

**LATHAM & WATKINS** LLP

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October 12, 2012

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Federal Communications Commission  
Office of the Secretary

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

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File No. 052043-0000

Re: Matters Regarding Aloha Station Trust and Informal Objection to Grant of Applications for Assignment of License for WOR(AM) (BAL-20120816AAQ) and for Renewal of License for WHTZ(FM) (BRH-20060201AAU): Reply to Oppositions

Dear Ms. Dortch:

We represent Connoisseur Media of Long Island, LLC ("Connoisseur"). On September 19, 2012, we filed, on behalf of Connoisseur, a letter regarding stations (the "Trust Stations") held by the Aloha Station Trust ("AST"), and objecting to the grant of certain pending applications before the Commission as described above. Through their respective counsel, AST and AMFM Radio Licenses, LLC, a subsidiary of Clear Channel Communications, Inc. (collectively, with its subsidiaries, "Clear Channel"), have filed separate oppositions to that letter, both dated October 1, 2012. By this letter, Connoisseur replies to those oppositions.

### **The AST Opposition**

AST makes three basic assertions in its Opposition. First, it insinuates that Connoisseur wrongfully withheld information from the Commission regarding an offer Connoisseur made to acquire stations WALK(AM) and WALK-FM (collectively, "WALK"). Second, it appears to claim that as a divestiture trustee it is as fully able as a broadcaster with long-term ownership to operate the Trust Stations as ongoing competitive market forces. And third, it asserts that the economy and the market for the sale of radio stations remains poor and has hampered AST's ability to sell stations. Each of these assertions is addressed below.

*Connoisseur's Offer for WALK.* AST leads off its Opposition by stating that Connoisseur made an offer to buy WALK from AST. AST insinuates that Connoisseur withheld relevant information from the Commission by not having disclosed that offer in its initial letter. In fact, as is almost universally the case when broadcast stations or other businesses are being sold, Connoisseur was compelled to sign a confidentiality agreement in order to obtain diligence material critical to assessing the value of WALK. Because that confidentiality agreement arguably restricted

Connoisseur from disclosing the fact that it had made an offer for WALK, in order to avoid a claim for breach of the confidentiality agreement Connoisseur did not disclose the offer it made for WALK. As licensee of WALK, and the party which is purportedly responsible for the sale process, AST of course was aware of the confidentiality agreement. For AST to imply that Connoisseur's failure to disclose that information, which it arguably was restricted from disclosing under contractual provisions arising from the very sale process for which AST is responsible, somehow constitutes a lack of candor before the Commission is disingenuous at best.

Moreover, Connoisseur welcomes the fact that AST has now made its offer for WALK public information. Connoisseur's offer was, despite AST's assertions to the contrary, actually above the fair market price for WALK. Connoisseur's offer constitutes direct and specific evidence that AST has refused an offer above fair market value for WALK after having failed to have sold WALK for more than four years. Connoisseur would like to disclose the terms of its offer, and demonstrate to the Commission how that offer reflects a multiple of WALK's twelve-month trailing broadcast cash flow that is well above the fair market value of WALK based on comparable recent transactions. Connoisseur believes that presenting such information to the Commission will constitute specific allegations of fact sufficient to make a *prima facie* case that AST is in violation of its obligations under the Commission order granting consent to the assignment of the licenses for WALK to AST, and for the transfer of control of Clear Channel.<sup>1</sup>

However, for Connoisseur to disclose the amount of its offer, and what that offer represents as a multiple of broadcast cash flow, would arguably constitute a breach of the confidentiality agreement between Connoisseur and Clear Channel. By copy of this letter, which is being served on Clear Channel through its counsel, Connoisseur requests that Clear Channel consent to Connoisseur's disclosure of the amount and terms of its offer for WALK, and what that offer represents as a multiple of broadcast cash flow. If Clear Channel so desires, such information may be submitted to the Commission with a request for confidentiality under Section 0.459 of the Commission's Rules.

For more than four years, WALK, the most profitable station placed in trust by Clear Channel, has remained in trust while AST has sold off other stations which are most likely unprofitable. AST repeatedly has justified its failure to have sold more stations by citing a flagging market, poor economic conditions, and the failure of potential buyers to emerge or to be able to finance acquisitions.<sup>2</sup> With respect to WALK, at least, those excuses ring hollow. Connoisseur, a very credible in-market bidder, has made an offer for WALK. The only question that remains is whether that offer was at or above fair market value. If it was, then by AST's own admission AST

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<sup>1</sup> *Shareholders of Clear Channel Communications, Inc.*, 23 FCC Rcd 1421 (2008) (the "Divestiture Order").

<sup>2</sup> See, e.g. AST Opposition at p. 3-4, citing "a persistent recessionary economy," "a difficult lending environment," market growth that is "slow and bumpy," and an inability to "identify qualified buyers willing to purchase a Trust Station at a fair price and who possess financing that will enable them to consummate transactions."

has a duty to accept it.<sup>3</sup> Connoisseur stands willing to present evidence as to its offer that it believes will constitute a *prima facie* case that AST has failed in its obligations as divestiture trustee, and needs only Clear Channel's consent to present that evidence to the Commission.

*AST's Inability to Operate the Trust Stations Competitively.* AST takes issue with Connoisseur's argument that a divestiture trustee cannot be expected to operate stations held in trust as true competitive forces in the market, as opposed to a broadcaster with long-term rather than transitory ownership.<sup>4</sup> The fact that AST even makes this assertion demonstrates its lack of understanding of the radio business. A station held in trust is by definition in a less competitive position; unlikely to be able to attract the best employees, who will prefer to take positions at other stations where the ultimate ownership is not in doubt, or to be able enter into long-term commitments or undertake long-term planning. The Trust Agreement itself prohibits or restricts AST from taking key actions such as entering into material contracts or changing station formats.<sup>5</sup> To claim that the inability to take such actions does not hamper a station's ability to compete is patently ridiculous. But perhaps most importantly, the profit motive, which drives competitive economic activity everywhere that the free market system prevails, is entirely absent in a trust situation. AST simply has no economic motivation to operate the Trust Stations competitively so as to maximize profits since all such profits accrue to Clear Channel.

AST itself in its Opposition betrays this lack of understanding of the competitive differences between a station in trust and one run by a competitive broadcaster. AST acknowledges that its duty is to "preserve the assets of the Stations and maintain the status quo."<sup>6</sup> One can only imagine what a station owner who is an actual businessperson would say to a general manager who described his duties as asset preservation and status quo maintenance. AST goes on to liken its role as trustee to that of a seller of a station who is awaiting closing. This is just the point; between the time an agreement for the sale of a station has been entered into and closing, the station owner is limited in a number of important ways from being able to operate its station. Even so, it is less hampered than is AST since the seller in such a situation may still seek the buyer's consent to take actions which are otherwise restricted, while AST cannot seek Clear Channel's consent to do so without violating the provisions in the Trust Agreement which require that AST be solely responsible for operation of the Trust Stations.

It may be AST's view that it matters little from a competitive perspective if stations languish in trust indefinitely, but that view is not shared by the Commission. The Commission has

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<sup>3</sup> See AST Opposition at p. 4. (AST "will continue to use its best efforts to meet all of its duties and obligations as a divestiture trust and a Commission licensee...those duties include ensuring that proposed purchase prices reflect the true value of the Trust Stations.")

<sup>4</sup> AST Opposition at p. 2. AST mocks these Connoisseur's argument as "unsubstantiated, meaningless generalizations." *Id.*

<sup>5</sup> Section 5(e) of the "Second Revised Exhibit C: Trust Agreement" (the "Trust Agreement") included as part of Exhibit 5 to the application on FCC Form 314 in FCC File BAL-20070619ABU.

<sup>6</sup> AST Opposition at p. 2.

expressed on numerous occasions the common sense notion that stations should be held in trust only for a very limited period because to do otherwise would be to aggravate competitive concerns.<sup>7</sup> To permit the Trust Stations to continue in trust indefinitely completely undermines one of the basic underpinnings of the use of the divestiture trust structure; that such trusts are to be of short duration so as to limit the adverse competitive impact.

*AST's Purported Inability to Sell Stations due to Market Factors.* There is no need to belabor the point that AST's assertions as to poor market conditions have worn thin after more than four years, particularly in light of an improving market and the ability of other broadcasters to get deals done. The key point is that, as described above, such excuses become irrelevant when a credible fair market offer is on the table such as is the case with WALK. The question is whether Connoisseur's offer for WALK was at or above fair market value, a question that Connoisseur can answer in the affirmative if permitted to make that showing to the Commission.

### **The Clear Channel Opposition**

In its Opposition, Clear Channel attempts to divorce itself completely from AST's actions and the Trust Station sale process, asserting that these have no relevance to its fitness to acquire the Commission license for a new station, or to be granted a renewal of an existing license. However, it is Clear Channel that sets the price at which the Trust Stations may be sold.<sup>8</sup> In its Opposition, AST claims that it rejected Connoisseur's offer because it "did not reflect the fair market value of the Stations."<sup>9</sup> It is simply impossible to believe that AST, having been presented with an offer equal to or in excess of the minimum price set by Clear Channel, would reject the offer on the basis of valuation. There can be no doubt that Clear Channel is calling the shots when it comes to pricing, and when AST rejects an offer on the basis of price, that rejection may be traced directly to Clear Channel. If Clear Channel is setting a minimum price which unduly impedes the sale of a Trust Station, then such actions constitute bad faith and a violation of Clear Channel's obligations under the Divestiture Order, and raise issues of candor before the Commission that bear upon its qualifications to be a Commission licensee.

Moreover, Clear Channel's fingerprints are all over the sale process, beyond setting the price. As noted above, the confidentiality agreement which Connoisseur was required to sign to participate in the sale process is with Clear Channel, not AST although AST purportedly owns the Trust Stations.

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<sup>7</sup> See, e.g., *Shareholders of AMFM Inc.* 15 FCC Rcd 16062, 16072 (2000) (Approving a six-month divestiture trust, noting that the use of divestiture trusts does not alleviate competitive concerns, and such concerns are mitigated only where the trust is of temporary duration). See also, *Stockholders of Infinity Broadcasting Corporation*, 12 FCC Rcd 5012, 5041-42 (1996) (Noting competitive concerns, approving trust limited to six-month duration, and stating that "trusts should not be used as a mechanism for warehousing stations in excess of statutory limits on radio ownership that could otherwise be sold to potential competitors."); *Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867, 6893-98 (MM Bur. 1999).

<sup>8</sup> Section 4(d)(i) of the Trust Agreement.

<sup>9</sup> AST Opposition at p. 1.

