The Buyer agrees that it and its representatives will use its best efforts to maintain the confidentiality of and not utilize in any manner (other than to analyze the transactions contemplated by this Agreement) any and all data and information so obtained from the Seller, except for such information as is required to be disclosed by a court order or decree or in compliance with applicable law or that which is otherwise in the public domain other than due to Buyer's breach of the terms of this Agreement. If this transaction is not consummated, the Buyer and its officers, agents and other representatives will immediately return to the Seller all such data in its possession, including all copies made thereof.

The parties agree that neither of them will make a unilateral public announcement of this proposed transaction and that if either party determines a need to make a public announcement concerning any aspect of this transaction, that party will first consult the other party and obtain agreement on the substance and need of the announcement .

4.3 **Exclusivity.** From the date of this Agreement, the Seller will not accept, induce, entertain, solicit, initiate, encourage, participate, facilitate or provide any information with respect to any proposal or offer of any person or entity other than the Buyer relating to any merger, consolidation, recapitalization or acquisition involving the Radio Stations, the Assets or the Licenses or any similar transaction.

4.4 **Real Estate.** Within forty-five (45) days of execution of this Agreement at the Seller's expense, the Seller shall provide the Buyer with binders of title insurance on all owned and leased real estate included in the Assets as set forth in Schedule 1.1(e), with such endorsements as the Buyer shall request. The title insurance policy shall be in an amount equal to the fully assessed value for the owned real estate, and an amount to be agreed upon by Buyer and Seller for the leased real estate. The Buyer shall bear the additional cost of obtaining the endorsements (including obtaining any surveys) it desires to have included in the title insurance policies. The Seller shall update the title insurance binders at its expense within fifteen (15) days prior to Closing. Such insurance commitments shall be provided by Chicago Title Insurance Company or such other insurance company that is mutually satisfactory to the parties hereto.

4.5 **Covenant of Non-Interference.** Between the date of this Agreement and the Closing Date, management and control of the Radio Stations shall be the sole responsibility of, and in the complete discretion of the Seller. It is further understood and agreed that, effective as of the Closing Date, and thereafter, the Seller shall have no control over, nor right to intervene in, nor participate in, the operation of the Radio Stations, nor to supervise any programs on the Radio Stations.

4.6 **Public Announcements.** Prior to the Closing Date, neither party shall, without the approval of the other party hereto, make any press release or other public announcement concerning the transaction set forth herein, except to the extent that such party shall be so obligated by law, in which case such party shall give advance notice to the other party and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

Notwithstanding the foregoing, the parties acknowledge that the rules and regulations of the FCC require that public notice of the transaction set forth herein be made after the application has been filed with the FCC. The form and substance of such public notice, to the extent not dictated by the Communications Act or the rules and regulations of the FCC, shall be mutually agreed upon by the Seller and the Buyer.

## ARTICLE V

### ***Conditions Precedent to the Obligations of the Buyer***

The obligations of the Buyer under this Agreement are subject at the Closing Date to the conditions listed in this Article. The Buyer may waive any one or more of the following conditions, by written notice delivered at or prior to the Closing Date, other than that of the FCC Consent:

5.1 ***FCC Approval.*** The FCC shall have issued the FCC Consent (as defined in Section 7.1) without any condition that would have a material adverse effect upon the Buyer, and such FCC Consent shall have become a Final Order (as defined in Section 1.7), unless waived by the Buyer pursuant to Section 1.7.

5.2 ***The Seller's Representations, Warranties and Covenants.*** The Seller's representations, warranties and covenants contained in this Agreement and in any document delivered pursuant hereto shall be true and correct in all material respects as of the Closing Date as if made on and as of that date. The Seller shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Date.

5.3 ***Governmental Authorizations.*** The Seller shall be the holder of the Licenses and there shall not have been any modification of any of such Licenses which has, or will have, a material adverse effect on the Radio Stations or the conduct of their business and operation. No proceedings shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, fail to renew, suspend, modify or impose any material condition upon any Licenses or any material licenses, permits or authorizations of the Radio Stations.

