

**ASSET PURCHASE AGREEMENT**

**by and among**

**MARINER BROADCASTING LIMITED PARTNERSHIP**

**and**

**NASSAU BROADCASTING HOLDINGS, INC.**

**for the Sale and Purchase of**

**Station WBQQ (FM), Kennebunk, ME  
Station WBQW (FM), Scarborough, ME  
Station WBQX (FM), Thomaston, ME  
Station WBQI (FM), Bar Harbor, ME  
Station WQEZ (FM), Kennebunkport, ME  
Station WBYA (FM), Isleboro, ME**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into as of this 26<sup>th</sup> day of November, 2003, by and among Mariner Broadcasting Limited Partnership, a limited partnership organized under the laws of the State of Delaware ("Seller"), and Nassau Broadcasting Holdings, Inc., a corporation organized under the laws of the State of New Jersey ("Buyer").

### WITNESSETH:

WHEREAS, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission") for the operation of radio stations WBQQ (FM), Kennebunk, ME (Facility ID 69854); WBQW (FM), Scarborough, ME (Facility ID 73885); WBQX (FM), Thomaston, ME (Facility ID 49564); WBQI (FM), Bar Harbor, ME (Facility ID 40925); WQEZ (FM), Kennebunkport, ME (Facility ID 69855); and WBYA (FM), Isleboro, ME (Facility ID 41105) (the "Stations" or the "Station"); and

WHEREAS, Seller owns or leases and desires to sell and/or assign, and Buyer desires to purchase and/or assume, certain of the assets and property used in the operation of the Stations.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

### SECTION 1 ASSETS TO BE SOLD

**1.1.** On the Closing Date, Seller shall sell, assign, transfer, convey, set over and deliver to Buyer, and Buyer shall purchase, assume and/or accept assignment of the following (hereinafter collectively the "Assets"):

1.1.1. Authorizations. All licenses, permits and authorizations issued or granted by the Commission for the operation of, or used in connection with, the operation of the Stations, and listed in Schedule 1.1.1 (hereinafter the "Commission Authorizations").

1.1.2. Real Property. All of Seller's rights in and to the land, buildings, improvements and other real property used in connection with the operation of the Stations' studio and tower facilities and listed in Schedule 1.1.2 (hereinafter the "Real Property").

1.1.3. Tangible Personal Property. All of Seller's rights in and to the fixed and tangible personal property used in the operation of the Stations and listed in Schedule 1.1.3, together with replacements thereof, additions and alterations thereto and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property").

1.1.4. Business Records. All original files and other records of Seller relating to the business and operations of the Stations owned and in the possession of Seller (other than records relating to the organizational nature of Seller such as minutes, tax records and similar records), including, without limitation, all available schematics, blueprints, engineering data, customer lists, reports, specifications, projections, statistics, promotional graphics, original art work, mats, plates, negatives and other advertising, marketing or related materials, and copies of all other technical and financial information concerning the Stations and the Assets, along with all FCC station logs and other records that relate to the operation of the Stations as are required to be maintained under the rules and regulations of the FCC, including, but not limited to, an up-to-date and complete local public file. (hereinafter collectively "Business Records").

1.1.5. Intangible Rights. All of Seller's right, title and interest in and to all intangible property used in the business and operation of the Stations, including without limitation copyrights, trademarks, jingles, slogans fictitious or trade names, service marks, licenses, patents, permits, telephone numbers, current call letters, domain names, websites, software, proprietary information, technical information, and other similar intangible property rights and interests (and good will associated with any of the foregoing) applied for, issued to, or owned by Seller or under which Seller are licensed or franchised, and which are listed on Schedule 1.1.5 hereto (collectively, the "Intangible Property"). To the extent any such Intangible Property is necessary for other business and operations of Seller that are not to be sold to Buyer pursuant to this Agreement, then Seller shall retain ownership of such Intangible Property, but shall grant to Buyer, from and after the Closing pursuant to a license agreement (in form and substance reasonably satisfactory to Seller and Buyer) to be entered into by Seller and Buyer at the Closing, a perpetual, royalty free, non-exclusive, transferable license to use said Intangible Property in connection with the business and operation of the Stations;

