

## *Edwards Media LTD. Asset Purchase Agreement*

This Asset Purchase Agreement (this “**Agreement**”) is entered into by and between Edwards Media Ltd.,\* a New Mexico corporation (“**Seller**”), and Bravo Mic Communications II, LLC, a New Mexico limited liability company (“**Buyer**”) (Seller and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”), based on the following facts:

### **RECITALS**

Buyer desires to purchase from Seller, and Seller desires to sell, convey, transfer, assign and deliver to Buyer, substantially all of the assets, properties and operations of radio stations KMVR(FM), Mesilla Park, New Mexico (Facility ID No. 54946) and KOBE(AM), Las Cruces, New Mexico (Facility ID No. 54945) (each, a “**Station**” and together, the “**Stations**”), on the terms and conditions set forth in this Agreement.

Based on the foregoing, and in consideration of the mutual agreements, representations, warranties, covenants and conditions contained this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE 1 TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES**

**1.1 Purchase and Sale of Assets.** On the terms and subject to the conditions set forth in this Agreement, at the Closing (as defined in Section 3.1), Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and accept delivery of, all assets and properties owned or held by Seller and used or useful in connection with the operation of the Stations, including without limitation the following described assets and those assets acquired between the Effective Date (as defined in the last paragraph of this Agreement) and the Closing Date (as defined in Section 3.1) pursuant to Article 6 (collectively, the “**Station Assets**”).

(a) **Licenses and Authorizations.** All licenses, permits and authorizations of the Federal Communications Commission (“**FCC**”) issued with respect to the Stations, including those set forth in **Schedule 1.1(a)**, together with any renewals, extensions or modifications thereof and additions thereto made between the Effective Date and the Closing Date (the “**Station Licenses**”).

(b) **Personal Property.** All tangible personal property used or useful in the operation of the Stations, including that listed on **Schedule 1.1(b)**, whether now

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\* The FCC licensee is Edwards Media Ltd. Co.

owned or hereafter acquired, together with any modifications and replacements thereof made between the Effective Date and the Closing Date, without limitation (the “**Personal Property**”).

(c) **Agreements, Leases and Contracts.** All leases, agreements and contracts, including any renewals, extensions or modifications thereof which are in effect on the Closing Date used or useful in the operation of the Stations, including those set forth in **Schedule 1.1(c)**, but only to the extent that such leases, agreements and contracts shall be deemed by Buyer to be useful to its the operation of the Stations after the Closing Date.

(d) **Intangible Property.** All of Seller’s rights in and to the Stations’ call letters, registered and unregistered trademarks and associated goodwill, trade names, service marks, copyrights, jingles, logos, slogans, Internet domain names, Internet URLs, Internet web sites, content and databases, computer software, programs and programming material and other intangible property rights and interests applied for, issued to or owned by Seller that are used or useful in connection with the operation of the Stations, including those listed on **Schedule 1.1(d)** (the “**Intellectual Property**”).

(e) **Real Property.** All interests in real property, including any leases or licenses to occupy, used or useful in connection with the operation of the Stations, including but not limited to that described on **Schedule 1.1(e)** (the “**Real Property**”).

(f) **Records.** All files, documents, records and books of account (or copies thereof) relating to the operation of the Stations, including the Stations’ public inspection files, programming information and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs.

The purchase and sale of the Station Assets contemplated by this Agreement are referred to in this Agreement as the “**Transaction.**”

**1.2 Liens.** At the Closing, all of the Station Assets shall be transferred by Seller to Buyer free and clear of any and all liens, mortgages, encumbrances, security interests, pledges, claims, equities and other restrictions or charges of any kind or nature whatsoever.

**1.3 Excluded Assets.** Notwithstanding anything to the contrary contained in Section 1.1, the Station Assets shall not include the following (the “**Excluded Assets**”):

(a) Seller’s books and records pertaining to the organization, existence or capitalization of Seller, and duplicate copies of such records as are necessary to enable Seller to file tax returns and reports;

(b) all cash, cash equivalents, or similar type investments of seller, such as certificates of deposit, treasury bills, and other marketable securities on hand and/or in banks, and any interest in and to any refunds of federal, state or local franchise, income or other taxes related to periods prior to the Closing;

(c) all insurance policies, except for any rights that may be assigned pursuant to Article 11 hereof, promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposit, or other similar items, and any cash surrender value in regard thereto;

(d) all pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement.

(e) all accounts receivable and notes receivable arising in connection with the operation of the Station prior to the Closing Date and outstanding and uncollected as of 11:59 p.n. on the day immediately preceding the Closing Date (the “**Accounts Receivable**”); and

(f) the items listed on Schedule 1.3(f) hereof.

**1.4 Assumption of Obligations.** Subject to the provisions of this Section 1.4 and of Section 3.3 of this Agreement, at the Closing Buyer shall assume and undertake to pay, satisfy or discharge the liabilities, obligations and commitments of Seller under the Station Assets, to the extent that either (1) the obligations and liabilities accrue or arise out of events occurring after the Effective Time or (2) the Purchase Price (as defined in Section 2.1) was reduced pursuant to Section 3.3 as a result of the proration or adjustment of such obligations and liabilities. Except as set forth in this Section 1.4, Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations or commitments of Seller of any nature whatsoever.

## ARTICLE 2 PURCHASE PRICE AND PAYMENT

**2.1 Purchase Price.** The total purchase price for the Station Assets shall be One Million, Nine Hundred Thousand Dollars (\$1,900,000.00) (the “**Purchase Price**”).

**2.2 Payment of Purchase Price.** Buyer has previously delivered the sum of One Hundred Thousand Dollars (\$100,000.00) (the “**Escrow Deposit**”) to Dona Ana Title (the “**Escrow Agent**”) in connection with that certain “Preliminary Agreement to Purchase and Sell,” dated September 20, 2006, between Buyer and Seller. The Escrow Deposit has been deposited with the Escrow Agent to be held in escrow pending the consummation of the Transaction and to secure Seller’s right to liquidated damages hereunder pursuant to the terms of the “Escrow Agreement” attached as **Exhibit A**. The Escrow Deposit shall be applied toward the Purchase Price and any interest or earnings thereon shall be returned to Buyer, upon the successful consummation of the Transaction. At the Closing, Buyer shall pay the Seller One Million Eight

Hundred Thousand Dollars (\$1,800,000.00) by wire transfer of immediately available funds pursuant to wire instructions that Seller shall provide to Buyer no less than five business days prior to Closing, plus or less any purchase price adjustments as set forth in Section 3.3 hereof, and shall deliver to Escrow Agent instructions requesting that the Escrow Deposit be delivered to Seller and any interest or earnings thereon be delivered to Buyer.

**2.3 Purchase Price Allocation.** The purchase price is contemplated to be allocated as set forth in **Schedule 2.3**. In the event the parties are unable to agree on the allocation of the Purchase Price set forth in **Schedule 2.3**, then Buyer and Seller shall use separate allocations in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

**2.4 Consulting Agreement.**

(a) At the Closing, Buyer shall enter into a Consulting Agreement with Seller's principal, Larry Edwards, in the form attached as Exhibit B, pursuant to which Seller shall receive One Hundred Percent (100%) of the Stations' annual Net Profits (as defined in the Consulting Agreement) each year for five years after the Closing unless and until the total of such payments exceeds Seven Hundred Thousand Dollars (\$700,000.00) in the aggregate, at which time Buyer shall have no further obligation to pay any portion of the Stations' Net Profits to Seller.