5.4 ***No Material Adverse Change.*** There shall have been no material adverse change in the Assets, business and condition (financial or otherwise) of the Seller or the Radio Stations.

5.5 ***No Adverse Proceedings.*** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

5.6 ***Closing Deliveries.*** The Seller shall have delivered to the Buyer those items required to be delivered at or prior to the Closing Date under the terms of this Agreement.

## ARTICLE VI

### ***Conditions Precedent to the Obligations of the Seller***

The obligations of the Seller under this Agreement are subject at the Closing Date to the conditions set forth in this Agreement. The Seller may waive any one or more of the following conditions, by written notice delivered at or prior to the Closing Date, other than those in Section 6.1.

6.1 ***FCC Approval.*** The FCC shall have issued the FCC Consent for each of the Radio Stations without any condition that would have a material adverse effect upon the Seller.

6.2 ***The Buyer's Representations, Warranties and Covenants.*** The Buyer's representations, warranties and covenants contained in this Agreement and in any document delivered pursuant hereto shall be true and correct in all material respects as of the Closing Date as if made on and as of that date. The Buyer shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Date.

6.3 ***No Adverse Proceedings.*** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

6.4 ***Closing Deliveries.*** The Buyer shall have delivered to the Seller all items required to be delivered at or prior to the Closing Date under the terms of this Agreement.

## ARTICLE VII

### ***FCC Consent***

7.1. ***FCC Consent.*** It is specifically understood and agreed by the Buyer and the Seller that the Closing and the assignment of the Licenses, permits and other authorizations pertaining to the Radio Stations are expressly conditioned on and are subject to the prior consent and approval of the FCC or its staff acting pursuant to delegated authority (the "FCC Consent").

7.2. ***Assignment Applications.*** Within ten (10) days after the Buyer's deposit of the Earnest Money with the Escrow Agent, the Seller and the Buyer shall jointly file with the FCC an application for assignment of the Licenses, permits and authorizations pertaining to each of the Radio Stations (the "Assignment Application") from the Seller to the Buyer. The cost of the FCC filing fees in connection with each of the Assignment

Applications shall be divided equally between the parties. Each party shall pay their own attorneys' fees. The Seller and the Buyer shall thereafter prosecute each Assignment Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of each Assignment Application as expeditiously as practicable (but neither the Seller nor the Buyer shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect upon the Radio Stations, it or upon any affiliated entity). If the FCC Consent imposes any condition on either party with respect to any of the Assignment Applications, such parties shall use commercially reasonable efforts to comply with such condition; provided, however, that neither party shall be required hereunder to comply with any condition that would have a material adverse effect upon either a Radio Station, either Buyer or Seller or any affiliated entity. The Seller and the Buyer shall jointly oppose any requests for reconsideration or judicial review of the FCC Consent and shall jointly request from the FCC any extension of the effective period of the FCC Consent if the Closing shall not have occurred prior to the expiration of the original effective period of the FCC Consent. Nothing in this Section 7.2 shall be construed to limit either party's right to terminate this Agreement pursuant to Article VIII.

## **ARTICLE VIII**

### ***Termination***

8.1 ***Grounds for Termination.*** This Agreement may be terminated by either the Buyer or the Seller, provided that the party seeking to terminate is not in breach of any of its material obligations under this Agreement, upon the occurrence of any of the following:

- (a) If, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or twenty (20) business days after the receipt of written notice of breach from the non-breaching party; or
- (b) If any Assignment Application is denied by Final Order; or
- (c) If there shall be in effect any judgment, or final decree order that would prevent or make unlawful the consummation of this Agreement; or
- (d) If the Closing has not occurred within fifteen (15) months after the Assignment Applications are tendered for filing.

8.2 ***Liability.*** The termination of this Agreement under Section 8.1 shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.