Even more to the point, the Commission's attention is directed to Exhibit A hereto which is a copy of an Asset Purchase Agreement filed with the FCC in connection with the sale of one of the Trust Stations to Red Wolf Broadcasting Corporation (the "Red Wolf APA").<sup>10</sup> In the Red Wolf APA the "Seller" is Clear Channel and AST (defined as the "Trust") is mentioned almost only in passing. If one were to eliminate the few references to the Trust, the Red Wolf APA would be *exactly identical* to a purchase agreement pursuant to which Clear Channel were selling one of its own stations. For example, Clear Channel makes all of the seller-side representations and warranties, including with respect to Clear Channel's holding the FCC licenses,<sup>11</sup> Clear Channel's ownership of the assets of the station,<sup>12</sup> and Clear Channel's compliance with employment laws and other employment matters.<sup>13</sup> Clear Channel also makes all of the seller covenants in the Red Wolf APA, including with respect to operating the station in the ordinary course and in compliance with Commission rules,<sup>14</sup> and a number of other matters which are completely inconsistent with the fundamental requirement that the Trust Stations be operated by AST and not by Clear Channel. There are, in fact, so many ways in which the Red Wolf APA is inconsistent with AST's ownership and operation of the station being sold that is impracticable to list them all. Perhaps Clear Channel believes that by adding the phrase "subject to the Trust" in a few places in the Red Wolf APA it has compliance with the Commission's requirements as set out in the Divestiture Order covered. But the Trust Agreement and the Red Wolf APA inhabit two separate universes; one in which AST owns and operates the Trust Stations and the other in which Clear Channel does. On its very face, the Red Wolf APA, together with the other purchase agreements filed in connection with the sale of Trust Stations, simply scream for the Commission to ask the question of what Clear Channel's actual role is, not just in the sale of the Trust Stations, but in their operation as well.<sup>15</sup> If Clear

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<sup>10</sup> The Red Wolf APA was filed with the Commission as Exhibit 5 to the application on FCC Form 314 in FCC File BALH-20090224ABA. The Red Wolf APA is not unique among the purchase agreements pursuant to which Trust Stations have been sold. To the contrary, it is representative in form and substance of such agreements.

<sup>11</sup> Section 2.4 of the Red Wolf APA. This contradicts Section 2(a)(i) of the Trust Agreement which provides that AST will acquire and hold the licenses for the Trust Stations.

<sup>12</sup> Section 2.6 of the Red Wolf APA. This contradicts Section 2(a) of the Trust Agreement which provides that AST will acquire and hold title to the Trust Station assets.

<sup>13</sup> Section 2.11 of the Red Wolf APA. This contradicts Sections 5(a)(iv) and 5(c) of the Trust Agreement which provide that the Trust Station employees will be employed by AST and not have a relationship with Clear Channel.

<sup>14</sup> Section 4.1(a) of the Red Wolf APA. This contradicts numerous provisions in the Trust Agreement, including Section 5(a)(i) which provides that AST "shall have absolute and complete control over the operations of a [Trust] Station...and no person other than [AST] or managers designated by [AST] shall have any authority with respect to the management of [the Trust Station or its assets] for so long as this Trust Agreement is in effect."

<sup>15</sup> For an example of an agreement to sell a station by a divestiture trust that reflects the station status as it is required to be, see the Asset Purchase Agreement for the sale of station WCLZ(FM) by The Last Bastion Station Trust to Saga Communications, filed with the Commission as Exhibit 5 to the application on FCC Form 314 in FCC File BALH-

Channel has been as involved in Trust Station ownership and operations as it appears to have been from the Red Wolf APA, this also violates the Divestiture Order and raises issues that bear upon Clear Channel's qualifications as a Commission licensee.

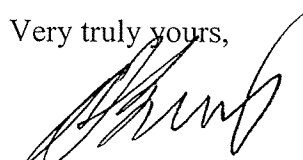
### Conclusion

While the Commission does not generally become involved in disputes over the economics of transactions, this is a case where it may be necessary for it to make such inquiry. If a party such as Clear Channel can merely establish a well-above market minimum price for stations placed in trust without any review by the Commission, it can impede the sale of those stations indefinitely. This makes a mockery of the Commission's statements as to the competitive concerns associated with stations held in trust and the necessity for trusts to be of limited duration.<sup>16</sup>

Of course the Commission need not in this case require that AST accept Connoisseur's offer, and Connoisseur is not asking that it do so. It can, as was set forth in Connoisseur's initial filing in this matter, require that the remaining Trust Stations be sold within a six-month period to whatever qualified buyers may emerge, and issue an Order to Show Cause why the licenses of any Trust Stations not sold by that deadline should not be revoked. Clear Channel will assuredly get fair market value or more for WALK, the most valuable of the Trust Stations by far. As for the other stations, even taking AST's protestations about the current condition of the market at face value, after more than four years it is time for a fire sale, if that is what is necessary for those stations to be sold. At some point a seller must take the market as he finds it, and not wait for some hypothetical buyer to emerge with what the seller considers a fair market offer.

Regardless of whether Clear Channel consents to Connoisseur making a showing as to its offer for WALK, the Commission should act promptly to set a meaningful deadline for divestiture of the remaining Trust Stations. That is the only way to spur Clear Channel and AST to action. The Trust Stations were supposed to have been sold within six months. It has now been six months times eight and counting. A final six-month period is sufficient time for the remaining Trust Stations to be sold.

Very truly yours,



David D. Burns  
of LATHAM & WATKINS LLP

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20070827AEA, a copy of which is attached as Exhibit B hereto. In that agreement, the trust is the seller, and makes all of the seller-side representations, warranties and covenants.

<sup>16</sup> See fn 7 *supra*.

cc: Peter Doyle, Esq.  
Chief, Audio Division  
Federal Communications Commission

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Connoisseur Media LLC

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## DECLARATION OF JEFFREY D. WARSHAW

I, Jeffrey D. Warshaw, CEO of Connoisseur Media, LLC, the parent company of Connoisseur Media of Long Island, LLC, declare under penalty of perjury that I have read the foregoing letter, and the statements contained therein are true and correct to the best of my knowledge, information and belief.

October 11, 2012

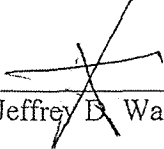
  
\_\_\_\_\_  
Jeffrey D. Warshaw



EXHIBIT A

(Red Wolf Asset Purchase Agreement)

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of the date set forth below among the company or companies set forth as Seller on the signature page hereto (collectively, "Seller"), the company or companies set forth as Buyer on the signature page hereto (collectively, "Buyer") and Aloha Station Trust LLC, a Delaware limited liability company (the "Trustee") in its capacity as Trustee of the Aloha Station Trust (the "Trust").

### Recitals

A. Subject to the Trust Seller owns and operates the following radio broadcast station (the "Station") pursuant to certain authorizations issued by the Federal Communications Commission (the "FCC"):

WURH(FM), Waterbury, Connecticut (Facility ID # 74279)

B. The Station is subject to the Trust pursuant to a Trust Agreement between the Trustee and an affiliate of Seller (the "Trust Agreement").

C. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (defined below).

### Agreement

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in Sections 1.2 and 1.3, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to all assets and properties of Seller, real and personal, tangible and intangible, that are used or held for use in the operation of the Station (the "Station Assets"), including without limitation the following:

(a) all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station (the "FCC Licenses"), including those described on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing;

(b) all of Seller's equipment, transmitters, antennas, cables, towers, vehicles, furniture, fixtures, spare parts and other tangible personal property of every kind and description that are used or held for use in the operation of the Station, including without limitation those listed on *Schedule 1.1(b)*, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business (the "Tangible Personal Property");

(c) all of Seller's real property used or held for use in the operation of the Station (including any appurtenant easements and improvements located thereon), including without limitation those listed on *Schedule 1.1(c)* (the "Real Property");

(d) all agreements for the sale of advertising time on the Station entered into in the ordinary course of business, and all other contracts, agreements and leases entered into in the ordinary course of the Station's business, including without limitation those listed on *Schedule 1.1(d)*, together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Article 4 (the "Station Contracts");

(e) all of Seller's rights in and to the Station's call letters and Seller's rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, programs and programming material, jingles, slogans, logos, and other intangible property which are used or held for use in the operation of the Station, including without limitation those listed on *Schedule 1.1(e)* (the "Intangible Property"); and

(f) Seller's rights in and to all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Station, including the Station's local public files, programming information and studies, engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, but excluding records relating to Excluded Assets (defined below).

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("Liens") except for Assumed Obligations (defined in Section 1.4), liens for taxes not yet due and payable, liens that will be released at or prior to Closing, and, with respect to the Real Property, such other easements, rights of way, building and use restrictions and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station (collectively, "Permitted Liens").

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein (the "Excluded Assets"):

(a) all cash and cash equivalents of Seller, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) all tangible and intangible personal property of Seller retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;

(c) all Station Contracts that are terminated or expire prior to Closing in accordance with Article 4;

(d) Seller's corporate and trade names not exclusive to the operation of the Station (including the name "Clear Channel"), charter documents, and books and records relating to the organization, existence or ownership of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

- (e) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;
- (f) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller;
- (g) the Station's accounts receivable and any other rights to payment of cash consideration for goods or services sold or provided prior to the Effective Time (defined below) or otherwise arising during or attributable to any period prior to the Effective Time (the "A/R");
- (h) any non-transferable shrinkwrapped computer software and any other non-transferable computer licenses that are not material to the operation of the Station;
- (i) all rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time;
- (j) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.7;
- (k) computers and other similar assets and any other operating systems and related assets that are used in the operation of multiple stations or other business units;
- (l) all assets used or held for use in the operation of any other radio station owned or operated by Seller or an affiliate of Seller, including without limitation the Station's studio (if shared with other stations) and any shared towers and equipment, except for any such items that are specifically set forth as included in the Station Assets on the Schedules hereto;
- (m) any shares of stock in Broadcast Music, Inc. held by Seller;
- (n) any AdSense for Audio Services Agreement with Google, Inc. for the Station, and any agreement with Cornerstone Research, Inc. for the XTrends service for the Station;
- (o) all intercompany arrangements among Seller and its affiliates that are not listed on *Schedule 1.1(c)* or *Schedule 1.1(d)*; and
- (p) the assets listed on *Schedule 1.2*.

With respect to any marks or similar Intangible Property used in the operation of the Station that are used in whole or in part in the operation of any other station, the Station Assets include only the right to use such items in the manner used by Seller at the applicable Station on a basis exclusive in the market but non-exclusive in that no right is granted to Buyer with respect to other markets (some of which may overlap), and such right (i) is limited to the extent of Seller's transferable rights, (ii) may not be assigned by Buyer except to a transferee of the applicable Station who assumes Buyer's obligations in respect thereof (and any such assignment shall not relieve Buyer of any obligation or liability), (iii) may be used by Buyer only in a manner that does not diminish the quality of such items, and only without violating law or any

third party rights (and Buyer shall be solely responsible for such use and the related services), and (iv) shall terminate for noncompliance or non-use, but otherwise shall be coterminous with Seller's rights. Upon Closing the parties shall enter into a separate license agreement that provides such rights in accordance with this Agreement.

1.3 Shared Contracts.

(a) Some of the Station Contracts may be used in the operation of multiple stations or other business units (the "Shared Contracts"). Except as provided by *Schedule 1.1(d)*, the rights and obligations under the Shared Contracts shall be equitably allocated among stations and such other business units in a manner reasonably determined by Seller in accordance with the following equitable allocation principles:

- (i) any allocation set forth in the Shared Contract shall control;
- (ii) if none, then any allocation previously made by Seller in the ordinary course of Station operations shall control;
- (iii) if none, then the quantifiable proportionate benefit to be received by the parties after Closing shall control; and
- (iv) if not quantifiable, then reasonable accommodation shall control.

(b) Buyer shall cooperate with Seller (and any third party designated by Seller) in such allocation, and the Station Contracts (and Assumed Obligations (defined below)) will include only Buyer's allocated portion of the rights and obligations under the Shared Contracts (without need for further action and whether such allocation occurs before or after Closing). If designated by Seller, such allocation will occur by termination of the Shared Contract and execution of new contracts. Buyer's allocated portion of the Shared Contracts will not include any group discounts or similar benefits specific to Seller or its affiliates. Completion of documentation of any such allocation is not a condition to Closing.