**ARTICLE 3  
THE CLOSING**

**3.1 Closing.** Except as otherwise mutually agreed upon by Seller and Buyer, the consummation of the Transaction (the "**Closing**") shall occur ten (10) business days after the FCC Consent (as defined in Section 3.2) has become a "**Final Order**" (as defined below) (the "**Closing Date**"). For purposes of this Agreement, the FCC Consent shall be deemed to be a Final Order (a) when it has not been vacated, reversed, stayed, set aside, annulled or suspended; (b) when it is not the subject of any pending timely appeal, request for stay or petition for rehearing, reconsideration or review by any person or by the FCC on its own motion; and (c) is an action by the FCC as to which the time for filing any such appeal, request, petition or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934 and the rules and regulations of the FCC has expired. Unless both Parties agree otherwise, the Closing shall occur in the offices of Dona Ana Title Co. 425 S. Telshor Blvd. Las Cruces, New Mexico 88005. In its sole discretion, and after the FCC Consent has become effective, Buyer may, upon at least ten (10) days prior written notice to Seller, accelerate the Closing Date to a date prior to the date that the FCC Consent becomes a Final Order. In the event that the Parties close the Transaction prior to the FCC Consent becoming a Final Order, the Parties will execute an "Unwind Agreement" in the form of **Exhibit C**, which shall provide for the rescission of the Closing in the event the FCC or court of competent jurisdiction directs or orders that the Parties rescind the assignment of the Station Licenses.

### 3.2 FCC Consent.

(a) It is specifically understood and agreed by Buyer and Seller that the Closing and the purchase of the Station Assets is expressly conditioned on and is subject to the prior consent of the FCC to the FCC Application filed pursuant to Section 3.2(b) and any condition imposed in such consent (the “**FCC Consent**”).

(b) Seller and Buyer shall within five (5) business days of the date of this Agreement, file with the FCC the requisite application (the “**FCC Application**”) for the assignment of the Station Licenses to Buyer and shall prosecute the FCC Application with all reasonable diligence and otherwise use their reasonable best efforts to obtain the grant of the FCC Application as expeditiously as practicable (but neither Seller nor Buyer shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect upon Seller or Buyer or upon any affiliated entity). If the FCC Consent imposes any condition on either Party, such Party shall use its reasonable efforts to comply with such condition; provided, however, that neither Party shall be required to comply with any condition that would have a material adverse effect upon it or any affiliated entity. If reconsideration or judicial review is sought with respect to the FCC Consent, the Party affected shall vigorously oppose such efforts for reconsideration or judicial review. Each Party shall bear its own legal fees and other costs associated with the preparation, filing and prosecution of its part of the FCC Application. The Parties shall each pay one-half of the FCC filing fees required for the FCC Application.

### 3.3 Proration of Income and Expenses.

(a) All property taxes and assessments, business and license fees, utility expenses, accrued vacation or accrued sick leave or other accrued time or benefits for employees, all other ongoing costs of usual operation of the Stations and time sales agreements shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 11:59 p.m. on the day immediately preceding the Closing Date (“the Effective Time”). These prorations shall, insofar as feasible, be determined and paid on the Closing Date, with best efforts to achieve final settlement within thirty (30) days after the Closing Date; provided, however, that proration of the annual regulatory fees payable to the FCC for the Station License shall not occur until such fees are assessed.

(b) In the event of any disputes between the parties as to any adjustments under this Section 3.3, the amounts not in dispute shall be paid at the time provided herein and the dispute shall be resolved by a CPA who shall be jointly selected by the parties within ten (10) days after a dispute arises. The decision of the CPA shall be binding on each of the parties and enforceable by a court of competent jurisdiction. The fees and expenses of the CPA shall be paid one-half by Seller and one-half by Buyer.

**3.4 Tax Clearance.** Within ten (10) days after the Closing Date, Buyer shall file an Application for Tax Clearance with the New Mexico Taxation and Revenue Department (the “**Department**”) as the successor in business to Seller. Buyer shall withhold the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) from the Purchase Price. If the Department determines that taxes are due and owing to the State of New Mexico by Seller with respect to the Business, then such taxes shall be paid from the monies withheld by Buyer. If such amount is insufficient to pay the taxes, then the balance shall be paid by Seller within ten (10) days after receipt of written notice from Buyer of the amount due and owing. Once a Certificate of No Tax Due has been issued by the Department to Buyer as a successor in business, Buyer shall forthwith cause the payment of the balance of the funds, if any, to be paid to Seller. Nothing contained in this Agreement shall be construed as precluding Seller from contesting the taxes, penalty and interest, if any, by claiming a refund therefor.

**3.5 Accounts Receivable.**

(a) As of the Closing, Seller shall designate Buyer as its agent solely for the purpose of collecting the accounts receivable for the Station existing at the Effective Time (the “Accounts Receivable”). Seller shall deliver to Buyer, on or immediately after the Closing Date, a complete and detailed statement of the Accounts Receivable. Buyer shall use commercially reasonable efforts to collect the Accounts Receivable during the period (the “Collection Period”) beginning at the Effective Time and continuing for 90 days thereafter consistent with Buyer’s practices for collection of its accounts receivable (but without obligation to institute proceedings or use any other extraordinary means of collection). Any payment received by Buyer (i) at any time following the Effective Time, (ii) from a customer of the Station after the Effective Time that was also a customer of the Station prior to the Effective Time and that is obligated with respect to any Accounts Receivable and (iii) that is not designated as a payment of a particular invoice or invoices or as a security deposit or other prepayment, shall be presumptively applied to the accounts receivable for such customer outstanding for the longest amount of time and, if such accounts receivable shall be an Accounts Receivable, remitted to Seller in accordance with Section 3.5(b); provided further, however, that if prior to the Effective Time, Seller or, after the Effective Time, Seller or Buyer received or receives a written notice of dispute from a customer with respect to an Accounts Receivable that has not been resolved, then Buyer shall apply any payments not designated as payment for a particular invoice or invoices or as a security deposit or other prepayment from such customer to such customer’s oldest, non-disputed accounts receivable, whether or not an Accounts Receivable. Buyer shall obtain the prior written approval of Seller before referring any of the Accounts Receivable to a collection agency or to an attorney for collection.

(b) On or before the tenth (10<sup>th</sup>) Business Day following the end of each calendar month in the Collection Period, Buyer shall deposit into an account identified by Seller the amounts collected during the preceding month of the Collection Period with respect to the Accounts Receivable in immediately available funds by wire transfer. Buyer shall furnish Seller with a list of the amounts collected during such calendar month and in any prior calendar months

with respect to the Accounts Receivable and a schedule of the amount remaining outstanding under each particular account.

(c) Following the expiration of the Collection Period, Buyer shall have no further obligations under this Section 3.5, except that ~~Programmer~~ <sup>Buyer</sup> shall immediately pay over to Seller any amounts subsequently paid to it with respect to any Accounts Receivable. Following the Collection Period, Seller may pursue collections of all the Accounts Receivable, and Buyer shall deliver to Seller all files, records, notes and any other materials relating to the Accounts Receivable and shall otherwise cooperate with Seller for the purpose of collecting any outstanding Accounts Receivable.

#### ARTICLE 4 SELLER'S REPRESENTATIONS AND WARRANTIES

Seller and its principals represent and warrant to Buyer and agree as follows:

**4.1 Standing.** Seller is a ~~corporation~~ <sup>V.L.C. AP</sup> duly organized, validly existing and in good standing under the laws of the State of New Mexico. Buyer has all requisite power to execute, deliver and perform its obligations under this Agreement and to consummate the Transaction.