## ARTICLE IX

### ***Default***

9.1 ***Default by the Seller.*** In the event this Agreement is terminated pursuant to Section 8.1(a) because of default on the part of the Seller, the Buyer shall be entitled to pursue any and all available legal or equitable remedies for any actual damages, including reasonable attorneys' fees sustained as a consequence of such default including, without limitation, the remedy of specific performance, subject to the posting of a bond or other security if required by the Court as a condition of the Buyer's application for such relief. The Seller agrees that this transaction and the assets to be conveyed under this Agreement are unique, and waives any right to claim that there is an adequate remedy at law for a breach of this Agreement.

9.2 ***Default by the Buyer.*** In the event this Agreement is terminated pursuant to Section 8.1(a) because of default on the part of the Buyer, the Seller shall be entitled to retain the Earnest Money or pursue any and all available legal or equitable remedies for any actual damages, including reasonable attorneys' fees sustained as a consequence of such default including, without limitation, the remedy of specific performance, subject to the posting of a bond or other security if required by the Court as a condition of the Seller's application for such relief. The Buyer agrees that this transaction and the assets to be conveyed under this Agreement are unique, and waives any right to claim that there is an adequate remedy at law for a breach of this Agreement.

9.3 ***Entitlement to Attorneys' Fees.*** With respect to a default by either Buyer or Seller, the party ultimately determined to be the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees incurred as a consequence of the defaulting party's default.

## ARTICLE X

### ***Indemnification***

10.1 ***Indemnification by the Seller.*** Effective upon the Closing, the Seller hereby covenants and agrees to hold harmless, defend, and indemnify the Buyer, its successors and assigns, from and against any claims, actions, suits, proceedings, assessment judgments, costs, losses, damages, liabilities, liens, encumbrances, charges, fines, penalties and expenses (including without limitation reasonable attorneys' fees) asserted against, resulting from, imposed upon or incurred by the Buyer directly or indirectly relating to or arising out of or as a consequence of: (i) the business and operation of the Radio Stations prior to and on the Closing Date; (ii) the inaccuracy of any representation or warranty of Seller herein ; (iii) any material failure by the Seller to perform and comply with any of its covenants, conditions or agreements set forth in this Agreement; (iv) the failure to comply with any "bulk sales" laws applicable to the transactions contemplated hereby; and (v) the Retained Liabilities.

**10.2 Indemnification by the Buyer.** Effective upon the Closing, the Buyer hereby covenants and agrees to hold harmless, defend and indemnify the Seller, its successors and assigns, from and against any claims, actions, suits, proceedings, assessment judgments, costs, losses, damages, liabilities, liens, encumbrances, charges, fines, penalties and expenses (including without limitation reasonable attorneys' fees) asserted against, resulting from, imposed upon or incurred by the Seller directly or indirectly relating to or arising out of or as a consequence of: (i) the business and operation of the Radio Stations after the Closing Date; (ii) the inaccuracy of any representation or warranty of Buyer herein; (iii) the Assumed Liabilities; (iv) any failure by the Buyer to perform and comply with any of its covenants, conditions or agreements set forth in this Agreement; and (v) a claim by any person or entity based on any arrangement or agreement to pay a commission, finder's fee or similar payment in connection with this Agreement made or alleged to have been made by the Buyer.

**10.3 Survival of Representations and Warranties.** The representations and warranties contained herein shall survive the Closing for a period of fifteen (15) months (five (5) years for Section 2.18) following the Closing Date. Notwithstanding anything to the contrary contained herein, the indemnification obligations contained in Sections 10.1 and 10.2 arising in connection with the Retained Liabilities and Assumed Liabilities, as well as the representations and warranties of title expressly set forth in the aforementioned Bill of Sale and Warranty Deeds, shall not terminate.

**10.4 Procedures.**

(a) **Notice.** Promptly after the receipt by either party (the "Indemnified Party") of notice of any claim or the commencement of any action or proceeding which may entitle such party to indemnification under this Section, such party shall give the other party (the "Indemnifying Party") written notice of such claim or the commencement of such action or proceeding and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting from such claim. The failure to give the Indemnifying Party timely notice under this Section 10.4 shall not preclude the Indemnified Party from seeking indemnification from the Indemnifying Party unless, and to the extent that, such failure has materially prejudiced the Indemnifying Party's ability to defend the claim or litigation.