1.4 Assumption of Obligations. On the Closing Date (defined below), Buyer shall enter into any new contracts required by *Schedule 1.1(d)* or *Schedule 1.1(e)* or otherwise required by this Agreement and shall assume the obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts, the obligations described in Section 5.7 and any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.7 (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the "Retained Obligations").

1.5 Purchase Price. In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Seven Million Nine Hundred Thousand Dollars (\$7,900,000), subject to adjustment pursuant to Section 1.7 (the "Purchase Price").

1.6 Deposit. On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in the amount of Two Million Five Hundred Thousand Dollars

(\$2,500,000) (the "Deposit") with Bank of America (the "Escrow Agent") pursuant to the Escrow Agreement (the "Escrow Agreement") of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller. If this Agreement is otherwise terminated pursuant to its terms, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement unless contested by a party in good faith in writing within five (5) business days of a disbursement request, in which event the Deposit shall remain with the Escrow Agent until the parties' dispute is resolved. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure Period under Section 10.1 does not apply entitling Seller to immediately terminate this Agreement.

1.7 Prorations and Adjustments. All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles ("GAAP") as of 12:01 a.m. on the day of Closing (the "Effective Time"). Such prorations shall include without limitation all ad valorem, real estate and other property taxes (except transfer taxes as provided by Section 11.1), music and other license fees, utility expenses, rent and other amounts under Station Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Station's deposits and prepaid expenses. Sales commissions related to the sale of advertisements broadcast on the Station prior to Closing shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on the Station after Closing shall be the responsibility of Buyer. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing. There shall be no proration or adjustment for any imbalance in the value of rights and obligations under trade, barter or similar agreements for the sale of time for goods or services. There shall be no proration or adjustment for employee leave accrued in the calendar year in which Closing occurs, but the prorations shall include an adjustment for employee leave (if any) accrued in a prior calendar year.

1.8 Allocation. Within 120 days of Closing, Seller shall allocate the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"). Each of Buyer and Seller shall file a tax return reflecting this allocation as and when required under the Code.

1.9 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the "Closing") shall take place on or before the tenth business day after the date the FCC Consent becomes a Final Order (defined below) or on such later day after such consent as Buyer and Seller may mutually agree, subject to Section 5.7 and the satisfaction or waiver of the conditions set forth in Articles 6 and 7 below. The date on which the Closing is to occur is referred to herein as the "Closing Date." For purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the

FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

1.10 FCC Consent.

(a) Within five (5) business days of the date of this Agreement, Buyer and Seller shall file an application with the FCC (the "FCC Application") requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the "FCC Consent". Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

1.11 Trust. Notwithstanding anything to the contrary set forth in this Agreement, the parties acknowledge and agree that the Station is subject to the Trust. Pursuant to the Trust Agreement, the Trust is a grantor trust under Sections 671 through 678 of the Internal Revenue Code with the Station Assets being assets of Seller for tax and accounting purposes. However, the Station Assets are subject to the Trust created by the Trust Agreement. Accordingly, in its capacity as Trustee of the Aloha Station Trust, the Trustee approves this Agreement and agrees that upon Closing the Trust shall terminate with respect to the Station and the Station Assets without need for further action by any party. At Closing, the Trustee shall also execute and deliver to Buyer an Assignment of FCC Licenses (which during the Trust period show the Trustee's rather than the Seller's interest). The Trustee is acting in its capacity as Trustee of the Aloha Station Trust only, and shall have no liability in its individual capacity under or in connection with this Agreement. Buyer's sole recourse under or in connection with this Agreement shall be against Seller and the Station Assets.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer, subject to the Trust:

2.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the "Seller Ancillary Agreements") and to consummate the transactions contemplated hereby.

2.2 Authorization. The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties

thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. Except as set forth on *Schedule 2.3* and except for the FCC Consent and consents to assign certain of the Station Contracts, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any organizational documents of Seller, the Trust Agreement or any other contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

2.4 FCC Licenses. Except as set forth on *Schedule 1.1(a)*:

Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, or, to Seller's knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "Communications Act"), and the rules, regulations and policies of the FCC. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed. All such reports and filings are accurate and complete in all material respects.

2.5 Taxes. Seller has, in respect of the Station's business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

2.6 Personal Property. *Schedule 1.1(b)* contains a list of material items of Tangible Personal Property included in the Station Assets. Except as set forth on *Schedule 1.1(b)*, Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Except as set forth on *Schedule 1.1(b)*, all material items of Tangible Personal Property are in good operating condition, ordinary wear and tear excepted.

2.7 Real Property. *Schedule 1.1(c)* contains a description of the Real Property. *Schedule 1.1(c)* includes a description of each lease of Real Property or similar agreement



included in the Station Contracts (the "Real Property Leases"). To Seller's knowledge, the Real Property is not subject to any suit for condemnation or other taking by any public authority.

2.8 Contracts. *Schedule 1.1(d)* contains a list of all contracts that are used in the operation of the Station other than contracts that when combined with any Station Contracts executed after the date of this Agreement do not exceed the limitations set forth in Section 4.1 and agreements for the sale of advertising time entered into in the ordinary course of business. The Station Contracts requiring the consent of a third party to assignment are identified with an asterisk on *Schedule 1.1(c)* and *Schedule 1.1(d)*. Each of the Station Contracts (including without limitation each of the Real Property Leases) is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and to Seller's knowledge, no other party to any of the Station Contracts is in default thereunder in any material respect.

2.9 Environmental. Except as set forth on *Schedule 1.1(c)* or in any environmental report delivered by Seller to Buyer prior to the date of this Agreement, to Seller's knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property included in the Station Assets. Except as set forth on *Schedule 1.1(c)* or in any environmental report delivered by Seller to Buyer prior to the date of this Agreement, to Seller's knowledge, Seller has complied in all material respects with all environmental, health and safety laws applicable to the Station.

2.10 Intangible Property. *Schedule 1.1(e)* contains a description of the material Intangible Property included in the Station Assets. Except as set forth on *Schedule 1.1(e)*, (i) to Seller's knowledge, Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect, (ii) no material Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use, and (iii) Seller has not received any written notice that its use of any material Intangible Property is unauthorized or infringes upon the rights of any other person. Except as set forth on *Schedule 1.1(e)*, to Seller's knowledge, Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

2.11 Employees. Except as set forth on *Schedule 2.11*, (i) Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, (ii) there is no unfair labor practice charge or complaint against Seller in respect of the Station's business pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business, and (iii) Seller is not party to any collective bargaining, union or similar agreement with respect to the employees of Seller at the Station, and to Seller's knowledge, no union represents or claims to represent or is attempting to organize such employees.

2.12 Insurance. Seller maintains insurance policies or other arrangements with respect to the Station and the Station Assets consistent with its practices for other stations, and will maintain such policies or arrangements until the Effective Time.

2.13 Compliance with Law. Except as set forth on *Schedule 2.13*, (i) Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC and Federal Aviation Administration rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station, and (ii) to Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Station except those affecting the industry generally.

2.14 Litigation. Except as set forth on *Schedule 2.14*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that will subject Buyer to liability or which will affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

2.15 Financial Statements. Seller has provided to Buyer copies of its statements of operations for the Station for the years ended December 31, 2007 and December 31, 2008 (being the GAAP versions and not the non-GAAP versions made available to Buyer). Such year-end statements are the statements included in the audited consolidated financial statements of Seller and its affiliates (but such statements are not separately audited and the year to date statements are not audited). Shared operating expenses and revenue from combined sales are allocated among the Station and other stations and business units as determined by Seller. Such statements may reflect the results of intercompany arrangements that are Excluded Assets. Except for the foregoing and except for the absence of footnotes, such statements have been prepared in accordance with GAAP consistently applied and in the aggregate present fairly in all material respects the results of operations of the Station as operated by Seller for the respective periods covered thereby.

2.16 No Undisclosed Liabilities. There are no liabilities or obligations of Seller with respect to the Station that will be binding upon Buyer after the Effective Time other than the Assumed Obligations and other than pursuant to the prorations under Section 1.7.

2.17 Station Assets. The Station Assets include all assets that are owned or leased by Seller and used or held for use in the operation of the Station in all material respects as currently operated, except for the Excluded Assets.

### ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Buyer has the requisite power and authority

to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "Buyer Ancillary Agreements") and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. No waiver of or exemption from any FCC rule or policy is necessary for the FCC Consent to be obtained. There are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application.

#### ARTICLE 4: SELLER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall, subject to the Trust:

(a) operate the Station in the ordinary course of business (for avoidance of doubt, any expense reductions made consistent with Seller's past practices shall be deemed in the ordinary course of business) and in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;

(b) not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) not other than in the ordinary course of business, sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(d) maintain the Tangible Personal Property in the ordinary course of business;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;

(f) except in the ordinary course of business and as otherwise required by law, not (i) enter into any employment, labor, or union agreement or plan (or amendments of any such existing agreements or plan) that will be binding upon Buyer after Closing or (ii) increase the compensation payable to any employee of the Station, except for bonuses and other compensation payable by Seller in connection with the consummation of the transactions contemplated by this Agreement (if any); and

(g) not enter into new Station Contracts that will be binding upon Buyer after Closing or amend any existing Station Contracts, except for (A) new time sales agreements and other Station Contracts made in the ordinary course of business that are terminable on ninety days notice or less without penalty, (B) other Station Contracts made with Buyer's prior consent, and (C) other Station Contracts that do not require post-Closing payments by Buyer of more than \$100,000 per Station (in the aggregate for all such new contracts).

For purposes of calculating the amount of said post-Closing payments by Buyer, if a contract is terminable by giving advance notice, then such amount shall include only the post-Closing amount that would be payable if a termination notice were given at Closing (whether or not such notice is in fact given), but in no event shall such amount be more than the amount payable absent such termination notice.

#### ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows, subject to the Trust:

5.1 Confidentiality. Seller or an affiliate of Seller and Buyer or an affiliate of Buyer are parties to a nondisclosure agreement (the "NDA") with respect to Seller and its stations. To the extent not already a direct party thereto, Buyer and Seller hereby assume the NDA and agree to be bound by the provisions thereof. Without limiting the terms of the NDA, subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including without limitation all financial information provided by Seller to Buyer) shall be confidential and shall not be disclosed to any other person or entity,

except the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement.

5.2 Announcements. Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement, and except as necessary to enforce rights under or in connection with this Agreement. Notwithstanding the foregoing, the parties acknowledge that this Agreement and the terms hereof will be filed with the FCC Application and thereby become public.

5.3 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.4 Risk of Loss.

(a) Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Effective Time any item of Tangible Personal Property is damaged or destroyed or otherwise not in the condition described in Section 2.6 in any material respect, then:

(i) Seller shall use commercially reasonable efforts to repair or replace such item in all material respects in the ordinary course of business; and

(ii) if such repair or replacement is not completed prior to Closing, then the parties shall proceed to Closing (with Seller's representations and warranties deemed modified to take into account any such condition) and Seller shall promptly repair or replace such item in all material respects after Closing (and Buyer will provide Seller access and any other reasonable assistance requested by Seller with respect to such obligation), except that if such damage or destruction materially disrupts Station operations, then Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects, subject to Section 10.1.

(c) If prior to Closing the Station is off the air or operating at a power level that results in a material reduction in coverage (a "Broadcast Interruption"), then Seller shall use commercially reasonable efforts to return the Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of 24 hours, then Buyer may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to Section 10.1.