**4.2 Authorizations of Agreements-No Breach.** The execution, delivery and performance of this Agreement, and of each and every agreement, document and instrument contemplated by this Agreement, and the consummation of the Transaction, has been or will be, as the case may be, duly and validly authorized and approved by Seller. Further, Seller has full power and authority to execute, deliver and perform this Agreement and each and every agreement, document and instrument contemplated by this Agreement and to consummate the Transaction. Such execution, delivery and performance and compliance by Seller with the terms and provisions hereof and the consummation of the Transaction do not violate or conflict with (a) any provisions of Seller's organizational documents, (b) (assuming receipt of the FCC Consent) any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority, or (c) any agreement, lease, or contract to which Seller is a party, or to which it or any of the Station Assets is subject, or constitute a default thereunder, or give to others by rights of termination or cancellation in or with respect to the Station Assets. This Agreement constitutes, and each and every agreement, document and instrument contemplated by this Agreement will constitute, when executed and delivered by Seller, the valid and binding obligation of Seller, enforceable in accordance with its terms.

**4.3 No Litigation.** There is no suit, audit or legal, administrative, arbitration or other proceeding or governmental investigation pending, or to Seller's knowledge threatened, (a) that in any manner challenges or seeks to prevent, enjoin, alter or delay materially the Transaction or (b) which individually or in the aggregate, adversely affects the title or interest of Seller in any of

the Station Assets or the conduct of its business. Should any such filing be made or action initiated, Seller shall promptly notify Buyer thereof.

#### **4.4 Licenses and Authorizations; FCC Compliance.**

(a) **Schedule 1.1(a)** contains a true and complete list of the Station Licenses, permits and authorizations, including their expiration dates. Seller has delivered to Buyer true and complete copies of the Station Licenses. The antenna structures used by the Stations are in compliance with the Communications Act and the requirements of the Federal Aviation Administration (“FAA”), and are registered with the FCC, if required. The location of the Stations’ main studio complies with the FCC’s rules. All FCC regulatory fees assessed with respect to the Station Licenses have been timely paid. There are no licenses, permits or authorizations other than the Station Licenses required from any government or other entity for the lawful operation of the Stations in the manner now operated; the Station Licenses and other licenses, permits and authorizations listed in **Schedule 1.1(a)** are validly held by Seller pursuant to a Final Order, are in full force and effect, have been issued for the full terms customarily issued to radio broadcast stations in the State of New Mexico, and none is subject to any restriction or condition which would limit in any material respect the full operation of the Stations as now operated; (iii) the Stations, their physical facilities, electrical and mechanical systems, and transmitting and studio equipment are operating in accordance with the terms and conditions of the Station Licenses and the rules and regulations of the FCC; and (iv) all reports and other filings required by the FCC with respect to the Station Licenses and the Stations, including, without limitation, material required to be placed in the Stations’ local public inspection files or other records, have been timely filed.

(b) There are no applications, complaints or proceedings pending or, to Seller’s knowledge, threatened before the FCC relating to the operation of the Stations or that may result in the revocation, materially adverse modification, non-renewal or suspension of any of the Station Licenses, or the imposition of any fines, forfeitures, or other administrative actions with respect to the Stations or their operation other than proceedings affecting the broadcasting industry generally. Should any such filing be made or action initiated, Seller shall promptly notify Buyer and shall take all commercially reasonable steps to protect the Stations and Station Licenses from material adverse impacts. Seller is not subject to any outstanding judgment or order of the FCC relating to the Stations. Seller is not aware of any action other than rule-making proceedings of general applicability to the radio industry which would adversely affect the FCC protected service area of the Stations as such service area is presently authorized by the FCC.

(c) There are no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify Seller as the assignor of the Station Licenses. Seller has no reason to believe that the FCC assignment contemplated herein will not be granted by the FCC in the ordinary course based upon Seller’s qualifications as the licensee and assignor of the Station Licenses.

(d) The Stations are operating with power and facilities specified in their FCC Licenses, and the Stations are not causing objectionable interference to the transmissions of any other broadcast station or communications facility, and no other broadcast station or communications facility is causing objectionable interference to the transmissions of the Stations.

**4.5 Contracts.** Seller has delivered to Buyer true and complete copies of all contracts, including any amendments and other modifications to such contracts. The contracts constitute valid and binding obligations of Seller and of all other parties thereto, and are in full force and effect as of the date hereof. Seller is not in material breach or default under any of the contracts and the other parties to such contracts are not in material breach or default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto, and no event has occurred which with notice or lapse of time or both would constitute a material breach or default thereunder. Except as set forth on **Schedule 4.5**, Seller has all requisite power and authority to assign its rights under the contracts to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and such assignment will not affect the validity, enforceability or continuity of any such contracts. There are no trade agreements, except as disclosed on **Schedule 4.5**.

**4.6 Title to and Condition of Personal Property.** **Schedule 1.1(b)** lists all material items of Personal Property whether owned, leased, used or held for use in conducting the business and operations of the Stations as now conducted. Seller is the sole owner or lessee, as applicable, of the Personal Property and has good and marketable title to and/or a valid leasehold interest in all Personal Property free and clear of all liens. All of the material items of tangible Personal Property are in good operating condition and repair (reasonable wear and tear excepted), are insurable at standard rates, and have been properly maintained in accordance with industry standards, are performing satisfactorily and in accordance with standards of good engineering practice, unless otherwise noted on **Schedule 1.1(b)**, materially comply in all respects with applicable rules and regulations of the FCC, the terms of the Station Licenses, and with other applicable federal, state and local statutes, ordinances, rules and regulations, and are available for immediate use in the operation of the Stations. There is no defect in the condition or operation of any item of Personal Property which is reasonably likely to have a material adverse effect on the operations of the Stations.

**4.7 Title to and Condition of Real Property.**

(a) **Schedule 1.1(e)** contains descriptions of the Real Property, including all of Sellers' interests, including leasehold interests and easements, and rights in and agreements with respect to, real property used or held for use in connection with Seller's operation of the Stations. All of the Real Property is in good condition and repair consistent with its current use and available for use in the conduct of the business and operations of the Stations. The Real Property and the use thereof by Seller complies in all material respects with all applicable laws,

statutes, ordinances, rules and regulations of federal, state and local governmental authorities, including, without limitation, those relating to zoning, and the rules and regulations of the FCC. The improvements on the Real Property are in good working condition and repair and exist or are operating in material compliance with good engineering practices and applicable EIA windloading standards and are adequate for their intended use.

(b) Seller has not received any notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or other law, order, regulation or requirement affecting such Real Property or improvements thereon, or of the need for any material repair, remedy, construction, alteration or installation with respect to the Real Property or improvements thereon, or any change in the means or methods of conducting operations thereon.

(c) The leases with respect to the Real Property listed on **Schedule 1.1(e)** constitute valid and binding obligations of Seller and of all other parties thereto, and are in full force and effect as to the date hereof. Seller is not in material default under any of the leases with respect to such Real Property and the other parties to such leases are not in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto. Seller has valid and subsisting leasehold interests, insurable at standard rates, pursuant to the real property leases which shall at the Closing be free and clear of all liens. With respect to each leasehold interest under the real property leases, as long as Seller fulfills its obligations under the lease therefor, Seller has enforceable rights to non-disturbance and quiet enjoyment.

(d) All towers, guy anchors and buildings and other improvements included in the Station Assets are located entirely on the Real Property.

(e) All utilities that are required for the full and complete occupancy and use of the Real Property for the purposes for which such properties are presently being used by the Stations pursuant to the terms and conditions of the Real Property Leases, including without limitation, electric, water, sewer, telephone and similar services, have been connected and are in good working order.