(b) **Assumption of Defense.** If the Indemnifying Party assumes the defense of any such claim or litigation resulting therefrom with counsel reasonably acceptable to the Indemnified Party, the obligations of the Indemnifying Party as to such claim shall be limited to taking all steps necessary in the defense or settlement of such claim or litigation resulting therefrom and to holding the Indemnified Party harmless from and against any losses, damages and liabilities caused by or arising out of any settlement approved by the Indemnifying Party or any judgment in connection with such claim or litigation resulting therefrom; provided, however, the Indemnified Party may participate, at its expense, in the defense of such claim or litigation provided that the Indemnifying Party shall direct

and control the defense of such claim or litigation. The Indemnified Party shall cooperate and make available all books and records reasonably necessary and useful in connection with the defense. The Indemnifying Party shall not, in the defense of such claim or any litigation resulting therefrom, consent to entry of any judgment, except with the written consent of the Indemnified Party, or enter into any settlement, except with the written consent of the Indemnified Party, which 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 liability in respect of such claim or litigation.

(c) ***Non-Assumption of Defense.*** If the Indemnifying Party shall not assume the defense of any such claim or litigation resulting therefrom, the Indemnified Party may, but shall have no obligation to, defend against such claim or litigation in such manner as it may deem appropriate, and the Indemnified Party may compromise or settle such claim or litigation without the Indemnifying Party's consent. The Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of all expenses, legal or otherwise and including the amounts of judgments entered or settlements agreed to, incurred by the Indemnified Party in connection with the defense against or settlement of such claim or litigation. If no settlement of the claim or litigation is made, the Indemnifying Party shall promptly reimburse the Indemnified Party for the amount of any judgment rendered with respect to such claim or in such litigation and for all expenses, legal or otherwise, incurred by the Indemnified Party in the defense against such claim or litigation.

**10.5 Limitations.** Seller's obligations pursuant to the provisions of Section 10.1 are subject to the following limitations: Buyer Indemnified Parties shall not be entitled to recover under Section 10.1: (a) unless Buyer has given written notice to Seller asserting a claim thereunder, in reasonable detail, within the applicable time period specified in Section 10.3; (b) unless and until such claims in the aggregate meet a minimum threshold amount of at least One Hundred Thousand Dollars (\$100,000); (c) with respect to consequential damages, including consequential damages consisting of business interruption or profits; (d) to the extent the aggregate claims under Section 10.1 (other than for fraud or other intentional misrepresentation) of the Buyer Indemnified Parties exceed Five Hundred Thousand Dollars \$500,000; and (e) with respect to misrepresentations or breaches of representations, warranties or covenants by or of Seller if at or before the time of Closing Buyer had actual knowledge of the misrepresentation or breach of such representation, warranty or covenant.

**10.6 Limitations.** Buyer's obligations pursuant to the provisions of Section 10.2 are subject to the following limitations: Seller Indemnified Parties shall not be entitled to recover under Section 10.2: (a) unless Seller has given written notice to Buyer asserting a claim thereunder, in reasonable detail, within the applicable time period specified in Section 10.3; (b) unless and until such claims in the aggregate meet a minimum threshold amount of at least One Hundred Thousand Dollars (\$100,000); (c) with respect to consequential damages, including consequential damages consisting of business interruption or profits; (d) to the extent the aggregate claims under Section 10.2 (other

than for fraud or other intentional misrepresentation) of the Seller Indemnified Parties exceed Five Hundred Thousand Dollars \$500,000; and (e) with respect to misrepresentations or breaches of representations, warranties or covenants by or of Buyer if at or before the time of Closing Seller had actual knowledge of the misrepresentation or breach of such representation, warranty or covenant.

**10.7 Exclusive Remedy.** Indemnification pursuant to the provisions of this Article X shall be the exclusive remedy of the parties for any misrepresentation or breach of any warranty or covenant contained in this Agreement or in any closing document executed and delivered pursuant to the provisions hereof. The only legal action which may be asserted by any party with respect to any matter which is the subject of this Article X shall be a contract action to enforce, or to recover damages for the breach of, this Article X. Without limiting the generality of the preceding sentence, no legal action sounding in tort or strict liability may be maintained by any party.