1.1.6 Programming and Copyrights. All programs and programming materials and elements, music libraries and software of whatever form or nature owned, leased or licensed by Seller and used or held for use in connection with the business and operations of the Stations on the Closing Date, whether recorded on tape or any other media or intended for live performance, and whether completed or held in production and any related common law and statutory copyrights owned by Seller or used or held for use in connection with the business and operations of the Stations, or licensed or sublicensed to Seller in connection therewith; and

1.1.7 Agreements. All of Seller's rights to and in the contracts, agreements and leases to which Seller and/or the Stations are a party as listed in Schedule 1.1.7 (hereinafter collectively the "Agreements") together with all contracts, agreements or leases entered into or acquired by Seller in the ordinary course of business between the date hereof and the Closing Date, including all of Seller's accounts receivable on the date of Closing. Buyer will assume trade or merchandising deals ("Barter Programs") or advertising contracts for the sale of time in exchange for goods or services ("Barter Time Spots"), as well as all other advertising contracts for the sale of time ("Cash Spots"), that are in effect on the Closing Date. If any agreements require the consent of third parties for assignment, but such consent has not been obtained by the Closing Date, then Buyer shall not be obligated to assume such agreements and may in its sole discretion elect to assume Seller's obligations under such agreements only for the period after Closing during which Buyer receives the benefit to which Seller is currently entitled under such agreements.

1.1.8 Causes of Action. All of Seller's rights in and to all causes of action in favor of Seller relating to the business or operations of the Stations, including, without limitation, any causes of action for past infringement on any of Seller's intellectual property, except such cause of action set forth on Schedule 1.1.8 hereto.

1.1.9 Goodwill. All of Seller's goodwill in, and going concern value of, the Stations.

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

1.2.1. All cash, cash equivalents or similar type investments of Seller, such as certificates of deposit, treasury bills, other marketable securities on hand and/or in banks on the day prior to Closing;

1.2.2. All tangible and intangible personal property disposed of or consumed in the ordinary course of business between the date of this Agreement and the Closing Date, or as permitted under the terms hereof;

1.2.3. All agreements that have terminated or expired prior to the Closing Date in the ordinary course of business and as permitted hereunder;

1.2.4. Seller's minute books, charter documents, record books and such other books and records as pertain to the organization, existence or capitalization of Seller and duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports as well as any other records or materials relating to Seller generally and not involving specific aspects of the Stations' operation;

1.2.5. Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date;

1.2.6. Any and all other claims made by Seller with respect to transactions prior to the Closing Date and the proceeds thereof to the extent the Station has been made whole for any loss or damage they or their assets may have suffered or incurred as a result of the item, event or occurrence giving rise to such claim;

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

1.2.8 All other assets of Seller not directly related to the Stations.

**SECTION 2  
PURCHASE PRICE**

**2.1. Purchase Price.** In consideration of Seller's performance of this Agreement, the sale, assignment, transfer, conveyance, setting over and delivery of the Assets as defined herein above to Buyer, the total purchase price (the "Purchase Price") to be paid by Buyer to Seller shall be a sum of money equal to EIGHTEEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$18,300,000.00).

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

a. Upon the execution and delivery of this Agreement, Buyer shall deposit NINE HUNDRED FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$915,000.00) (the "Escrow Deposit") pursuant to an escrow agreement in the form attached hereto as Exhibit A (the "Escrow Agreement). The Escrow Deposit shall be held and disbursed by Cohn and Marks LLP (the "Escrow Agent") pursuant to the terms of the Escrow Agreement, which Escrow Agreement shall be signed by Seller, Buyer and Escrow Agent simultaneously with the execution of this Agreement. At Closing, Buyer shall join with Seller in causing the Escrow Agent to cause the Escrow Deposit (but not the interest earned thereon) to be sent to Seller by wire transfer of immediately available funds to a bank designated by Seller to be credited against the Purchase Price. All interest earned on the Escrow Deposit, including all interest earned but not yet paid, shall be sent to Buyer.

b. On the Closing Date, Buyer will pay to Seller by wire transfer of immediately available funds to a bank designated by Seller the amount required under Section 2.1 less the Escrow Deposit, as adjusted to reflect any adjustments made at the Closing pursuant to Section 3.2 of this Agreement.