**4.9 Intellectual Property.** **Schedule 1.1(d)** lists all Intellectual Property applied for, issued to or owned by Seller for use in the operation of the Stations, or under which Seller is licensed or franchised to be assigned hereunder, all of which rights and interests are issued to or owned by Seller, or if licensed or franchised to Seller, are valid and uncontested. Seller has delivered to Buyer copies of all documents, if any, establishing such rights, licenses or other authority. There is no pending or threatened proceeding or litigation affecting or with respect to the Intellectual Property. Seller is not knowingly infringing upon or otherwise acting adversely to any trademarks, trade names, service marks, service names, copyrights, patents, patent applications, internet domain names, know-how, methods, or processes owned by any other person or persons, and there is no claim or action pending, or threatened, with respect thereto.

The Intellectual Property listed on **Schedule 1.1(d)** comprise all material intangible property interests used or held for use in conducting the business and operations of the Stations as now conducted.

#### **4.10 Personnel Information.**

(a) **Schedule 4.10** contains a true and complete list of all persons employed at the Stations, including each person's job title or the capacity in which employed, date of hire, and a description of all compensation including bonus arrangements and employee benefit plans or arrangements applicable to each such employee, including without limitation, accrued by unused sick and vacation leave and service credited for purposes of vesting and eligibility to participate under any benefit plan. Seller is not a party to any agreement, written or oral, with employees except as described on **Schedule 1.1(c)**.

(b) Seller is not a party to any collective bargaining agreement covering any of the employees at the Stations. Seller is not a party to any contract with any labor organization, nor has Seller agreed to recognize any union or other collective bargaining unit, nor has any union or other collective bargaining unit been certified as representing any of Seller's employees at the Stations, nor has Seller received any demands or any other requests from a labor organization for representative status with respect to any persons employed at the Stations.

(c) Except as set forth in **Schedule 4.10(c)**, Seller is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan.

(d) There are no unfair labor practice charges pending against Seller.

**4.11 Insurance.** There is presently in force, fire, casualty and liability insurance with respect to the Station Assets and the Stations, and Seller will maintain or cause to be maintained such insurance in full force until the Closing.

**4.12 Taxes.** Except as stated otherwise herein, there are no tax liens on the Station Assets.

**4.13 Financial Statements.** Seller has provided Buyer with true and complete copies of income statements for the Stations for their most recently concluded two fiscal years, by quarter, and for all full months since elapsed (the "**Financial Statements**"). The Financial Statements were prepared in accordance with Generally Accepted Accounting Principles ("**GAAP**"), and fairly present in all material respects the information purported to be presented therein as of the dates and for the respective periods covered thereby, and fairly reflect the results of operation of the Stations on a stand-alone basis. Except as set forth in the Financial

Statements, Seller does not have any liability or obligation of any nature (whether accrued, absolute, contingent or otherwise), except liabilities or obligations that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect.

**4.14 Environmental Matters.** No Hazardous Substance, (i) is or has been used, treated, stored, disposed of, released, spilled, generated, manufactured, transported or otherwise handled on the Real Property, (ii) has been spilled, released or disposed of on property adjacent to the Real Property, or (iii) has otherwise come to be located on or under the Real Property. The Real Property and all operations on the Real Property are in compliance with all applicable local, state and federal statutes and regulations relating to the protection of human health of the environment including the FCC's regulations concerning radio frequency radiation ("**Environmental Laws**"). Seller has obtained all environmental, health and safety permits necessary for the operations of the Stations, and all such permits are in full force and effect, and Seller is in compliance with the terms and conditions of all such permits. No outstanding liens have been placed on the Real Property under any Environmental Laws. Seller has not received any notice, and is not aware, of any administrative or judicial investigations, proceedings or actions with respect to violations, alleged or proven, of Environmental Laws by Seller, or otherwise involving the Real Property or the operations conducted on the Real Property. The Real Property and all operations conducted on the Real Property are in compliance with all federal and state statutes and regulations relating to Asbestos, and no material containing more than one-tenth of one percent (0.1%) Asbestos by weight is present in any of the improvements on the Real Property or is otherwise located on the Real Property. There are no underground storage tanks, whether in use or closed, on or under the Real Property, and no polychlorinated biphenyl ("**PCB**") is present on the Real Property. No PCB is used in the Personal Property. As used herein, the term "**Hazardous Substance**" shall mean all hazardous or toxic waste or material which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substance" shall include, but is not limited to, any and all hazardous or toxic substances, materials or wastes as defined or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act or any comparable state statute or any regulation promulgated under any of such federal or state statutes. "Hazardous Substance" shall not include ordinary quantities of consumer or commercial products used in the normal course of broadcast Stations operations, including grounds and building operation and maintenance; provided, that such products have been properly stored, handled, and disposed of.

**4.15 Compliance with Laws.** Seller has operated and is operating in material compliance with all laws, regulations and governmental orders applicable to the operation of the Stations, and its present use of the Station Assets does not materially violate any such laws, regulations or orders. Seller has not received any notice asserting any noncompliance with any applicable statute, rule or regulation, in connection with the operation of the Stations. Seller is

not subject to any order, agreement, memorandum of understanding or other regulatory enforcement action or proceeding with or by the FCC or any other federal or state governmental agency having supervisory or regulatory authority with respect to the Stations or Station Assets.

**4.16 Sufficiency of Station Assets.** The Station Assets include all assets that are necessary to operate the Stations in the manner and to the full extent that they are currently operated, except to the extent that assets used in the operation of the Stations are excluded under Section 1.3. Seller has good and marketable title to or validly leases or is licensed to use all of the Station Assets.

**4.17 Accuracy of Documents and Information.** The information provided to Buyer by Seller with respect to the Stations' billing, collection and expenses are true and correct.

## ARTICLE 5

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### BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller from the Closing Date as follows:

**5.1 Standing.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Mexico. Buyer has all requisite power to execute, deliver and perform its obligations under this Agreement and to consummate the Transaction.

**5.2 Authority.** The execution, delivery and performance by Buyer of this Agreement and of each and every agreement, document and instrument contemplated by this Agreement, and the consummation of the Transaction, will, before the Closing, be duly authorized by the manager and, to the extent necessary, the members of Buyer, and this Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except to the extent that enforcement may be limited by applicable bankruptcy, reorganization or insolvency laws, or other laws affecting the enforcement of creditors' rights, or by the principles governing the availability of equitable remedies.

**5.3 Qualification.** Buyer has no knowledge of any facts which would under present law and present rules, regulations, and practices of the FCC, disqualify Buyer as an assignee of the licenses, permits and authorizations listed in **Schedule 1.1(a)**.

**5.4 Absence of Conflicting Laws and Agreements.** Neither the execution, delivery or performance of this Agreement by Buyer nor the consummation of the sale and purchase of the Station Assets or any other transaction contemplated by this Agreement, does or will, after the giving of notice, or the lapse of time, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under, the limited liability company operating agreement or other organizational agreements or

documents of any type of Buyer, or any federal, state or local law, statute, ordinance, rule or regulation, or any court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which either Buyer or its assets is bound;

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

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

## **ARTICLE 6 COVENANTS OF SELLER**

**6.1 Affirmative Covenants.** Between the Effective Date and the Closing Date, Seller shall:

(a) Maintain the Stations under the terms of the licenses, in the usual and ordinary course of business, and use all reasonable efforts to preserve intact its present business organization and to keep available the services of all employees, representatives and agents. Seller shall use all reasonable efforts, consistent with its past practices, to promote the Stations, and to maintain the goodwill and reputation associated with the Stations;

(b) Maintain the tangible Station Assets in good operating condition, repair and order, and take all reasonable steps necessary to maintain and protect the intangible Station Assets;

(c) Pay or cause to be paid or provide for all income, property, sales, use, and franchise, excise, and/or all other taxes of or relating to the Station and the Station Assets required by Seller to city, county, state, federal, and/or other governmental units until the Closing Date;

(d) Materially comply with all laws applicable to Seller's use of the Station Assets; continue to operate and maintain the Stations in material conformity with the Station Licenses, the Communications Act of 1934, as amended, and the rules and regulations of the FCC, and in material conformity with all other licenses and applicable laws, ordinances, regulations, rules and orders;

(e) Timely make or provide all payments, services or other consideration due for the contracts so that all payments required to be made as of the Closing Date will have been paid, except for any amounts being contested by Seller in good faith, and use

commercially reasonable efforts to satisfy Seller's obligations under the trade agreements in order to minimize the amount by which such obligations under the trade agreements exceed the fair market value of all goods or services to be received under the trade agreements as of the Closing;

(f) Use commercially reasonable efforts to obtain the consent of any third party (whether before or after the Closing) necessary for the assignment to Buyer, without any material adverse change, of the contracts;

(g) Maintain the insurance policies currently in effect relating to the Station Assets in the current or increased amounts and, upon Buyer's reasonable request, provide Buyer with certificates of insurance evidencing such coverage.