5.5 Environmental.

(a) With respect to any ground lease included in the Station Assets, if any, Buyer may at its expense conduct Phase I environmental assessments (each a "Phase I") prior to Closing, provided that such assessments are conducted during normal business hours upon reasonable prior notice (and subject to landlord consent if necessary), but completion of such assessments (or the results thereof) is not a condition to Closing.

(b) If any Phase I or any item set forth on *Schedule 1.1(c)* or any environmental report provided by Seller to Buyer prior to the date of this Agreement identifies a condition requiring remediation under, applicable environmental law, then:

(i) except as set forth below, Seller shall use commercially reasonable efforts to remediate such condition in all material respects in the ordinary course of business; and

(ii) if such remediation is not completed prior to Closing, then the parties shall proceed to Closing (with Seller's representations and warranties deemed modified to take into account any such condition) and Seller shall remediate such item in all material respects after Closing (and Buyer will provide Seller access and any other reasonable assistance requested by Seller with respect to such obligation).

(c) Notwithstanding anything herein to the contrary, if at any time any such condition exists and the reasonably estimated cost to remedy all such conditions in the aggregate exceeds \$100,000, then either party shall have the right to terminate this Agreement upon written notice to the other party.

#### 5.6 Consents.

(a) The parties shall use commercially reasonable efforts to obtain (i) any third party consents necessary for the assignment of any Station Contract (which shall not require any payment to any such third party), and (ii) execution of reasonable estoppel certificates by lessors under any Real Property Leases requiring consent to assignment, but no such consents or estoppel certificates are conditions to Closing except for the Required Consents. Receipt of consent to assign to Buyer the Station's main tower leases designated with a diamond on *Schedule 1.1(c)* is a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms.

#### 5.7 Employees.

(a) Seller has provided Buyer a list showing employee positions and certain compensation information for employees of the Station who are available to Buyer for hire.

Except as set forth on *Schedule 1.1(d)*, Buyer may, but is not obligated to, offer post-Closing employment to such employees. With respect to each such employee, within thirty (30) calendar days after the date of this Agreement Buyer shall notify Seller in writing whether or not it will offer Comparable Employment (defined below) to such employee upon Closing. Within thirty (30) calendar days after Closing, Buyer shall give Seller written notice identifying (i) all Transferred Employees (defined below) and (ii) all individuals who were employed by Seller prior to the Closing who were offered Comparable Employment with Buyer who did not accept such offers. As used herein, "Comparable Employment" means employment with no reduction in base salary or change in the amount of scheduled hours, and no requirement to commute more than 30 miles further than the employee's commute while employed by Seller.

(b) If applicable, Seller shall give any notice to any applicable employees required under the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local law, and Buyer shall comply with any applicable requirements thereunder after the Effective Time. If the WARN Act or any such other law is applicable, then Seller may by written notice to Buyer extend the Closing Date to a date within five (5) business days after expiration of all applicable notice periods.

(c) With respect to employees of the Station hired by Buyer ("Transferred Employees"), Seller shall be responsible for all compensation and benefits arising prior to the Effective Time (in accordance with Seller's employment terms), and Buyer shall be responsible for all compensation and benefits arising after the Effective Time (in accordance with Buyer's employment terms). Buyer shall grant credit to each Transferred Employee for all unused vacation and sick leave accrued as of the Effective Time as an employee of Seller, and Buyer shall assume and discharge Seller's obligation to provide such leave to such employees (such obligations being a part of the Assumed Obligations). If any such leave is accrued in a year prior to the calendar year in which Closing occurs, then Buyer shall receive an appropriate adjustment as provided by Section 1.7.

(d) Buyer shall permit Transferred Employees (and their spouses and dependents) to participate in its "employee welfare benefit plans" (including without limitation health insurance plans) and "employee pension benefit plans" (as defined in ERISA) in which similarly situated employees are generally eligible to participate, with coverage effective immediately upon Closing (and without exclusion from coverage on account of any pre-existing condition), with service with Seller deemed service with Buyer for purposes of any length of service requirements, waiting periods, vesting periods and differential benefits based on length of service, and with credit under any welfare benefit plan for any deductibles or co-insurance paid for the current plan year under any plan maintained by Seller.

(e) Buyer shall also permit each Transferred Employee who participates in Seller's 401(k) plan to elect to make direct rollovers of their account balances into Buyer's 401(k) plan as soon as administratively feasible after Closing, including the direct rollover of any outstanding loan balances such that they will continue to make payments under the terms of such loans under Buyer's 401(k) plan, subject to compliance with applicable law and subject to the reasonable requirements of Buyer's 401(k) plan.

(f) Between the date of this Agreement and the date one (1) year after Closing, Buyer shall not, without the prior written consent of Seller, solicit for hire any of

Seller's (or its affiliates') employees in the Station's market who are not on the list of employees available for hire pursuant to Section 5.7(a). Notwithstanding the foregoing, the restrictions set forth in this Section 5.7(f) shall not prohibit general solicitations not directed at such employees or the use of employee recruiting or search firms (provided that such employee recruiting or search firms do not direct their activities at such employees), or the hiring of any such employee that does not result from a breach of this Section.

5.8 Accounts Receivable. Buyer shall not collect any A/R unless requested by Seller, and Buyer shall promptly pay over to Seller any A/R it receives, without offset. If requested by Seller, then for a period of ninety (90) days after Closing (the "Collection Period"), Buyer shall, without charge to Seller, use commercially reasonable efforts to collect the A/R in the ordinary course of business and shall apply all amounts collected from the Station's account debtors to the oldest account first, unless the advertiser disputes in good faith in writing an older account and designates the payment to a newer account. Any amounts relating to the A/R that are paid directly to Seller shall be retained by Seller. Buyer shall not discount, adjust or otherwise compromise any A/R and Buyer shall refer any disputed A/R to Seller. Within ten calendar days after the end of each month, Buyer shall deliver to Seller a report showing A/R collections for the prior month and Buyer shall make a payment, without offset, to Seller equal to the amount of all such collections. At the end of the Collection Period, any remaining A/R shall be returned to Seller for collection.

5.9 1031 Exchange. To facilitate a like-kind exchange under Section 1031 of the Code, Seller may assign its rights under this Agreement (in whole or in part) to a "qualified intermediary" under section 1.1031(k)-1(g)(4) of the treasury regulations (but such assignment shall not relieve Seller of its obligations under this Agreement) and any such qualified intermediary may re-assign to Seller. If Seller gives notice of such assignment, Buyer shall provide Seller with a written acknowledgment of such notice prior to Closing and pay the Purchase Price (or such portion thereof as is designated in writing by the qualified intermediary) to or on behalf of the qualified intermediary at Closing and otherwise reasonably cooperate therewith.

5.10 Actions. After Closing, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action which is pending or threatened against Seller or its affiliates with respect to the Station, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, Buyer shall make available its employees to give depositions or testimony and shall preserve and furnish all documentary or other evidence that Seller may reasonably request.

5.11 FCC Compliance. If after Closing the FCC Consent is reversed or otherwise set aside, and there is a Final Order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Station Assets shall be rescinded. In such event, Buyer shall reconvey to Seller the Station Assets free and clear of Liens other than Permitted Liens, and Seller shall repay to Buyer the Purchase Price and reassume the Station Contracts. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final Order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and execution by Seller of instruments of assumption of the Station Contracts) and make such



payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

#### ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

##### 6.1 Representations and Covenants.

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consent shall have become a Final Order.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2.

#### ARTICLE 7: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

##### 7.1 Representations and Covenants.

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorization. The FCC Consent shall have become a Final Order.

7.4 Deliveries. Seller shall have complied with its obligations set forth in Section 8.1.

7.5 Consents. The Required Consents shall have been obtained.

#### ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) good standing certificates issued by the Secretary of State of Seller's jurisdiction of formation;

(ii) a certificate executed by Seller's secretary or assistant secretary confirming that the officers executing this Agreement and the Seller Ancillary Agreements are authorized to execute such documents;

(iii) the certificate described in Section 7.1(c);

(iv) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

(v) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;

(vi) an assignment and assumption of leases assigning the Real Property Leases from Seller to Buyer;

(vii) domain name transfers assigning the Station's domain names listed on *Schedule 1.1(e)* from Seller to Buyer following customary procedures of the domain name administrator;

(viii) endorsed vehicle titles conveying the vehicles included in the Tangible Personal Property (if any) from Seller to Buyer;

(ix) a bill of sale conveying the other Station Assets from Seller to Buyer; and

(x) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Section 1.5 hereof;
- (ii) good standing certificates issued by the Secretary of State of Buyer's jurisdiction of formation;
- (iii) a certificate executed by Buyer certifying the due authorization of this Agreement and the Buyer Ancillary Agreements, together with copies of Buyer's authorizing resolutions;
- (iv) the certificate described in Section 6.1(c);
- (v) an assignment and assumption of contracts assuming the Station Contracts;
- (vi) an assignment and assumption of leases assuming the Real Property Leases;
- (vii) domain name transfers assuming the Station's domain names listed on *Schedule 1.1(e)* following customary procedures of the domain name administrator;
- (viii) any new agreements required by the Schedules to this Agreement or otherwise required by this Agreement (if any); and
- (ix) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

#### ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.5 (Taxes), Section 2.9 (Environmental), and those under Sections 2.6, 2.7 and 2.10 solely with respect to title, all of which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

#### 9.2 Indemnification.

(a) Subject to Section 9.2(b), from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties made under this Agreement; or

(ii) any default by Seller of any covenant or agreement made under this Agreement; or

(iii) the Retained Obligations; or

(iv) the business or operation of the Station before the Effective Time, except for the Assumed Obligations.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller shall have no liability to Buyer under clause (i) of Section 9.2(a) until Buyer's aggregate Damages exceed an amount equal to \$100,000, after which such threshold amount shall be included in, not excluded from, any calculation of Damages, and (ii) the maximum aggregate liability of Seller under Section 9.2(a) shall be an amount equal to 20% of the Purchase Price.

(c) From and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

(i) any breach by Buyer of its representations and warranties made under this Agreement; or

(ii) any default by Buyer of any covenant or agreement made under this Agreement; or

(iii) the Assumed Obligations; or

(iv) the business or operation of the Station after the Effective Time.

### 9.3 Procedures.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1.

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

(c) Anything herein to the contrary notwithstanding:

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

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

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

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

(d) After Closing, all claims for breach of representations or warranties under this Agreement shall be subject to the limitations set forth in Section 9.2(b).

#### ARTICLE 10: TERMINATION AND REMEDIES

10.1 Termination. Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below);

(c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing;

(d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date six (6) months after the date of this Agreement; or

(e) as provided by Section 5.5(c).

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty

(20) calendar days thereafter or (ii) the Closing Date determined under Section 1.9; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date determined under Section 1.9, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date determined under Section 1.9.

10.3 Survival. Except as provided by Section 10.5, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.6 (Deposit) (and Section 10.5 with respect to the Deposit), 5.1 (Confidentiality) and 11.1 (Expenses) shall survive any termination of this Agreement.

10.4 Specific Performance. In the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. Notwithstanding the foregoing, if prior to Closing the condition described in Section 10.1(c) exists, then Seller's sole remedy for Buyer's breach of this Agreement shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 10.5, except for any failure by Buyer to comply with its obligations related to the Deposit or Sections 1.10, 5.1, 5.2 or 5.3, as to which Seller shall be entitled to all available rights and remedies, including without limitation specific performance.