**2.3. Allocation of Purchase Price.** Prior to the Closing Date, the parties agree to use their commercially reasonable efforts to allocate the Purchase Price in accordance with the requirements of Section 1060 of the Internal Revenue Code. In the event that the parties are unable to reach such an agreement prior to the Closing Date, they will select a qualified, independent and nationally recognized appraiser of broadcast properties and that appraiser's decision shall be binding upon the parties and the fees and expenses shall be borne equally by Buyer and Seller. The parties also agree to use such Purchase Price allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

**SECTION 3  
ADJUSTMENTS ACCOUNTS RECEIVABLE AND RESTRICTIVE  
COVENANTS**

**3.1. Adjustment Time.** The "Adjustment Time" as used herein shall be as of 12:01 A.M. eastern time on the Closing Date.

**3.2. Adjustment Items.** The following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, and monies shall be paid at Closing in accordance with Section 3.3 herein below.

3.2.1. Rentals or other charges, payable or paid with respect to the Lease Agreement.

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

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

3.2.4. Buyer shall refund any security deposits, to include transferable license, permit and registration fees and like items, to Seller.

3.2.5. Other similar items applicable to the Assets and/or attributable to Seller's operation of the Stations, to include employment contracts which Buyer elects to assume, it being the intention of the parties that all operations of the Stations prior to the Adjustment Time shall be for the account of Seller, and all operations of the Stations on and after the Adjustment Time shall be for the account of Buyer.

3.2.6. If the amount of any real or personal property tax to be prorated is not known on the Closing Date, such tax or fee shall be apportioned on the basis of the most recent tax assessment.

**3.3. Adjustments After Closing Date.** At least five (5) business days prior to the Closing, Seller shall deliver to Buyer a report (the "Preliminary Report") showing in reasonable detail the preliminary determination of the adjustments referred to in Section 3.2, each of which shall be calculated as of the Adjustment Time. The Preliminary Report shall serve as the basis of any adjustments to the Purchase Price. Within forty-five (45) days after the Closing Date, Seller shall deliver to Buyer a report (the "Final Report") showing in reasonable detail (a) Seller's final determination of its proposed adjustments to the Purchase Price, (b) all adjustments to the Purchase Price that were not calculated as of the Closing Date, and (c) any corrections to any of its estimated adjustments contained in the Preliminary Report, together with appropriate documents substantiating the calculations, determinations and adjustments proposed in the Final

Report. Any resulting payment shall be made to the party entitled thereto within thirty (30) days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments in the Final Report, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid by Seller and/or Buyer in inverse proportion to the accountant's resolution of the disputed items or amounts.

**3.4 Accounts Receivable.** All cash accounts receivable in connection with the operation of the Stations, including but not limited to accounts receivable for broadcast time, on or prior to the Closing Date shall be assigned to Buyer. In consideration therefore Buyer shall pay Seller, in addition to the purchase price and as an adjustment to the purchase price, the following to be calculated the day of the closing: 90% of the accounts receivable that are 0 – 60 days old; 60% of the accounts receivable that are 60 – 90 days old; and 30% of the accounts receivable that are over 90 days old. Any commission due to Seller's current or former employees at the Stations or of the business and operations of the Stations as a result of amounts collected on any such accounts receivable shall be paid by Buyer to such employees promptly after Buyer has received such collections. At the expiration of each 30 day billing period for the period of 90 days from the date of closing, Buyer will provide Seller with a statement of any commissions paid to its former employees on the collected accounts receivable and Seller

shall, within 30 days, reimburse Buyer for the sums so paid. Any disputes concerning the commission reimbursement will be resolved as set forth in Section 3.3 *supra*.

**3.5 Employees and Agreements Relating to Employment .**

3.5.1 No labor union is currently certified, or collective bargaining agreement is in place, or otherwise recognized, as the collective bargaining representative for any of the Stations' employees. Seller has no, and has not had any, claims, charges or conflicts pending, or, to the knowledge of Seller, threatened against it before the Equal Employment Opportunity Commission, any state or local agency responsible for the prevention of unlawful employment practices or the FCC with respect to the Stations. Seller has no knowledge of any labor strike, or other employee or labor controversy or dispute pending which would materially affect the operation of the Stations.

3.5.2 Seller is not, and on the Closing Date will not be, except as disclosed on Schedule 3.5.2, a party to: (i) any labor contract, (ii) any vacation pay, severance pay or other benefit arrangement (including any "employee benefit plans" within the meaning of Section 3(3) of ERISA or similar plans) with its employees, or (iii) any employment contract or agreement which is not terminable upon termination notice of thirty (30) days.