(h) Within fifteen (15) days after the Effective Date, furnish, at its cost and expense, the Buyer Uniform Commercial Code reports from both the Office of the Secretary of State of the State of New Mexico and from the Office of the County Clerk of Doña Ana County, New Mexico. These reports shall contain copies of all documents which are reflected by the public record and which pertain to the Station Assets.

(i) File with the FCC all applications and other documents required to be filed in connection with operation of the Station Assets.

(j) Provide Buyer, and representatives of Buyer, with reasonable access to the properties, titles, contracts, files, financial records, and affairs of the Stations, and furnish such additional information concerning the Stations as Buyer may from time to time reasonably request.

(k) Provide reasonable notice to Buyer of any adverse change with respect to the Stations.

(l) Maintain its books, accounts and records in the usual, regular and ordinary manner and in accordance with past practices.

(m) In the event of, and promptly thereafter, the taking of any actions or impending or threatened occurrence of any event, the taking or occurrence of which would make untrue, inaccurate, or misleading, or would otherwise constitute or result in a breach or violation of, any of the representations, warranties, covenants, or agreements of Seller set forth in this Agreement, or would, if it had occurred prior to the Effective Time, make any representation or warranty made by Seller in this Agreement, untrue, inaccurate, or misleading, Seller shall promptly give detailed written notice thereof to Buyer.

(n) Permit Buyer (after notice to Seller by Buyer and consent from Seller, which consent shall not be unreasonably withheld or delayed) to contact and make arrangements with employees identified to Buyer by Seller for the purpose of assuring their employment by Buyer after the Closing and for the purpose of ensuring the continuity of Seller's operations, and Seller agrees not to discourage any such employees from being employed by or consulting with Buyer.

(o) Secure the release of all liens on the Station Assets that secure the payment of any indebtedness and shall deliver to Buyer at the Closing releases or terminations under the Uniform Commercial Code and any other applicable federal, state or local statutes or regulations of any financing or similar statements filed against any Station Assets in the jurisdictions specified or required by applicable federal, state or local statutes or regulations.

**6.2 Negative Covenants.** Between the Effective Date and the Closing Date, Seller shall not, without the prior written consent of Buyer:

(a) Enter into any agreements with employees or any other party which Buyer will be required to assume, or which cannot be terminated prior to the Closing, without penalty;

(b) Create, assume, or permit to exist any new security interest or pledge, or subject to any lien or encumbrance any of the Station Assets, whether now or hereafter acquired, or sell, assign, lease, or otherwise dispose of or transfer any of the Station Assets;

(c) Permit the FCC licenses listed on **Schedule 1.1(a)** to lapse, to be modified in any adverse respect, or otherwise to become impaired in any manner, subject to Buyer's right to file a modification application;

(d) Take any action that would cause the representations and warranties of Seller set forth in this Agreement not to be true and correct in any material respect at and as of the Closing Date, as if made at and as of such time;

(e) Grant any salary increase (other than normal merit or cost-of-living increases in the ordinary course of business consistent with past practices and in no event greater than five percent (5%)) to any employee, or enter into any new or amend or alter any existing employment agreement or bonus, incentive compensation, medical reimbursement, life insurance, deferred compensation, profit sharing, retirement, pension, stock option, group insurance, death benefit or other fringe benefit plan, trust agreement for employees or other similar arrangement;

(f) Sell, lease or otherwise dispose of any of the Station Assets except in the ordinary course of business consistent with past practice;

(g) Take any action, or permit its officers, employees, attorneys, agents, accountants and other representatives to take any action, to solicit, encourage or initiate (directly or indirectly) any discussion with, provide any information to, negotiate with, or enter into any agreement, option arrangement or understanding with, any person or entity or group, other than Buyer, for the sale of all or any part of the Station Assets or the assignment or transfer of control of any of the **Station Licenses** or similar transactions involving Seller or the Stations;

(h) Take or omit to take any action which causes, or which is likely to cause, any deterioration of the Stations or Seller's relationships with suppliers or customers;

(i) Terminate or modify or amend any assumed contract; or

(j) Do, or fail to do, any act which will cause a material breach of, or default under, or termination of, any contract.

## **ARTICLE 7 COVENANTS OF BUYER**

**7.1 Covenants.** Between the Effective Date and the Closing Date, Buyer shall:

(a) At least five (5) days prior to the Closing Date, notify the Employment Security Division of the New Mexico Department of Labor, in writing by registered mail, of the Transaction so that Buyer can acquire the Station Assets free from any lien or claim that said division or department may have against those assets for any amount owed by Seller to said division or department;

(b) Have received, within forty-five (45) days of the date of this Agreement (and promptly thereafter provided to Seller), completed Phase I environmental audit reports (the "**Phase I Reports**") at Buyer's sole expense regarding the Real Property, which Phase I Reports shall be reasonably satisfactory to Buyer. In the event Buyer fails to obtain such Phase I Reports within the aforementioned forty-five (45) day period, Buyer shall have waived such condition. If, in Buyer's reasonable judgment, Phase II environmental audit reports ("**Phase 2 Reports**") are necessary in light of the contents of the Phase I Reports, at Buyer's sole expense, Buyer shall be required to obtain such Phase II Reports to its reasonable satisfaction within sixty (60) days of the date of this Agreement (and promptly thereafter provide them to Seller). In the event Buyer fails to obtain any such Phase II Report within such sixty (60) day period, Buyer shall have waived such condition. In the event that a Phase I Report and/or a Phase II Report

discloses an environmental condition or matter which is reasonably unsatisfactory to Buyer, Buyer shall notify Seller in writing of its objection to any environmental condition or matter addressed in the Phase I Reports or Phase II Reports and Seller shall have forty-five (45) days from Seller's receipt of notice to remediate and eliminate such condition or matter.

(c) Within forty-five (45) days after the date of this Agreement, Buyer may at its expense obtain for the Real Property (either owned or leased) to be conveyed to Buyer hereunder (i) a current survey, prepared by a licensed surveyor and conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, disclosing the location of all improvements (including guy wire and anchors), easements, party walls, sidewalks, roadmaps, utility lines and other matters customarily shown on such surveys, and showing access affirmatively to public streets and roads (the "Surveys"), and (ii) standard ALTA Form B commitments for owner's or lessor's title insurance for such Real Property (the "**Title Commitments**"). Buyer shall provide Seller with a copy of the Surveys and Title Commitments within fifteen (15) business days of receipt by Buyer, but in no event later than sixty (60) days after the date of this Agreement and at the same time shall give the Seller notice of any exceptions or defects to title in the Title Commitments or matters revealed by the **Surveys** that materially and adversely affects the use of the Real Property as currently used by Seller (the "**Objectionable Exceptions**"). If Buyer fails to give such notice in a timely manner, Buyer shall be deemed to have accepted all title exceptions reported in the Title Commitments or matters revealed by the Surveys other than the Objectionable Exceptions expressly set forth in the notice. Seller shall cure or remove any Objectionable Exception within forty-five (45) days from the date of Buyer's notice;

(d) At least (5) business days prior to the Closing Date notify Seller of those employees that it wishes to employ following the Closing Date.