10.5 Liquidated Damages. If Seller terminates this Agreement pursuant to Section 10.1(c), then Buyer shall pay Seller on demand an amount equal to the Deposit by wire transfer of immediately available funds (which shall be satisfied by disbursement of the Deposit to Seller under Section 1.6), and such payment shall constitute liquidated damages and the sole remedy of Seller for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

#### ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. All governmental fees and charges applicable to the request for the FCC Consent shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

11.2 Further Assurances. After 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 of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.3 Assignment. Except as provided by Section 5.9 (1031 Exchange), neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that (i) any such assignment does not delay processing of the FCC Application, grant of the FCC Consent or Closing, (ii) any such assignee delivers to Seller a written assumption of this Agreement, (iii) Buyer shall remain liable for all of its obligations hereunder, and (iv) Buyer shall be solely responsible for any third party consents necessary in connection therewith (none of which are a condition to Closing). The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Seller:	Clear Channel Broadcasting, Inc. 200 E. Basse Road San Antonio, TX 78209 Attention: Dirk Eller Facsimile: (210) 822-2299
with a copy (which shall not constitute notice) to:	Clear Channel Broadcasting, Inc. Legal Department 200 E. Basse Road San Antonio, TX 78209 Attention: Christopher M. Cain, Esq. Facsimile: (210) 832-3433
and to:	Wiley Rein LLP 1776 K Street, N.W. Washington, D.C. 20006 Attention: Doc Bodensteiner Facsimile: (202) 719-7049
if to Buyer:	Red Wolf Broadcasting Corporation P.O. Box 357 758 Colonel Ledyard Highway Ledyard, CT 06339 Attention: John J. Fuller, President Facsimile: 860-464-8143

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

Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, D.C. 20016  
Attention: Arthur Belendiuk  
Facsimile: (202) 363-4266

if to the Trustee:

Aloha Station Trust LLC  
2810 Thousand Oaks  
No. 210  
San Antonio, TX 78232  
Attention: Jeanette Tully  
Facsimile: (210) 491-5918

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

Thompson Hine LLP  
1920 N Street, NW, Suite 800  
Washington, DC 20036  
Attention: Barry Friedman  
Facsimile: (202) 331-8330

11.5 Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

11.6 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Station, which shall remain in full force and effect. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Seller makes no representation or warranty to Buyer with respect to any projections, budgets or other estimates of the Station's revenues, expenses or results of operations, or, except as expressly set forth in Article 2, any other financial or other information made available to Buyer with respect to the Station.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

11.8 No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.



11.9 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Texas without giving effect to the choice of law provisions thereof. Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement shall be brought in any state court located in Bexar County, Texas ("Bexar County Courts"). The parties consent to the exclusive jurisdiction and venue of the Bexar County Courts in any action, suit or proceeding arising out of or in connection with this Agreement, and the parties irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of exclusive jurisdiction and venue in the Bexar County Courts and that any such action, suit or proceeding brought in the Bexar County Courts has been brought in an inconvenient forum. The prevailing party in a lawsuit brought to enforce the performance or compliance of any provision of this Agreement may recover reasonable attorneys' fees and costs from the non-prevailing party.

11.10 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

Dated as of: February 18, 2009

[SIGNATURE PAGE FOLLOWS]

12957679

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER: RED WOLF BROADCASTING CORPORATION

By: 

Name: John J. Fuller

Title: President

SELLER: CAPSTAR RADIO OPERATING COMPANY  
CAPSTAR TX LIMITED PARTNERSHIP

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

Name:

Title:

As provided by Section 1.11:

TRUSTEE: ALOHA STATION TRUST, LLC, in its  
capacity as Trustee of the Aloha Station Trust

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

Jeanette Tully, its member

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER: RED WOLF BROADCASTING CORPORATION

By: \_\_\_\_\_  
Name: John J. Fuller  
Title: President

SELLER: CAPSTAR RADIO OPERATING COMPANY  
CAPSTAR TX LIMITED PARTNERSHIP

By: Bill Hamersly  
Name: BILL HAMERSLY  
Title: SVP

As provided by Section 1.11:

TRUSTEE: ALOHA STATION TRUST, LLC, in its  
capacity as Trustee of the Aloha Station Trust

By: \_\_\_\_\_  
Jeanette Tully, its member

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER: RED WOLF BROADCASTING CORPORATION

By: \_\_\_\_\_  
Name: John J. Fuller  
Title: President

SELLER: CAPSTAR RADIO OPERATING COMPANY  
CAPSTAR TX LIMITED PARTNERSHIP

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

As provided by Section 1.11:

TRUSTEE: ALOHA STATION TRUST, LLC, in its  
capacity as Trustee of the Aloha Station Trust

By: Jeanette Tully  
Jeanette Tully, its member

EXHIBIT B

(Last Bastion Trust-Saga Asset Purchase Agreement)

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**") is made as of August 22, 2007 between The Last Bastion Station Trust, LLC, a Delaware limited liability company ("**Seller**" or "**Trustee**"), and Saga Communications of New England, LLC, a Delaware limited liability company ("**Buyer**").

### RECITALS

In connection with the Agreement and Plan of Merger by and among The Walt Disney Company, ABC Radio Holdings, Inc. (fka ABC Chicago FM Radio, Inc.), Citadel Broadcasting Corporation ("**Citadel**") and Alphabet Acquisition Corp. dated February 6, 2006, Citadel entered into a Trust Agreement dated as of June 12, 2007, as amended by that certain First Amendment to Trust Agreement dated as of June 25, 2007, and as further amended by that certain Second Amendment to Trust Agreement dated as of July 23, 2007 (the "**Trust Agreement**"), with Trustee in order to vest legal title and control of certain stations in the Trustee for the purpose of reducing the number of stations in which Citadel holds an attributable interest in certain markets and facilitating a sale or sales of the stations by the Trustee. Upon consummation of the Merger, the Station (defined below) was assigned to and is currently operated by the Trustee.

Seller, as trustee, operates as trustee broadcast radio station WCLZ(FM), FCC Facility ID No. 56569, Brunswick, ME (the "**Station**"), pursuant to licenses issued by the Federal Communications Commission (the "**FCC**").

Seller and Buyer have agreed that Seller will sell and Buyer will acquire the Station Assets (as defined below), on the terms and subject to the conditions set forth in this Agreement, including the FCC's consent to the assignment of the FCC Licenses (as defined below) to Buyer. A table of cross-references for definitions of capitalized terms used in this Agreement is set forth in Article 12.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE 1: PURCHASE OF ASSETS

**1.1 Station Assets.** On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in Sections 1.2 and 1.3, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the assets and properties of Seller, real and personal, tangible and intangible, that are used exclusively in the operation of the Station (the "**Station Assets**"), as follows:

(a) The licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station (the "**FCC Licenses**") and listed on *Schedule 1.1(a)*, including any modifications thereof between the date hereof and Closing;

(b) the equipment, transmitters, antennas, cables, towers, vehicles, furniture, fixtures, spare parts and other tangible personal property listed on *Schedule 1.1(b)*, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business (the “*Tangible Personal Property*”);

(c) Seller’s real property used in connection with the Station (including any appurtenant easements and improvements located thereon) and listed on *Schedule 1.1(c)* (the “*Real Property*”);

(d) all agreements for the sale of advertising time on the Station entered into in the ordinary course of business, and all other contracts, agreements and leases entered into in the ordinary course of the Station’s business, including without limitation those listed on *Schedule 1.1(d)*, together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Article 4 (the “*Station Contracts*”);

(e) all of Seller’s rights in and to the Station’s call letters and Seller’s rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, programs and programming material, jingles, slogans, logos, and other intangible property which are used exclusively in the operation of the Station, including without limitation those listed on *Schedule 1.1(e)* (the “*Intangible Property*”); and

(f) Seller’s rights in and to all the files, documents, records, and books of account (or copies thereof) relating exclusively to the operation of the Station, including the Station’s local public files, programming information and studies, engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, but excluding records relating to Excluded Assets (defined below).

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances (“*Liens*”) except for Permitted Liens. “*Permitted Liens*” means the following: (i) liens for current taxes not yet due and payable (or being contested in good faith); (ii) zoning laws and ordinances and similar laws; (iii) rights reserved to any governmental authority to regulate the affected property; (iv) as to interests in Real Property, any easements, rights-of-way, servitudes, permits, restrictions and minor imperfections or irregularities in title that are reflected in the public records and that do not individually or in the aggregate materially detract from the value of the Real Property or interfere with the right or ability to own, use, lease or operate the Real Property as presently utilized; (v) the Assumed Obligations, (vi) inchoate materialmens, mechanics’, workmen’s, repairmen’s or other Liens arising in the ordinary course of business, and (vii) any Liens set forth in *Schedule 1.1(x)*.

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein (the “*Excluded Assets*”):

(a) all cash and cash equivalents of Seller or Citadel, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

- (b) all tangible and intangible personal property of Seller or Citadel retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;
- (c) all Station Contracts that are terminated or expire prior to Closing in accordance with Article 4;
- (d) Citadel's corporate and trade names unrelated to the operation of the Station (including the name "*Citadel*"), charter documents, and books and records relating to the organization, existence or ownership of Citadel, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;
- (e) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;
- (f) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller or Citadel;
- (g) the Station's accounts receivable and any other rights to payment of cash consideration for goods or services sold or provided prior to the Effective Time (defined below) or otherwise arising during or attributable to any period prior to the Effective Time (the "*Accounts Receivable*");
- (h) any non-transferable shrinkwrapped computer software and any other non-transferable computer licenses that are not material to the operation of the Station;
- (i) all rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time;
- (j) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.7;
- (k) computers and other similar assets located anywhere other than at the Station's studios, and any other operating systems and related assets that are used in the operation of multiple stations or other business units;
- (l) the studio and office facilities of the Station, all equipment and furniture located therein, and all contracts relating to such office or studio space or equipment located therein, except as specifically set forth on *Schedule 1.1(b)*;
- (m) the tower and other assets used or held for use in the operation of any other radio station owned or operated by Citadel, Seller or an affiliate of Citadel or Seller, except as specifically set forth on *Schedule 1.1(b)*;
- (n) certain contracts or portions thereof as provided by *Schedule 1.1(c)* or *Schedule 1.1(d)*; and



- (o) the assets listed on *Schedule 1.2* (if any).

If any real property is identified on *Schedule 1.2* as an Excluded Asset, then all towers and buildings on such property and any income-producing leases with respect thereto are also Excluded Assets. With respect to any such real property, if a lease providing for use of such property by the applicable Station does not currently exist, then either (i) prior to Closing Seller will enter into such a lease (in which event it shall become a Station Contract) or (ii) if it does not enter into such lease prior to Closing, then at Closing, Buyer and Seller shall enter into such lease in such form.

With respect to any marks or similar Intangible Property used in the operation of the Station that are used in whole or in part in the operation of any other station, the Station Assets include only the right to use such items in the manner used by Seller at the applicable Station on a basis exclusive in the market but non-exclusive in that no right is granted to Buyer with respect to other markets (some of which may overlap), and such right (i) is limited to the extent of Seller's transferable rights, (ii) may not be assigned by Buyer except to a transferee of the applicable Station who assumes Buyer's obligations in respect thereof (and any such assignment shall not relieve Buyer of any obligation or liability), (iii) may be used by Buyer only in a manner that does not diminish the quality of such items, and only without violating law or any third party rights (and Buyer shall be solely responsible for such use and the related services), and (iv) shall terminate for noncompliance or non-use, but otherwise shall be coterminous with Seller's rights. If any party requests further documentation of such rights, then upon Closing the parties shall enter into a separate license agreement that provides such rights in accordance with this Agreement.