## **ARTICLE XI**

### ***Miscellaneous***

**11.1 Entire Agreement; Binding Effect.** This Agreement, and the Schedules attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No party shall be in any manner responsible as to any warranties, representations or covenants except as specifically set forth herein. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

**11.2 Applicable Law.** This Agreement is made pursuant to and shall be construed under the laws of the State of Wisconsin, subject, however, to all applicable rules and regulations of the FCC.

**11.3 Notices, Etc.** All notices, requests, demand and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or five (5) days after being deposited in the United States mail, certified mail, postage prepaid, return receipt requested, or twenty-four (24) hours after delivery to a reputable courier service which guarantees overnight delivery, addressed as follows:

- (a) **If to the Seller, to:**  
Bruce Buzil  
Executive Vice-President  
Marathon Media Group, L.L.C.  
980 North Michigan Ave., Suite 1880  
Chicago, IL 60611

With copy to:

John J. Egan III, P.C.  
McDermott, Will & Emery  
28 State Street  
Boston, MA 02109

(b) **If to the Buyer, to:**

Richard T. Record  
Family Radio, Inc.  
P. O. Box 99  
432 Cass Street  
La Crosse, WI 54601

With copy to:

Thomas A. Walker  
Mid-West Management, Inc.  
2740 Ski Lane  
Madison, WI 53713

And additional copy to:

Jerry E. McAdow, Esq.  
Lathrop & Clark LLP  
740 Regent Street, Suite 400  
P. O. Box 1507  
Madison, WI 53701-1507

11.4 **Counterparts.** This Agreement may be signed in counterpart originals, which collectively, when each of the parties hereto have signed a counterpart, shall have the same legal effect as if all signatures had appeared on the same physical document.

11.5 **Severability.** The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, this Agreement shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly; provided, however, that if the deletion of any provision materially alters the burdens or benefits of either party, the parties agree to negotiate in good faith such modifications to this Agreement as are appropriate to insure the burdens and benefits of each party are reasonably comparable to those originally contemplated and expected.

11.6 **Waiver.** No waiver by either party hereto of a breach of any of the terms and conditions of this Agreement by the other party shall be construed as a waiver by such party of any subsequent breach.

11.7 **Expenses.** Except as otherwise set forth in Sections 1.5(b), 2.14, 4.4 and 7.2, herein, the parties hereto shall pay their own expenses, including, without limitation, brokers', accountants' and attorneys' fees incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

11.8 **Risk of Loss.** The risk of loss or damage by fire or other casualty or cause to those physical properties which are the subject of this Agreement shall, until the Closing Date, be upon the Seller. In the event of any material damage, deterioration (normal wear and tear excepted), destruction, or loss materially adversely affecting any item of tangible property included in the Assets until Closing, the parties shall have the following options:

(a) If the loss is covered by insurance, the Buyer shall either be entitled to receive the insurance payment in lieu of the lost or damaged property, or may elect, if the loss exceeds \$200,000, to instead terminate this Agreement and obtain a refund of the Earnest Money at any time before the Closing Date.

(b) If there are either no or inadequate insurance proceeds to cover the loss, the Buyer shall be entitled, at its option, to (i) receive from the Seller up to \$100,000 of the dollar amount required to restore such assets to the condition such assets were in prior to the damage or destruction or (ii) credit the Buyer for up to \$100,000 of the cost of repair or restoration of such assets against the Purchase Price or (iii) if the uninsured portion of the loss exceeds \$100,000 or such higher credit amount as Seller may elect in its discretion to afford Buyer, terminate this Agreement without any liability and obtain the prompt refund of its Earnest Money together with accrued interest.