## **ARTICLE 8 JOINT COVENANTS**

**8.1 Cooperation.** Buyer and Seller will cooperate in all respects in connection with: (i) securing any non-governmental approvals, consents and waivers required of third parties; and (ii) giving notices to any governmental authority, or securing the permission, approval, determination, consent or waiver of any governmental authority, required by law in connection with the transfer of the Station Assets from Seller to Buyer.

**8.2 Public Announcement.** Seller shall publish and broadcast a public notice concerning the filing of the application for assignment of the Licenses in accordance with the requirements of the FCC's Rules. As to any other announcements, no party hereto shall issue any press release or public announcement without prior approval of the other parties hereto

which shall not be unreasonably withheld except as and to the extent that such party shall be obligated by law, rule or regulation, in which case the other party shall be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

**8.3 Consents.** As of the date of this Agreement, except for the consents provided for elsewhere herein, no consent, approval, permit, or authorization of, or declaration to, or filing with any governmental or regulatory authority or any other third party is required (a) to consummate the transactions contemplated hereby; or (b) to permit Seller to assign or transfer the Station Assets to Buyer. Seller shall use its best effort to obtain third party consents, if any, for the assignment or transfer of the Contracts, including Lease.

**8.4 Confidentiality.** Buyer and Seller shall keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby, except where such information is known or available through other lawful sources or where such party is advised by counsel that its disclosure is required in accordance with applicable law.

**8.5 Control of Station.** Between the date of this Agreement and the closing, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Station. Such operations shall be the sole responsibility of Seller and, subject to the provisions of Article 8, shall be in its complete discretion.

**8.6 Employee Matters.** Buyer may (but is not obligated to) offer post-Closing employment to any of the Station's employees. Any offer shall be for employment at will by Buyer as new employees of Buyer to occupy positions designated by Buyer and pursuant to the terms and conditions determined by Buyer in its sole discretion. Seller shall make available to Buyer, to the fullest extent permitted by law, all information and materials requested by Buyer from the personnel files of each employee who accepts employment with Buyer. With respect to each employee who accepts Buyer's offer of employment, Seller shall be responsible for all compensation and benefits arising prior to Closing (including without limitation any accrued vacation time and any accrued sick leave in accordance with Seller's employment terms) and Buyer shall be responsible for all compensation and benefits arising after Closing (in accordance with Buyer's employment terms). Buyer assumes no obligation to continue or assume any compensation arrangements or liabilities of Seller (including without limitation any salary, bonuses, fringe benefits, insurance plans, or pension or retirement benefits under any compensation or retirement plan maintained by Seller) to any employee. Provided that Buyer first gives Seller notice of those employees to whom it will be offering employment, Seller shall terminate the employment of all employees who render services to the Stations effective on and

as of the Closing Date and shall give all required notices under COBRA. Seller shall not give notice to any of its employees who render services to the Stations of such termination of employment more than five (5) business days prior to the Closing Date.

## **ARTICLE 9 CONDITIONS PRECEDENT**

**9.1 To Buyer's Obligations.** The obligations of Buyer under this Agreement are, at its option, subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

(a) **Representations, Warranties and Covenants.** The representations and warranties of Seller contained in this Agreement shall be true and correct at and as of the time of the Closing as though made at and as of such time, and each and all of the agreements and conditions of Seller to be performed on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly performed and complied with. 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 this Section 9.1(a) have been satisfied.

(b) **Governmental Consents.** The FCC Consent shall contain no provision materially adverse to any of Buyer, Buyer's Affiliates or the Stations and shall have become a Final Order.

(c) **Adverse Proceedings.** No litigation, investigation, or proceeding of any kind shall have been instituted or threatened and reasonably probable of being asserted, which would adversely affect the Station Assets or operation or would adversely affect the ability of Buyer to execute this Agreement and to be eligible to be an FCC licensee.

(d) **Authorization.** Buyer shall have received a true and complete copy, certified by an officer of Seller, of the resolutions duly and validly adopted by the board of directors of Seller evidencing its authorization of the execution and delivery of this Agreement and consummation of the transactions contemplated hereby.

(e) **Transfer of Licenses; Equipment.** At the Closing Date, the FCC licenses and authorizations shall be assigned and transferred to Buyer and shall contain no adverse modifications of the terms of such authorizations and licenses for the full and unrestricted term. All equipment, now owned or hereafter acquired, and all engineering shall comply with the laws, rules, and regulations of the federal, state, and local governments or agencies having jurisdiction over construction and/or operation of broadcast properties.

(f) **Adverse Change.** There shall not have been any adverse change in the property to be sold nor any damage, destruction, or loss adversely affecting the property to be sold.

(g) **Third Party Consents.** Seller shall have delivered to Buyer all third party consents for those **contracts** designated as **material contracts** on **Schedule 1.1(c)**, and shall have delivered to Buyer all other third party consents that have been obtained for assignment of the **contracts**.

(h) **Deliveries.** Seller shall have made or stand willing to make all the deliveries required under Sections 12.1 and 12.2.

**9.2 To Seller's Obligations.** The obligations of Seller under this Agreement are, at its option, subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

(a) **Representations, Warranties and Covenants.** The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date. 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 this Section 9.2(a) have been satisfied.

(b) **Governmental Consents.** The FCC Consent shall have been granted and shall be in full force and effect and shall contain no provision materially adverse to Seller or Seller's Affiliate. Seller acknowledges that Seller's obligation to consummate the transactions contemplated by this Agreement is not subject to the condition that the FCC Consent shall have become a Final Order.

(c) **Adverse Proceedings.** No litigation, investigation, or proceeding of any kind shall have been instituted or threatened and reasonably probable of being asserted, which would adversely affect the Station Assets or operation or would adversely affect the ability of Buyer to execute this Agreement and to be eligible to be an FCC licensee.

(d) **Authorization.** Seller shall have received a true and complete copy, certified by an officer of Buyer, of the resolutions duly and validly adopted by the members of Buyer evidencing its authorization of the execution and delivery of this Agreement and consummation of the transactions contemplated hereby.

(e) **Payments.** All payments under this Agreement which are due and payable by Buyer on or before the Closing Date shall have been paid in accordance with the terms in this Agreement.

(f) **Deliveries.** Buyer shall have made or stand willing to make all the deliveries required under Sections 12.1 and 12.3, and shall have paid or stand willing to pay the Purchase Price as provided in Section 2.2.

## **ARTICLE 10 RIGHTS OF INDEMNIFICATION**

### **10.1 Obligations of Seller.**

(a) It is understood and agreed that Buyer does not assume and shall not be obligated to pay any of the liabilities of Seller under the terms of this Agreement. Seller and its CEO hereby jointly and severally agree to indemnify and hold Buyer, Buyer's employees, officers and managers, its successors, and assigns harmless from and against, and agree promptly to defend Buyer from and reimburse its indemnified parties for, any and all direct or indirect damages, claims, losses, liabilities, deficiencies, costs, and other expenses (including without limitation reasonable attorney's fees and other legal costs and expenses) which arise out of or result from:

(i) Any and all claims, liabilities, and obligations of every kind and description, whether absolute, accrued, contingent, or otherwise and whether due or to become due, relating to Seller and not expressly assumed by Buyer pursuant to the terms of this Agreement.