### **1.3 Shared Contracts.**

(a) Some of the Station Contracts may be used in the operation of multiple stations or other business units (the "*Shared Contracts*"). Except as provided by *Schedule 1.1(d)*, the rights and obligations under the Shared Contracts shall be equitably allocated among stations and such other business units in a manner reasonably determined by Seller in accordance with the following equitable allocation principles:

- (i) any allocation set forth in the Shared Contract shall control;
- (ii) if none, then the quantifiable proportionate benefit to be received by the parties after Closing shall control; and
- (iii) if not quantifiable, then the mutual agreement of the parties shall control.

(b) Buyer shall cooperate with Seller (and any third party designated by Seller) in such allocation, and the Station Contracts (and Assumed Obligations (defined below)) will include only Buyer's allocated portion of the rights and obligations under the Shared Contracts (without need for further action and whether such allocation occurs before or after Closing). If designated by Seller, such allocation will occur by termination of the Shared Contract and execution of new contracts. Buyer's allocated portion of the Shared Contracts will

not include any group discounts or similar benefits specific to Seller or its affiliates. Completion of documentation of any such allocation is not a condition to Closing.

**1.4 Assumption of Obligations.** On the Closing Date (defined below), Buyer shall enter into any new contracts required by *Schedule 1.1(c)* or *Schedule 1.1(d)* or otherwise required by this Agreement and shall assume the obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date from the ownership or holding of the Station Assets, the obligations described in Section 5.7 and any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.7 (collectively, the “*Assumed Obligations*”). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the “*Retained Obligations*”).

**1.5 Purchase Price.** In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000), subject to adjustment pursuant to Section 1.7 (the “*Purchase Price*”).

**1.6 Deposit.** On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to ten percent (10%) of the Purchase Price (the “*Deposit*”) with Commerce Bank, National Association (the “*Escrow Agent*”) pursuant to the Escrow Agreement (the “*Escrow Agreement*”) of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller. If this Agreement is terminated for any other reason, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure Period under Section 10.2 does not apply entitling Seller to immediately terminate this Agreement.

**1.7 Prorations and Adjustments.** All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“*GAAP*”) as of 12:01 a.m. on the day of Closing (the “*Effective Time*”). Such prorations shall include without limitation all ad valorem, real estate and other property taxes (except transfer taxes as provided by Section 11.1), music and other license fees, utility expenses, rent and other amounts under Station Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s deposits and prepaid expenses. Sales commissions related to the sale of advertisements broadcast on the Station prior to Effective Time shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on the Station after the Effective Time shall be the responsibility of Buyer. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing. There shall be no proration or adjustment for any imbalance in the value of rights and obligations under trade, barter or similar agreements for the sale of time for goods or services. Except as may be provided by *Schedule 5.7*, there shall be no proration or adjustment for employee leave accrued

in the calendar year in which Closing occurs, but the prorations shall include an adjustment for employee leave (if any) accrued in a prior calendar year.

**1.8 Allocation.** Within 120 days of Closing, Buyer and Seller shall mutually agree to an allocation of the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the “**Code**”). Each of Buyer and Seller shall file a tax return reflecting this allocation as and when required under the Code.

**1.9 Closing.** The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “**Closing**”) shall take place on or before the tenth business day after the date the FCC Consent shall have become a Final Order, or on such later day after such consent as Buyer and Seller may mutually agree, subject to Section 5.7 and the satisfaction or waiver of the conditions set forth in Articles 6 or 7 below. Notwithstanding the foregoing, the Buyer may waive the condition precedent that the FCC Consent shall have become a Final Order (which waiver, if made by Buyer, shall be deemed also made by Seller) if, but only if, the FCC Consent shall have been issued by the FCC without opposition thereto by any party, and, upon such waiver, the Closing shall be held on the tenth business day after Seller receives notice of such waiver from Buyer or on such later day as Buyer and Seller may mutually agree (assuming that the FCC has provided Public Notice of the FCC Consent). As used in this Agreement, “Final Order” shall mean an order of the FCC or a court of competent jurisdiction with respect to which no appeal, no petition for re-hearing, reconsideration or stay, and no other administrative or judicial action contesting such order is pending and as to which the time for filing or instituting such appeal, petition or other action has expired, or, if filed or instituted, has been denied, dismissed, concluded or withdrawn, and the time for requesting or instituting any further review or reconsideration by a court of competent jurisdiction or the FCC, whether on its own motion or at the request of any party, has expired. The date on which the Closing is to occur is referred to herein as the “**Closing Date**.”

**1.10 Governmental Consents.**

(a) Within five (5) business days of the date of this Agreement, Buyer and Seller shall file an application with the FCC (the “**FCC Application**”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “**FCC Consent**”. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

## **ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES**

Seller makes the following representations and warranties to Buyer:

**2.1 Organization.** Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in each jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the “*Seller Ancillary Agreements*”) and to consummate the transactions contemplated hereby.

**2.2 Authorization.** The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**2.3 No Conflicts.** Except as set forth on *Schedule 2.3* and except for the FCC Consent and consents to assign certain of the Station Contracts, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby or thereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

**2.4 FCC Licenses.** Except as set forth on *Schedule 1.1(a)*:

Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, or, to Seller’s knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against the Station or against Seller with respect to the Station that could result in any such action. The Station is operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the “*Communications Act*”), and the rules, regulations and policies of the FCC. All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been timely filed. All such reports and filings are accurate and complete in all material respects.

**2.5 Taxes.** Seller has, in respect of the Station's business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

**2.6 Personal Property.** *Schedule 1.1(b)* contains a list of material items of Tangible Personal Property included in the Station Assets. Except as set forth on *Schedule 1.1(b)*, Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Except as set forth on *Schedule 1.1(b)*, all material items of Tangible Personal Property are in operating condition and repair, ordinary wear and tear excepted.

**2.7 Real Property.** *Schedule 1.1(c)* contains a description of the Real Property. Seller has good and marketable fee simple title to the owned Real Property described on *Schedule 1.1(c)*, free and clear of Liens other than Permitted Liens. To Seller's knowledge, the Real Property is not subject to any suit for condemnation or other taking by any public authority.

**2.8 Contracts.** *Schedule 1.1(d)* contains a list of all contracts that are used in the operation of the Station other than contracts that when combined with any Station Contracts executed after the date of this Agreement do not exceed the limitations set forth in Section 4.1 and agreements for the sale of advertising time entered into in the ordinary course of business. The Station Contracts requiring the consent of a third party to assignment are identified with an asterisk on *Schedule 1.1(d)*, . Each of the Station Contracts is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and to Seller's knowledge, all other parties to the Station Contracts have materially performed their obligations thereunder and no other party to any of the Station Contracts is in default thereunder in any material respect.

**2.9 Environmental.** Except as set forth on *Schedule 1.1(c)*, to Seller's knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property included in the Station Assets. Except as set forth on *Schedule 1.1(c)*, to Seller's knowledge, Seller has complied in all material respects with all environmental, health and safety laws (collectively "*Environmental Laws*") applicable to the Station, and Seller has not received any communication from any other party to indicate that any prior user or occupant of the Real Property has not complied in all material respects with all Environmental Laws applicable to the Station.

**2.10 Intangible Property.** *Schedule 1.1(e)* contains a description of the material Intangible Property included in the Station Assets. Except as set forth on *Schedule 1.1(e)*, (i) to Seller's knowledge, Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect, (ii) no material Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use, and (iii) Seller has not received any written notice that its use of any material Intangible Property is unauthorized or infringes upon the rights of any other person. Except as set forth on

*Schedule 1.1(e)*, to Seller's knowledge, Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

**2.11 Employees.** Except as set forth on *Schedule 2.11*, (i) Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, (ii) there is no unfair labor practice charge or complaint against Seller in respect of the Station's business pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business, and (iii) Seller is not party to any collective bargaining, union or similar agreement with respect to the employees of Seller at the Station, and to Seller's knowledge, no union represents or claims to represent or is attempting to organize such employees. Except as set forth on *Schedule 1.1(d)*, there is no written employment contract with any employee of the Station and no material obligation, contingent or otherwise, under any employment arrangement with any employee of the Station.

**2.12 Insurance.** Seller or Citadel maintains insurance policies or other arrangements with respect to the Station and the Station Assets consistent with its practices for other stations, and will maintain such policies or arrangements until the Effective Time.

**2.13 Compliance with Law.** Except as set forth on *Schedule 2.13*, (i) Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC and Federal Aviation Administration rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station, and (ii) to Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Station except those affecting the industry generally.

**2.14 Litigation.** Except as set forth on *Schedule 2.14*, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that might subject Buyer to liability or which might affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which might have a material adverse effect on the condition of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

**2.15 No Undisclosed Liabilities.** Other than the Assumed Obligations and other than pursuant to the prorrations under Section 1.7, there are no liabilities or obligations with respect to the Station Assets that will be binding upon Buyer after the Effective Time.

**2.16 Station Assets.** The Station Assets include all assets that are owned or leased by Seller and used or held for use exclusively in the operation of the Station in all material respects as currently operated, except for the Excluded Assets.

**2.17 Broker.** Seller has not incurred or become liable for any broker's commission or finder's fee relating to the transactions contemplated under this Agreement that is binding on Buyer or that will impose any liability on Buyer.

### **ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to Seller:

**3.1 Organization.** Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "*Buyer Ancillary Agreements*") and to consummate the transactions contemplated hereby.

**3.2 Authorization.** The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.3 No Conflicts.** Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby and thereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

**3.4 Litigation.** There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

**3.5 Qualification.** Buyer is legally, financially and otherwise qualified to acquire the FCC Licenses and to own and operate the Station Assets under the Communications Act and the rules, regulations and policies of the FCC. No waiver of or exemption from any provision of the Communications Act or any FCC rule or policy is necessary for the FCC Consent to be obtained. To Buyer's knowledge, there are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application.

**3.6 Financing.** As of the Closing Date, Buyer will have sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Purchase Price and any other amounts to be paid by it in accordance with the terms of this Agreement.