3.5.3. Schedule 3.5.3 sets forth a complete list of the names, positions and locations of the employees of the Stations. Prior to closing, Seller shall deliver a list of employees of its Stations that it does not intend to rehire after closing. The Buyer may interview and elect to hire any of the listed employees. Buyer is not obligated to hire any of the employees.

3.5.4. Prior to the Closing Date, Buyer will provide Seller with a list (the "Employee List") of all employees to whom Buyer intends to make an offer of

employment, which Employee List shall be derived from the list delivered to Buyer by Seller in accordance with Section 3.5.3. Buyer will offer employment as of the Closing to all employees on the Employee List on such terms of employment and conditions as shall be determined in Buyer's sole and absolute discretion. Seller shall be responsible for all obligations or liabilities to those employees not offered employment by Buyer, and Buyer shall have no obligations with respect to those employees.

**3.6 Covenant Not To Compete.** Seller agrees that for a period of two (2) years after the Closing date, neither entity, nor any of their affiliates, will, directly or indirectly, (i) own, manage, operate, control or participate in the ownership, management, operation or control of any business, whether in corporate proprietorship, partnership or other form, which is engaged in the operation of any radio station whose principal community contours overlap the principal community contours of any of the Stations; provided, however, that Seller and its principals may own up to five percent (5%) of any issued and outstanding class of securities that have been registered under the Securities and Exchange Act.

#### **SECTION 4 APPLICATION TO AND CONSENT BY COMMISSION**

**4.1. Commission Consent.** Consummation of the transactions contemplated herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the Commission or its staff shall have given its consent in writing, without any condition that would have a Material Adverse Effect, as defined in Section 4.2(c), on Buyer or Seller, to the assignment of the Commission Authorizations from Seller to Buyer.

**4.2. Application For Commission Consent.**

a. Seller and Buyer agree to proceed expeditiously and with due diligence and to use their best efforts and to cooperate with each other in seeking the Commission's approval of the assignment of the Commission Authorizations from Seller to Buyer. Within five (5) business days after the date of this Agreement, each party shall prepare and file with the Commission its portion of an application to assign the Commission Authorizations (the "Assignment Application") and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application, including, but not limited to, a showing by Buyer that its ownership of the Stations shall comply with the FCC radio ownership limits. Each party further agrees expeditiously to prepare amendments to the Assignment Application whenever such amendments are required by the Commission or its rules. Without limiting the foregoing, in the event that the FCC staff should require additional information regarding Buyer's compliance with the FCC's numerical ownership limits on radio or other FCC policies related to radio ownership, Buyer shall promptly supply such information, at its own expense, and use its best efforts to seek an expeditious grant of the Assignment Application.

b. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. All filing fees and grant fees imposed by the Commission shall be shared equally by Seller and Buyer.

c. Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a Material Adverse Effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its

representations, warranties, or covenants in this Agreement. "Material Adverse Effect" means a condition, event or circumstance which would materially restrict, limit, increase the cost or burden of, or otherwise materially impair the right of Buyer or Seller to the ownership, use, control or operation of the Assets consistent with their present use, operation or condition; provided, however, that any condition, event or circumstance which requires that the Assets be operated in accordance with a condition similar to that contained in the Commission Authorizations as they exist as of the date of this Agreement or that affect the Stations' market or the broadcasting industry, generally, shall not be deemed a Material Adverse Effect. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section shall limit any party's right to terminate this Agreement pursuant to Section 16 of this Agreement).

**4.3. Notice of Application.** Seller shall, at its expense, give due notice of the filing of the Assignment Application by broadcasting on the Stations, or by such other means, as may be required by the rules and regulations of the Commission. The specifics of the required notice, as such notice relates to Buyer, shall be provided to Seller by Buyer.