(ii) Any misrepresentations, breach of warranty, or breach of any commitment on the part of Seller under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with the Transaction.

(iii) Any and all actions, suits, proceedings, claims, demands, assessments, investigations, audits, tax deficiencies, judgments, fines, and other expenses of any nature whatsoever relating to Seller and the operations of the Stations prior to the Closing.

(iv) Any failure by Seller to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and materials delivered by Seller pursuant to this agreement.

(v) Any suit, action or other proceeding brought by any governmental authority or person arising out of any of the matters referred to in Section 10.1(a)(i)-(iv).

## 10.2 Obligations of Buyer

(a) Buyer hereby agrees to indemnify and hold Seller, Seller's employees, officers and managers, and its successors and assigns harmless from and against any and all direct or indirect damages, claims, losses, liabilities, deficiencies, cost and other expenses, (including, without limitation reasonable attorney's fees) which arise out of or result from:

(i) The operation of the Stations subsequent to the Closing.

(ii) Any misrepresentations, or breach of any agreement on the part of Buyer under this Agreement.

(iii) Any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses as the result of Buyer's failure or refusal to defend or compromise any claim, incident to any of the foregoing provisions.

(iv) Any suit, action or other proceeding brought by any governmental authority or person arising out of any of the matters referred to in Section 10.2(a)(i)-(iii).

(b) Nothing contained in this Section 10.2, or elsewhere herein, shall provide Seller Indemnified Parties with rights of indemnification or remedies against Buyer in amounts greater than as set forth in Section 13.2 if the transactions contemplated by this Agreement fail to close.

## 10.3 Indemnity Procedure.

(a) A party agreeing to be responsible for or to indemnify against any matter pursuant to this Agreement is referred to herein as the "**Indemnifying Party**" and the other party claiming indemnity is referred to as the "**Indemnified Party**." An Indemnified Party under this Agreement shall give prompt written notice to the Indemnifying Party of any liability which might give rise to a claim of indemnity under this Agreement; provided, however, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent the rights of the Indemnifying Party are prejudiced. As to any claim, action, suit or proceeding by a third party, the Indemnifying Party shall be entitled to assume the defense, compromise or settlement of any such matter through the Indemnifying Party's own attorneys and at its own expense. The Indemnified Party shall provide such cooperation and such access to its books, records and properties as the Indemnifying Party shall reasonably request with respect to such matter, and the parties hereto agree to cooperate with each other in order to ensure the proper and

adequate defense thereof. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article 10 within thirty (30) days after the receipt of written notice thereof from the Indemnified Party.

(b) An Indemnifying Party shall not make any settlement of any claims that would materially and adversely affect the Indemnified Party without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld. Without limiting the generality of the foregoing, it shall not be deemed unreasonable to withhold consent to a settlement involving injunctive or other equitable relief against the Indemnified Party or its assets, employees or business.

(c) In the event that the Indemnifying Party does not undertake the defense, compromise or settlement of any claim as provided in the foregoing, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of such claim on behalf of, for the account of, at the expense of, and at the risk of the Indemnifying Party. The Indemnified Party shall, however, notify the Indemnifying Party of any compromise or settlement of any such claim. Any such claim paid by the Indemnified Party shall be allowed as a setoff against the then outstanding monetary obligations, if any, of the Indemnified Party to the Indemnifying Party under this Agreement. The balance, if any, of such claim paid by the Indemnified Party shall be payable by the Indemnifying Party to the Indemnified Party on demand of the Indemnified Party.

(d) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 10.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Section 10.1 or 10.2, the Indemnifying Party shall have the right to employ counsel acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 10.3(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand.

## **ARTICLE 11 RISK OF LOSS**

The risk of loss, damage, or destruction to any of the Station Assets from fire or other casualty or cause shall be borne by Seller at all times prior to the Closing. Upon the occurrence of any loss or damage to any property or assets to be transferred under this Agreement as a result of fire, casualty, or other causes prior to the Closing, Seller shall notify Buyer of same in writing immediately stating with particularity the extent of such loss or damage incurred, the cause thereof, if known, and the extent to which such restoration, replacement, and repair of the Station Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Should the property not be repaired or restored by the Closing Date, then, subject to the provisions hereof, Buyer shall have the option to: (1) terminate this agreement, (2) postpone the Closing until such time as the property has been completely repaired, replaced, or restored, (3) elect to consummate the Closing and accept the property in its "then" condition, in which event Seller shall assign all rights under any insurance claim covering the loss and pay over any proceeds under such insurance policy thereafter received by Seller with respect thereto. In the event Buyer elects to postpone the Closing Date as provided in clause (2) in the preceding sentence, the Parties will cooperate to extend the time during which this Agreement must be closed as specified in the FCC Consent.

## **ARTICLE 12 DOCUMENTS TO BE DELIVERED AT THE CLOSING**

**12.1 Documents to be Delivered by Both Parties.** At the Closing, each of Buyer and Seller shall execute and deliver to the other as applicable:

- (a) A duly executed Assignment and Assumption Agreement;
- (b) A duly executed Assignment and Assumption Agreement for the Real Property Leases;
- (c) If the Closing occurs before the FCC Consent becomes a Final Order, a duly executed Unwind Agreement, substantially in the form of **Exhibit C**; and.
- (d) The Consulting Agreement.

**12.2 Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following:

- (a) The certificate described in Section 9.1(a);
- (b) The documents described in Section 9.1(d);
- (c) A duly executed Bill of Sale;

- (d) A duly executed Assignment for the Station Licenses;
- (e) A duly executed Assignment for the intangible property;
- (f) A duly executed special warranty deed for the Owned Real Property; and
- (g) The consents to assignment to Buyer required under those Station contracts listed on **Schedule 1.1(c)**, duly executed by the appropriate persons.

**12.3 Documents to be Delivered by Buyer.** At the closing, Buyer shall deliver to Seller the following:

- (a) The certificate described in Section 9.2(a);
- (b) The documents described in Section 9.2(d); and
- (c) The monies payable at the Closing as detailed in Section 2.2, by wire transfer of immediately available funds.

### **ARTICLE 13 DEFAULT AND TERMINATION**

**13.1 Breach by Seller.** In the event of a breach by Seller of any of its representations or obligations under this Agreement, not cured within ten (10) days after written notice to that effect from Buyer, Buyer shall be entitled to, in addition to all other remedies that may be available to it, bring an action to enforce the terms of this agreement by decree of specific performance, it being agreed that Buyer may not be fully compensated for its loss through money damages alone and that the Station Assets are unique and not readily available on the open market. With respect to Buyer pursuing an action for specific performance, Seller hereby waives the defense that there is an adequate remedy at law and agrees to pay all costs associated with such an action, including, but not limited to, reasonable attorney's fees and all court costs. As a condition to seeking specific performance, Buyer shall not be required to have tendered the consideration specified in this Agreement, but shall be ready, willing and able to do so. If this Agreement is terminated as a result of a breach by Seller of any of its representations or obligations under this Agreement or because the FCC Consent is not obtained, then Seller shall refund the Purchase Option Deposit to Buyer immediately.

**13.2 Breach by Buyer.** In the event of a material breach by Buyer of any of its representations or obligations under this Agreement, not cured within ten (10) days after written notice to that effect from Seller, Seller shall have the right, if it is not in default under this Agreement, to terminate this Agreement by written notice to Buyer. Seller shall be able to recover as its sole and exclusive remedy under this Agreement, the Deposits as liquidated damages. The parties acknowledge and agree that the liquidated damages provided in this

Section bear a reasonable relationship to the anticipated harm which would be caused by Buyer's breach and failure to close under the terms of the Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Buyer's breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. If this Agreement is terminated for any other reason, then the Additional Deposit and all interest earned thereon shall be returned to Buyer. The provisions of this Section 13.2 shall survive the termination of the Agreement.