#### **ARTICLE 4: SELLER COVENANTS**

**4.1 Seller's Covenants.** Between the date hereof and Closing, except as contemplated by the Trust Agreement and except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

- (a) operate the Station in the ordinary course of business in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;
- (b) not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;
- (c) not other than in the ordinary course of business, sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;
- (d) maintain the Tangible Personal Property in the ordinary course of business;
- (e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Station;
- (f) except in the ordinary course of business and as otherwise required by law, not (i) enter into any employment, labor, or union agreement or plan (or amendments of any such existing agreements or plan) that will be binding upon Buyer after Closing, (ii) increase the compensation payable to any employee of the Station, except for bonuses and other compensation payable by Seller in connection with the consummation of the transactions contemplated by this Agreement (if any), or (iii) hire, fire, release or transfer any employee of the Station;
- (g) not enter into new Station Contracts that will be binding upon Buyer after Closing or amend any existing Station Contracts, except for (A) new time sales agreements and other Station Contracts made in the ordinary course of business that are terminable on ninety (90) days notice or less without penalty, (B) other Station Contracts made with Buyer's prior consent, and (C) other Station Contracts that do not require post-Closing payments by Buyer of more than \$25,000 (in the aggregate for all such new contracts);
- (h) not make any material change in the price or terms of advertising;



(i) not modify, amend, alter or terminate any of the Station Contracts, or waive any default or breach thereunder, or modify, amend, alter or terminate any other right relating to or included in the Station Assets;

(j) not knowingly do, or knowingly omit to do, any act which will cause a default under, or breach or termination of, any Station Contract;

(k) provide to Buyer, concurrently with filing thereof, copies of all reports to and other filings with the FCC relating to the Station; and provide to Buyer, promptly upon receipt thereof by Seller, copies of (i) any notices from the FCC or any other governmental authority regarding the revocation, suspension, or limitation of the rights under, or of any proceeding for the revocation, suspension, or limitation of the rights under (or that such authority may in the future, as the result of failure to comply with laws or regulations or for any other reason, revoke, suspend or limit the rights under) any FCC License, or any other license or permit held by Seller respecting the Station, and (ii) all protests, complaints, challenges or other documents filed with the FCC by third parties concerning the Station, together with, promptly upon the filing or making thereof, copies of Seller's responses to such filings. Seller shall notify Buyer in writing immediately upon learning of the institution or written threat of action against the Seller involving the Station or Station Assets before the FCC or any other governmental agency;

(l) not permit any of the FCC Licenses to expire or to be surrendered or voluntarily modified, or knowingly take any action (or knowingly fail to take any action) which could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation or limitation of rights under any FCC License; or fail to prosecute with due diligence any pending applications to any governmental authority with respect to the Station or any of the FCC Licenses, except for proceedings affecting the radio broadcasting industry generally and applications that are not material to the preservation of the FCC Licenses or the operation of the Station as currently conducted;

(m) pay or cause to be paid or provided for when due (except to the extent contested in good faith and for which proper reserves have been established) all income, property, use, franchise, excise, social security, withholding, worker's compensation and unemployment insurance taxes and all other taxes of or relating to the Station, the Station Assets and the employees of the Station required to be paid to city, county, state, Federal and other governmental units up to the Closing Date; and

(n) provide to Buyer, within ten (10) days of preparation, any monthly financial statements prepared by Seller in the ordinary course of business with respect to Seller's operation of the Station.

For purposes of calculating the amount of said post-Closing payments by Buyer, if a contract is terminable by giving advance notice, then such amount shall include only the post-Closing amount that would be payable if a termination notice were given at Closing (whether or not such notice is in fact given), but in no event shall such amount be more than the amount payable absent such termination notice.

#### **ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree as follows:

**5.1 Relocation of Tangible Personal Property.** Within forty-five (45) days following the Closing (the “**Relocation Period**”), Buyer shall remove the Tangible Personal Property located at the Seller’s studio facility. During the Relocation Period, Seller will hold the Tangible Personal Property in Seller’s studio facility until its removal by Buyer and will exercise reasonable care and otherwise cooperate with Buyer in protecting the Tangible Personal Property from damage. Seller will not move the Tangible Personal Property from its studio facility without the prior written approval of Buyer, and will allow Buyer reasonable access to Seller’s studio facility as needed for the removal of the Tangible Personal Property. Neither Seller nor Buyer shall have any liability to each other for any loss, damage, injury or expense of any kind or nature caused, whether directly or indirectly, by the Tangible Personal Property during the Relocation Period.

**5.2 Announcements.** Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

**5.3 Control.** Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

**5.4 Risk of Loss.**

(a) Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Effective Time any item of Tangible Personal Property is damaged or destroyed or otherwise not in the condition described in Section 2.6 in any material respect, then:

(i) Seller shall use commercially reasonable efforts to repair or replace such item in all material respects in the ordinary course of business; and

(ii) if such repair or replacement is not completed prior to Closing, then the parties shall proceed to Closing (with Seller’s representations and warranties deemed modified to take into account any such condition) and Seller shall promptly repair or replace such item in all material respects after Closing (and Buyer will provide Seller access and any other reasonable assistance requested by Seller with respect to such obligation), except that if such damage or destruction materially disrupts Station operations, then Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects, subject to Section 10.1.

(c) If prior to Closing the Station is off the air or operating at a power level that results in a material reduction in coverage (a “**Broadcast Interruption**”), then Seller shall

use commercially reasonable efforts to return the Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of 24 hours, then Buyer may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to Section 10.1.

#### **5.5 Environmental.**

(a) With respect to any Real Property, Buyer may at its expense conduct a Phase I environmental study by a qualified party (the "***Phase I***"). Such study shall be conducted during normal business hours upon reasonable prior notice to Seller. Failure to initiate the Phase I within thirty (30) days of the execution of this Agreement shall constitute a waiver of Buyer's right to conduct such study. Buyer shall use commercially reasonable efforts to have any Phase I be concluded as expeditiously as practicable.

(b) Buyer shall provide Seller with a copy of the Phase I promptly after its receipt by Buyer. If the Phase I discloses any material non-compliance with any Environmental Law, Seller shall, prior to the Closing Date and within fifteen (15) days of receiving a copy of the Phase I, notify Buyer whether Seller shall either:

- (i) correct the condition prior to Closing; or
- (ii) not correct the condition prior to Closing.

(c) If Seller refuses to correct a condition as described in Section 5.5(b), above, then Buyer may, at its sole option (by notice to Seller within ten days of receipt of Seller's notice), either:

- (i) waive such condition and proceed to Closing; or
- (ii) terminate this Agreement, upon which termination and notwithstanding anything to the contrary in this Agreement, the parties shall have no further obligations or liabilities to each other under this Agreement.

#### **5.6 Consents.**

(a) The parties shall use commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Station Contract (which shall not require any payment to any such third party) but no such consents are conditions to Closing.

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms.

## 5.7 Employees.

(a) Seller has provided Buyer a list showing employee positions and basic compensation for employees of the Station. Except as set forth on *Schedule 1.1(d)*, Buyer may, but is not obligated to, offer post-Closing employment to such employees. With respect to each such employee, within thirty (30) calendar days after the date of this Agreement Buyer shall notify Seller in writing whether or not it will offer Comparable Employment (defined below) to such employees upon Closing. Within thirty (30) calendar days after Closing, Buyer shall give Seller written notice identifying (i) all Transferred Employees (defined below) and (ii) all individuals who were employed by Seller prior to the Closing who were offered Comparable Employment with Buyer who did not accept such offers. As used herein, “*Comparable Employment*” means employment with no reduction in base salary or change in the amount of scheduled hours.

(b) If applicable, Seller shall give any notice to any applicable employees required under the Worker Adjustment and Retraining Notification Act (the “*WARN Act*”) or any similar state or local law, and Buyer shall comply with any applicable requirements thereunder after the Effective Time. If the WARN Act or any such other law is applicable, then Seller may by written notice to Buyer extend the Closing Date to a date within five (5) business days after expiration of all applicable notice periods.

(c) With respect to employees of the Station hired by Buyer (“*Transferred Employees*”), Seller shall be responsible for all compensation and benefits arising prior to the Effective Time (in accordance with Seller’s employment terms), and Buyer shall be responsible for all compensation and benefits arising after the Effective Time (in accordance with Buyer’s employment terms). Except as provided by *Schedule 5.7*, Buyer shall grant credit to each Transferred Employee for all unused vacation and sick leave accrued as of the Effective Time as an employee of Seller, and Buyer shall assume and discharge Seller’s obligation to provide such leave to such employees (such obligations being a part of the Assumed Obligations). If any such leave is accrued in a year prior to the calendar year in which Closing occurs, then Buyer shall receive an appropriate adjustment as provided by Section 1.7.

(d) Buyer shall permit Transferred Employees (and their spouses and dependents) to participate in its “employee welfare benefit plans” (including without limitation health insurance plans) and “employee pension benefit plans” (as defined in ERISA) in which similarly situated employees are generally eligible to participate, with coverage effective immediately upon Closing (and without exclusion from coverage on account of any pre-existing condition), with service with Seller deemed service with Buyer for purposes of any length of service requirements, waiting periods, vesting periods and differential benefits based on length of service, and with credit under any welfare benefit plan for any deductibles or co-insurance paid for the current plan year under any plan maintained by Seller.

(e) Buyer shall also permit each Transferred Employee who participates in Seller’s 401(k) plan to elect to make direct rollovers of their account balances into Buyer’s 401(k) plan as soon as administratively feasible after Closing, including the direct rollover of any outstanding loan balances such that they will continue to make payments under the terms of such loans under Buyer’s 401(k) plan, subject to compliance with applicable law and subject to the reasonable requirements of Buyer’s 401(k) plan.

## **5.8 Intentionally Omitted.**

**5.9 1031 Exchange.** To facilitate a like-kind exchange under Section 1031 of the Code, either party may assign its rights under this Agreement (in whole or in part) to a “qualified intermediary” under section 1.1031(k)-1(g)(4) of the treasury regulations (but such assignment shall not relieve such party of its obligations under this Agreement) and any such qualified intermediary may re-assign to such party. If a party gives notice of such assignment, the other party shall provide the assigning party with a written acknowledgment of such notice prior to Closing and pay the Purchase Price (or such portion thereof as is designated in writing by the qualified intermediary) to or on behalf of the qualified intermediary at Closing and otherwise reasonably cooperate therewith.

**5.10 Actions.** After Closing, Buyer and Seller shall cooperate with each other in the investigation, defense or prosecution of any action which is pending or threatened against either party or its affiliates with respect to the Station, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, each Party shall make available its employees to give depositions or testimony and shall furnish all documentary or other evidence that Seller may reasonably request.

**5.11 Rescission.** If after Closing the FCC Consent is reversed or otherwise set aside by an order of the FCC or a court of competent jurisdiction that becomes a Final Order (or otherwise becomes effective) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Station Assets shall be rescinded. In such event, (a) Buyer shall reconvey to Seller the Station Assets free and clear of Liens other than Permitted Liens, (b) Seller and Buyer shall enter into a local marketing agreement with terms and conditions standard to such agreements that will entitle Buyer to operate the Station upon reimbursement of Seller’s reasonable expenses, and (c) Seller shall promptly engage a media brokerage firm to sell the Station Assets at the highest price as quickly as practicable, with all proceeds from the sale of the Station Assets being paid to Buyer (less brokerage commissions and other expenses reasonably incurred by Seller in the sale of the Station Assets). Any such rescission shall be consummated on a mutually agreeable date within thirty (30) days of such final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and execution by Seller of instruments of assumption of the Station Contracts) as are necessary to give effect to such rescission and, if required by the FCC, Buyer and Seller will file with the FCC any applications for consent to assign the FCC Licenses back to Seller. Notwithstanding anything to the contrary in this section, Seller, or any party authorized to act on its behalf, may designate another party to fulfill its obligations hereunder (subject to obtaining any necessary FCC approval) if Seller is no longer in existence as of the date of any judicial or FCC order requiring rescission.

**5.12 Changes to Facilities.** Seller agrees that Buyer may, at Buyer’s expense, file with the FCC applications, petitions, or other papers (herein “**FCC Filings**”) as deemed necessary by Buyer to change the facilities of the Station. Attached hereto as Schedule 5.12 (pursuant to Section 73.3517 of the FCC’s Rules) is Seller’s written statement which specifically grants Seller’s permission to Buyer (a) to file such applications, petitions, or other papers, and (b) to file the statement with the applications, petitions or other papers. Seller shall, upon request of Buyer, associate with Station’s call sign, Buyer’s FCC Registration Number (“**FRN**”) to permit Buyer

to file FCC Filings on the FCC's Consolidated Data Base System. In the event Buyer does not close the acquisition of Station, Buyer or Seller (acting on Buyer's behalf) will, within 5 days of the termination of this Agreement, request in writing to the FCC that any FCC Filings be dismissed. Notwithstanding anything to the contrary in this Section, the Closing is not conditioned upon the FCC's grant of any FCC Filings.