11.9 **Assignment.** Except as set forth in this section, neither the Buyer nor the Seller may assign this Agreement without the written consent of the other party, except that after specific written notice to the Seller, the Buyer may assign all of its right, title and interest in, to and under this Agreement at any time prior to the entry of a Final Order to one or more entities, of which the Buyer is or the Buyer's shareholders are the majority owner, on condition that each of such entities shall jointly and severally assume the obligations of the Buyer as described in this Agreement. Upon the furnishing of a signed copy of the assignment and assumption agreement or agreements to the Seller, such entities shall have the right jointly and severally to receive the Assets and assume the obligation jointly and severally to pay to the Seller the Purchase Price therefor and to meet any other obligations of the Buyer as described in this Agreement (for example, share of accountants' fees, as applicable). Notwithstanding the foregoing, Buyer shall make no assignment prior to Closing which would require the refile of the application for approval of the transfer of the Radio Stations. After Closing and then entry of a Final Order, there shall be no restrictions on the Buyer's transfer or assignment.

11.10 **No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than the Buyer and the Seller and their respective successors and permitted assigns.

11.11 **Further Assurances.** After the Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.12 **Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

11.13 **Amendments and Waivers.** No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the parties hereto.

11.14 **Mutual Responsibility for Drafting.** Each of the parties hereto acknowledge and agree that they have been represented by counsel in the negotiation and drafting of this Agreement and that each party has had equal participation in the drafting of this Agreement to the end that neither party shall be entitled to claim any benefit from the rule of contract drafting that errors, ambiguities or omissions shall be construed against the draftsman.

11.15 **Accounts Receivable Collection.** Provided that the Buyer receives complete written information as to Seller's account debtors and amounts owed by same, the Buyer shall (i) assist the Seller in the collection of the Accounts Receivable for a period of 120 days following the Closing, (ii) endorse and deliver to the Seller, on or before the 15<sup>th</sup>, 30<sup>th</sup>, 45<sup>th</sup>, 60<sup>th</sup>, 75<sup>th</sup>, 90<sup>th</sup> and 120<sup>th</sup> day following the closing (each, a "Turnover Date") and thereafter, any checks or other instruments payable to the Buyer that are received on account of such receivables on or prior to any such date, (iii) deliver to the Seller on each Turnover Date and thereafter any checks or other payment instruments payable to or otherwise intended for the Seller on account of the Accounts Receivable. In addition, the Buyer hereby agrees and acknowledges (a) that all payments received by the Buyer or Buyer's lender on account of the Accounts Receivable shall be held in trust for the benefit of the Seller, (b) that payments received from customers of the Buyer that owe payments to the Buyer and also owe payments to the Seller shall be applied in accordance with the invoice which accompany or relate to each such payment. If there is no invoice identifying the payment, it shall be applied to payment of the earliest bill. In the event of any dispute over payment of Seller's invoices or bills, Seller shall be solely responsible for resolving any such dispute. The Buyer shall have no duty or responsibility for resolving any Seller dispute with any of Seller's accounts. (c) that all such payments shall be delivered to the Seller together with any necessary endorsements thereon, on each Turnover Date and thereafter. To the extent that Seller has not received payment on any Accounts Receivable as of the 120<sup>th</sup> day following the Closing, the Buyer shall have no further obligation to collect the Accounts Receivable,

unless otherwise agreed upon by the Seller and the Buyer and the Buyer shall promptly return any and all documentation to the Seller.

11.16 **Books and Records.** Seller and Buyer shall each make their respective books and records (including work papers in the possession of their respective accountants) available for inspection by the other party, or by its duly accredited representatives, for reasonable business purposes at all reasonable times during normal business hours, for a seven (7) year period after the Closing Date, with respect to all transactions relating to the Stations occurring prior to the Closing Date, or otherwise relevant to the transactions contemplated by this Agreement.

***IN WITNESS WHEREOF***, the undersigned parties hereto have duly executed this Agreement or a counterpart thereof as of the date first above written.

SELLER:

**Marathon Media Group, L.L.C.**  
**By: Marathon Media, L.P.,**  
a Delaware limited partnership, its Manager  
**By: Marathon Media, Inc. , its General Partner**

By: \_\_\_\_\_  
Bruce Buzil, Executive Vice-President

**Family Radio, Inc.,** a Wisconsin Corporation, BUYER

By: \_\_\_\_\_  
Richard T. Record, President