**13.3 Termination.** This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other upon the occurrence of any of the following:

- (a) if, on or prior to the Closing Date, the other party defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained herein and such default has not been cured within ten (10) days from receipt of written notice of default from the non-defaulting party;
- (b) if the FCC denies the FCC Application or designates it for a trial-type hearing;
- (c) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing; or
- (d) if the Closing has not occurred on or before [twelve (12)] months from the date of public notice that the application requesting such consent has been accepted for filing by the FCC.

**13.4 Broadcast Transmission Interruption.** Seller shall promptly notify Buyer if the Stations' normal broadcast transmission is interrupted, interfered with or in any way impaired and shall describe the measures being taken to correct such problem, provided that (a) if the Station is off the air for more than forty-eight (48) consecutive hours, or (b) if more than four (4) such events occur within any sixty (60) day period, then Buyer shall have the right to terminate this Agreement without further obligation to Seller, for a period of thirty (30) days after receiving notice from Seller of such occurrences described in clauses (a) or (b), and cure provisions otherwise set forth in this Agreement shall not apply. If Buyer elects to terminate the Agreement pursuant to this Section 13.5, Buyer shall be entitled to the immediate return of the Escrow Deposit, and all interest accrued thereon, and neither party shall have any further obligation under this Agreement. If Buyer elects not to terminate this Agreement pursuant to this Section 13.5, Buyer shall have the option to defer the Closing until such time that the Station's operations have been restored to the operating power and mode tolerances specified in 47 C.F.R. § 73.1560.

**13.5 Liability.** The termination of this Agreement under Section 13.3 or 13.4 hereof shall not relieve any party of any liability for breach of this Agreement prior to the date of termination except as specifically set forth in Sections 13.1 and 13.2 hereof.

## **ARTICLE 14 MISCELLANEOUS**

**14.1 Inventory.** Within three (3) days after the complete execution of this Agreement and within three (3) days prior to the Closing Date (as the parties may mutually agree), the parties shall conduct inventories of all of Seller's tangible Personal Property located on the premises of the Stations. If not all of the property included on first inventory is included on the second inventory (unless replacements for such property are included on the second inventory), then the Purchase Price shall be reduced by an amount equal to the replacement cost of such missing property.

**14.2 Expenses.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the Parties agrees to pay all of its respective expenses incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the Transaction.

**14.3 Further Assurances.** Upon request of a Party, the other Party shall promptly execute and deliver such other instruments and documents and generally will do all acts and things reasonably necessary or appropriate to consummate the Transaction.

**14.4 Schedules and Exhibits.** All Schedules and Exhibits attached to this Agreement shall be deemed part of this Agreement and incorporated in this Agreement, where applicable, as if fully set forth in this Agreement. Any disclosure with respect to a Section of this Agreement requires a specific reference in the Schedules to such Section of the Agreement to which any such disclosure applies, and no disclosure shall be deemed to apply with any respect to any Section to which it does not expressly apply.

**14.5 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE.

**14.6 Counterparts; Fax Signatures; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signature of each of the Parties to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Agreement and read having the same force and effect as though all of the signatories had signed a single page. Further, the execution and delivery of this Agreement may be effectuated by the use of fax transmission and the facsimile signature created thereby shall be considered an original signature. The Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**14.7 Survival of Representations, Warranties and Covenants.** Each and every term, warranty, representation, covenant and agreement made by the Parties shall survive the Closing and the doctrine of merger shall not apply to the Transaction.

**14.8 Attorneys' Fees.** In the event legal action is commenced by either party to enforce or interpret, or for breach of, any provision of this Agreement, the prevailing Party shall be entitled to recover from the losing Party costs and expenses incurred, including, but not limited to, reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing Party may be entitled.

**14.9 Broker.** Buyer and Seller hereby mutually represent that there are no finders, consultants or brokers involved in this transaction, and that neither Seller nor Buyer has agreed to pay any brokers, finders or consultants fee in connection with this transaction.

**14.10 General Construction Principles.** Time is of the essence with respect to any covenant or obligation imposed by this Agreement. Words in any gender shall be deemed to include the other genders. The singular shall be deemed to include the plural and vice versa. In this Agreement, all Articles and Sections are designated by Arabic numerals; in the Section numbers, those numerals preceding the decimal correspond to the number of the Article in which the Section is located. The subdivisions of the various Sections are referred to as paragraphs. Unless otherwise indicated, all references in this Agreement to Articles, Sections, paragraphs and subparagraphs refer to Articles, Sections, paragraphs and subparagraphs of this Agreement, and all references to exhibits or schedules are to exhibits or schedules attached to this Agreement. If any deadline or date set for performance under this Agreement falls on a weekend or a federal banking holiday, the deadline or date for performance shall automatically be extended to close of business on the next day which is not a weekend or federal banking holiday.

**14.11 Entire Agreement.** This Agreement and the documents required to be delivered hereto contain the entire understanding between the Parties and supersede any prior or contemporaneous written or oral negotiations, understandings or agreements between them respecting the subject matter of this Agreement. There are no representations, agreements,

arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully set forth in this Agreement.

**14.12 Amendment.** No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

**14.13 Assignment; Successors.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. Neither of the Parties shall assign or delegate any of its rights or obligations under this Agreement without the prior written consent of the other Party. No other person shall have any right, benefit or obligation hereunder.

**14.14 No Reliance.** Except for any assignees permitted by Section 14.13 of this Agreement:

(a) No third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement; and

(b) Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**14.15 Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of each party have participated in the preparation hereof.

**14.16 Notices.** All communications or notices contemplated by this Agreement shall be in writing and sent by hand delivery, registered or certified mail, return receipt requested, fax, or private courier. The notice shall be deemed to be delivered on the date of receipt or, in the case of notice sent by first class mail, the third day after mailing. Notice by fax shall be deemed to be delivered on the date transmitted provided that a copy is also sent by mail on that same date as provided in this Section. The notice shall be prepaid and addressed as follows:

Notices to Buyer to be sent to:

Michael Smith  
Bravo Mic Communications, LLC  
101 Perkins Drive  
Las Cruces, NM 88005  
Telephone: 505-527-1111  
Telecopy: 505-527-1100

With a copy to:

Howard Topel, Esq.  
Leventhal, Senter & Lerman, PLLC  
2000 K Street NW, Suite 600  
Washington, DC 20006-1809  
Telephone: 202-416-1098  
Telecopy: 202-293-7783

Notices to Buyer to be sent to:

Larry Edwards, CEO  
Edwards Media Ltd. Co.  
KOBE/KMVR Radio  
2803 Topley  
Las Cruces, NM 88005  
Telephone: [xxx-xxx-xxxx]  
Telecopy: [xxx-xxx-xxxx]

With a copy to:

**[Insert]**

Each Party may, by notice given under this Agreement, designate any further or different address to which notices or other communications shall be sent.

**14.17 Definition of Business Day.** For purposes of this Agreement, a “business day” shall mean any day other than a Saturday, Sunday, or holiday on which national banking associations are closed.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates specified below. The "Effective Date" of this Agreement shall be the later of said dates.

**SELLER:**

Edwards  
Media Ltd., a New Mexico  
Liability Company  
Limited

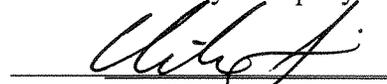
By:

  
Larry Edwards, Mgr.  
Date: 11/20/06

**BUYER:**

Bravo Mic Communications LLC, a New Mexico  
Limited Liability Company

By:

  
Michael Smith, Executive Vice President and  
General Manager  
Date: 11-20-06