#### **ARTICLE 6: SELLER CLOSING CONDITIONS**

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

##### **6.1 Representations and Covenants.**

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

**6.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**6.3 FCC Authorization.** The FCC Consent pursuant to the FCC's initial order shall have been obtained.

**6.4 Deliveries.** Buyer shall have complied with its obligations set forth in Section 8.2.

#### **ARTICLE 7: BUYER CLOSING CONDITIONS**

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

##### **7.1 Representations and Covenants.**

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

**7.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**7.3 FCC Authorization.** The FCC Consent shall have become a Final Order, unless this condition has been waived by Buyer.

**7.4 Deliveries.** Seller shall have complied with its obligations set forth in Section 8.1.

**7.5 Consents.** The Required Consents (if any) shall have been obtained.

## **ARTICLE 8: CLOSING DELIVERIES**

**8.1 Seller Documents.** At Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) good standing certificates issued by the Secretary of State of Seller's jurisdiction of formation;

(ii) a certificate executed by Seller's secretary or assistant secretary evidencing authorization by Seller's managing members for the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(iii) the certificate described in Section 7.1(c);

(iv) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

(v) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;

(vi) special warranty deeds conveying the Owned Real Property (if any) from Seller to Buyer;

(vii) an assignment of marks assigning the Station's registered marks listed on *Schedule 1.1(e)* (if any) from Seller to Buyer;

(viii) domain name transfers assigning the Station's domain names listed on *Schedule 1.1(e)* (if any) from Seller to Buyer following customary procedures of the domain name administrator;

(ix) endorsed vehicle titles conveying the vehicles included in the Tangible Personal Property (if any) from Seller to Buyer;

(x) a bill of sale conveying the other Station Assets from Seller to Buyer;

(xi) the opinion of Dickstein Shapiro LLP, counsel to Seller, substantially in the form of *Exhibit A* annexed hereto and dated as of the Closing Date;

(xii) if the FCC has not yet granted the request set forth in *Schedule 5.12* annexed hereto, a lease with Citadel Broadcasting Company or its affiliate at nominal rent to provide designated space at Seller's main studio for the Station in South Portland, Maine, that Buyer can use as its main studio (and share Citadel employees to the extent permitted under FCC rules and policies) until alternative studio facilities can be obtained for the Station; and

(xiii) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

**8.2 Buyer Documents.** At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with Section 1.5 hereof;
- (ii) good standing certificates issued by the Secretary of State of Buyer's jurisdiction of formation;
- (iii) certified copies of resolutions authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;
- (iv) the certificate described in Section 6.1(c);
- (v) an assignment and assumption of contracts assuming the Station Contracts;
- (vi) an assignment and assumption of leases assuming the Real Property Leases (if any);
- (vii) domain name transfers assuming the Station's domain names listed on *Schedule 1.1(e)* (if any) following customary procedures of the domain name administrator;
- (viii) any new agreements required by *Schedule 1.1(d)* or otherwise required by this Agreement; and
- (ix) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

## **ARTICLE 9: SURVIVAL; INDEMNIFICATION**

**9.1 Survival.** The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire



and be of no further force or effect, except (i) those under Section 2.5 (Taxes) and Section 2.9 (Environmental), which shall survive until the expiration of any applicable statute of limitations, and those under Sections 2.6, 2.7 and 2.10 solely with respect to title, which shall survive indefinitely; and (ii) that if within such twelve (12) month period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until its resolution. The covenants and agreements in this Agreement shall survive Closing until performed.

## **9.2 Indemnification.**

(a) Subject to Section 9.2(b), from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("**Damages**") incurred by Buyer arising out of or resulting from:

(i) any breach by Seller of its representations and warranties made under this Agreement; or

(ii) any default by Seller of any covenant or agreement made under this Agreement; or

(iii) the Retained Obligations;

(iv) any obligation of Buyer pursuant to a presently-existing written definitive license agreement (a "**Missing Agreement**") as contemplated in the agreement listed as item number eight (8) under **Exclusive Contracts** on disclosure Schedule 1.1(d) attached hereto (the "**Atlantic Agreement**"), but only to the extent that Buyer's obligations under such Missing Agreement are materially different from the terms and conditions set forth in the Atlantic Agreement; or

(v) the business or operation of the Station before the Effective Time, except for the Assumed Obligations.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller shall have no liability to Buyer under clause (i) of Section 9.2(a) until Buyer's aggregate Damages exceed \$25,000, after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of Seller under Section 9.2(a) shall be an amount equal to the Purchase Price.

(c) Subject to Section 9.2(d), from and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

(i) any breach by Buyer of its representations and warranties made under this Agreement; or

(ii) any default by Buyer of any covenant or agreement made under this Agreement; or

- (iii) the Assumed Obligations; or
- (iv) the business or operation of the Station after the Effective Time.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Buyer shall have no liability to Seller under clause (i) of Section 9.2(c) until Seller's aggregate Damages exceed \$25,000, after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of Buyer under Section 9.2(c) shall be an amount equal to the Purchase Price.

### **9.3 Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "***Claim***"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 9.1.

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

(c) Anything herein to the contrary notwithstanding:

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

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

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

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

## **ARTICLE 10: TERMINATION AND REMEDIES**

**10.1 Termination.** Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below);
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing;
- (d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date six (6) months after the date of this Agreement; or
- (e) as provided by Section 5.5(c).

**10.2 Cure Period.** Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date determined under Section 1.9; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date determined under Section 1.9, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date determined under Section 1.9.

**10.3 Survival.** Except as provided by Section 10.5, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.6 (Deposit) (and Section 10.5 with respect to the Deposit), 5.1 (Confidentiality) and 11.1 (Expenses) shall survive any termination of this Agreement.

**10.4 Specific Performance.** In the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. Notwithstanding the foregoing, if prior to Closing the condition described in Section 10.1(c) exists, then Seller's sole remedy shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 10.5, except for any failure by Buyer to comply with its obligations related to the Deposit or Sections 1.10,

5.1, 5.2 or 5.3, as to which Seller shall be entitled to all available rights and remedies, including without limitation specific performance.

**10.5 Liquidated Damages.** If Seller terminates this Agreement pursuant to Section 10.1(c), then Buyer shall pay Seller on demand an amount equal to 10% of the Purchase Price by wire transfer of immediately available funds (which amount shall be satisfied by the disbursement of the Deposit to Seller under Section 1.6), and such payment shall constitute liquidated damages and the sole remedy of Seller under this Agreement. Buyer acknowledges and agrees that Seller's recovery of such amount shall constitute payment of liquidated damages and not a penalty and that Seller's liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer's material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

#### **ARTICLE 11: MISCELLANEOUS**

**11.1 Expenses.** Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The filing fee for the FCC Consent shall be divided equally between Buyer and Seller. All other governmental fees and charges applicable to any requests for governmental consents shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

**11.2 Further Assurances.** After 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 of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

**11.3 Assignment.** Except as provided by Section 5.9 (1031 Exchange) and Section 1.10(d), neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that (i) any such assignment does not delay processing of the FCC Application, grant of the FCC Consent or Closing, (ii) any such assignee delivers to Seller a written assumption of this Agreement, and (iii) Buyer shall remain liable for all of its obligations hereunder, and Seller may assign its rights hereunder to an affiliate of Seller or to the Trustee. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

**11.4 Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or

confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Buyer:

Saga Communications, Inc.  
73 Kercheval Avenue  
Grosse Pointe Farms, MI 48236  
Attn.: Samuel D. Bush, CFO  
Phone: (313) 886-7070 (office)  
Email: sbush@sagacom.com

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

Bodman LLP  
201 W. Big Beaver Road,  
Suite 500  
Troy, MI 48084  
Attn. : David C. Stone, Esq.  
Phone: (248) 743-6045  
Email: dstone@bodmanllp.com

If to Seller:

The Last Bastion Station Trust, LLC  
c/o Media Venture Partners, LLC  
244 Jackson Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Elliot B. Evers  
Phone: (415) 391-4877  
Email: eevers@mediaventurepartners.com

Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington, DC 20006  
Attn: Andrew S. Kersting  
Phone: (202) 420-3631  
Email: kerstinga@dicksteinshapiro.com

**11.5 Amendments.** No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

**11.6 Entire Agreement.** This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Station, which shall remain in full force and effect. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Seller makes no representation or warranty to Buyer with respect to any projections, budgets or other estimates of the Station's

revenues, expenses or results of operations, or, except as expressly set forth in Article 2, any other financial or other information made available to Buyer with respect to the Station.

**11.7 Severability.** If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**11.8 No Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

**11.9 Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Michigan without giving effect to the choice of law provisions thereof.

**11.10 Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. Facsimile or electronic signatures will be sufficient to make this Agreement legally binding.

## **ARTICLE 12:        DEFINITIONS**

The following is a list of terms used in this Agreement and a reference to the section hereof in which such term is defined:

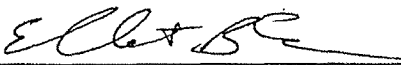
<b><u>Term</u></b>	<b><u>Section Reference</u></b>
Accounts Receivable	1.2(g)
Assumed Obligations	1.4
Broadcast Interruption	5.4(c)
Buyer	Preamble
Buyer Ancillary Agreements	3.1
Claim	9.3(a)
Closing	1.9
Closing Date	1.9
Code	1.8
Collection Period	5.8
Communications Act	2.4
Comparable Employment	5.7(a)
Damages	9.2(a)
Deposit	1.6
Effective Time	1.7
Escrow Agent	1.6
Escrow Agreement	1.6
Excluded Assets	1.2

FCC	Recitals
FCC Application	1.10
FCC Consent	1.10
FCC Licenses	1.1(a)
GAAP	1.7
Intangible Property	1.1(e)
Liens	1.1
NDA	5.1
Owned Real Property	2.7
Permitted Liens	1.1
Phase I	5.5(a)
Purchase Price	1.5
Real Property	1.1(c)
Real Property Leases	2.7
Required Consents	5.6(a)
Retained Obligations	1.4
Seller	Preamble
Seller Ancillary Agreements	2.1
Shared Contracts	1.3(a)
Station	Recital
Station Assets	1.1
Station Contracts	1.1(d)
Tangible Personal Property	1.1(b)
Transferred Employees	5.7(c)
Trust Agreement	Recitals
Trustee	Recitals
WARN Act	5.7(b)

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**THE LAST BASTION STATION TRUST, LLC**

By:   
Name: ELLIOT B. EVERAS  
Title: MANAGING MEMBER

**SAGA COMMUNICATIONS OF NEW  
ENGLAND, LLC**

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



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

THE LAST BASTION STATION TRUST, LLC

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

SAGA COMMUNICATIONS OF NEW  
ENGLAND, LLC

By: Samuel D. Bush  
Name: Samuel D. Bush  
Title: Treasurer

### List of Schedules

- 1.1(a) - FCC Licenses
- 1.1(b) - Tangible Personal Property
- 1.1(c) - Real Property
- 1.1(d) - Station Contracts
- 1.1(e) - Intangible Property
- 1.2 - Excluded Assets
- 2.3 - Conflicts/Consents
- 2.11 - Employment Disclosures
- 2.13 - Compliance with Law
- 2.14 - Litigation
- 5.7 - Employees/Employment Information
- 5.12 - Permission to File Modification Application