**4.4. Delay in Approval of Application.** Either party, not then in material default of this Agreement, at its option may terminate this Agreement by five (5) business days' prior written notice to the other party, and without liability to the other party, if there is no Final Order (as defined in Section 9.1 hereof) of the Commission's granting of the Assignment Application by September 1, 2004 (the "Upset Date"). In addition, either party may at its option terminate this Agreement by five (5) business days' prior, written notice to the other party in the event that the Commission should designate a hearing

regarding the transaction proposed herein, and such termination shall be without liability to the other party unless such hearing is the result of the breach of any representation, warranty or covenant contained herein by the terminating party. In the event of termination pursuant to this Section 4.4, each party shall bear its own expenses, and, unless the termination is the result of a breach by Buyer, the Escrow Agent shall return to Buyer the Escrow Deposit (including all interest earned thereon). If the termination is the result of a breach by Buyer, the Escrow Agent shall deliver to Seller the Escrow Deposit (including all interest earned thereon).

## **SECTION 5 LIABILITIES**

**5.1. Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics' and materialmen's liens), pledges, conditional sales agreements, charges, mortgages, security interests, encumbrances and restrictions of any type or amount (other than Permitted Liens, as hereinafter defined) (collectively, "Liens") created or suffered by Seller prior to the Closing Date. "Permitted Liens" means (i) liens or mortgages that will be released at Closing; (ii) zoning ordinances and regulations, including statutes and ordinances relating to municipal improvements, which would not have a Material Adverse Effect; and (iii) liens identified in Schedule 5.1.

**5.2. Buyer's Assumed Obligations.** Consistent with Schedule 1.1.7 of this Agreement, Buyer covenants and agrees to assume at Closing and discharge following the Closing (i) current liabilities of Seller for which Buyer receives a reduction in the Purchase Price, but not in excess of the amount of such reduction, and (ii) all of the unperformed duties, obligations and liabilities attributable to periods and arising from events or circumstances occurring on or after the Closing Date under or with respect to

the Assets or operation of the Stations, including those arising out of Buyer's ownership of the Assets and operation of the Stations. Except as provided in the preceding sentence, Buyer is not agreeing to, and shall not, assume any other liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement. All of such liabilities and obligations shall be referred to herein as the "Retained Liabilities."

**5.3. Seller's Liability.** Seller shall remain liable for, and covenants to pay, satisfy, or discharge, all liabilities, payments, obligations, and duties attributable to periods and arising from events or circumstances occurring before the Closing Date under or with respect to the Assets or operation of the Stations.

**5.4 Fees and Transfer Taxes.** All filing and recording fees in connection with any instrument of conveyance or transfer delivered pursuant to this Agreement shall be split evenly by Buyer and Seller. Transfer taxes, if any, with regard to any real or personal property and the intangible assets sold and transferred hereunder shall be split evenly by Buyer and Seller.

## **SECTION 6 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants as follows:

**6.1. Organization and Standing.** Seller is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and is in good standing in the State of Maine if so required by the laws of the State of Maine. Seller has the full power to own the Assets and to conduct the operation of the Stations as it is now being conducted.

**6.2. Authorization and Binding Obligation.** Seller has all necessary power and authority to enter into this Agreement and the Seller's Closing Documents. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Seller's Closing Documents (on the Closing Date) either have been or will be authorized by all necessary action of Seller. This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

**6.3. No Contravention.** The execution, delivery and performance of this Agreement or any of the Seller's Closing Documents do not violate any provision of Seller's organizational documents, any contract provision or other commitment to which Seller with respect to the Assets is a party or under which the Assets are bound, or any judgment or order, and will not result in the creation or imposition of any Lien (other than a Permitted Lien) upon any of the Assets.

**6.4. Business Records.** Seller has maintained the Business Records in the usual, regular and ordinary manner in accordance with good business practices.

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

6.5.1. Real Property. Schedule 1.1.2 attached hereto accurately lists all the Real Property owned, leased or otherwise held or exclusively used by Seller in connection with its operation of the Stations. To the best of Seller's knowledge, the Real Property, as well as the present uses thereof, conforms in all material respects with all material restrictive covenants and with all applicable zoning, environmental, and building codes, laws, rules and regulations. All Assets on the Real Property are structurally sound,

in good condition and repair (ordinary wear and tear excepted), and available for immediate use in the operations of the Stations. No condemnation of any of the Real Property has occurred; there is no existing notice covering future condemnation; and Seller has no reason to believe that any of the Real Property will be condemned. All transmitting facilities included as part of the Assets, including, antennas, anchors and all other related buildings, structures and appurtenances, if any, are located entirely within the confines of the Real Property. To the best knowledge of Seller, all utilities required for the operation of the Assets on the Real Property either enter the Real Property through adjoining public streets, or if they pass through adjoining private land, they do so in accordance with valid easements. To the best knowledge of Seller, the use of the Assets on the Real Property and the conduct therein have not violated any law, statute, ordinance, rule or regulation of any government, governmental body, agency or authority (federal, state or local) in any material respect. In connection with such use and conduct, there are no problems with respect to adequate water supply, sewage and waste disposal facilities or air, water or land pollution, nor are there any pending or threatened eminent domain proceedings or special assessments with respect to the Real Property.

6.5.2. Owned Real Property and Tangible Personal Property. Seller is the owner of, and at closing will have good and marketable title to all of the Owned Real Estate and Tangible Personal Property listed in Schedules 1.1.2 and 1.1.3 free and clear of all liens (other than Permitted Liens).

6.5.3. Condition of Property. Unless otherwise so noted, the Tangible Personal Property listed in Schedule 1.1.3 is now, and on the Closing Date will be, in good operating condition in accordance with generally accepted standards of practice in

the broadcasting industry (ordinary wear and tear excepted), and to Seller's best knowledge, is free from defects in materials and workmanship in all material respects.

**6.6. Agreements.**

6.6.1. Except for contracts or agreements entered into or acquired by Seller between the date hereof and the Closing Date, Schedule 1.1.7 accurately lists all agreements, leases and other contracts with respect to the Stations to be conveyed hereby to Buyer (except for contracts for the sale of advertising time for cash) to which, as of the date hereof, Seller and/or the Stations are a party or by which Seller and/or the Stations may be bound or obligated in any way. Upon assumption and assignment to Buyer, each agreement will be in full force and effect, and constitute a valid and binding obligation of, and will be unimpaired by any acts or omissions of Seller, Seller's employees, officers or managers. To the best of Seller's knowledge, there has not occurred as to any agreement any default by Seller or any event that, with the lapse of time or otherwise, could become a default by Seller.

**6.7. Authorizations.** Except as disclosed on Schedule 6.7:

6.7.1. Seller is the authorized legal holder of all licenses, permits, and authorizations necessary to operate the Stations' facilities lawfully and as they are now being conducted, including, without limitation, all Commission Authorizations listed in Schedule 1.1.1, none of which is subject to any restrictions or conditions which would limit in any respect the full operation of the Stations' facilities as now operated and be deemed a Material Adverse Effect.

6.7.2. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended.

6.7.3. Seller is operating the Assets in all material respects in accordance with the Commission Authorizations, the underlying construction permits and all rules, regulations and policies of the Commission.

6.7.4. There is no action pending nor to Seller's knowledge, threatened, before the Commission or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations, or any action which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Assets, except as required to transfer same to Buyer.

6.7.5. All reports, applications and other documents required by the Commission to be filed by Seller with the Commission or any other administrative body to date with respect to the Assets or the Stations' operation of its facilities have been filed and all such reports, applications and documents are true and correct in all material respects.

6.7.6. There are no matters known to Seller that might reasonably be expected to result in the suspension or revocation of any Commission Authorizations pertaining to the Assets.

**6.8. Litigation and Insurance.**

6.8.1. Litigation; Compliance With Law. Except as disclosed on Schedule 6.8.1, with respect to the Assets, Seller, to the best of its knowledge, is in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including compliance with the Communications Act and all rules and regulations issued thereunder. Except for administrative rule makings or other proceedings of general applicability to the broadcast industry, there is no complaint,

claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending, or to Seller's knowledge, threatened against the Assets, including, without limitation, any proceeding which may (a) have a Material Adverse Effect, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of the Commission Authorizations, or the issuance or imposition of any administrative sanction that reasonably could be expected to have a Material Adverse Effect. In addition, to Seller's knowledge, no such litigation, investigation, or proceeding has been threatened. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Seller is not in material default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a Material Adverse Effect.

6.8.2. Insurance. All of the Tangible Personal Property listed in Schedule 1.1.3 is insured and such insurance is in full force and effect.

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

**6.10. Environmental Matters.**

a. To Seller's best knowledge with respect to the Assets, Seller has complied in all material respects with all laws, rules and regulations of all federal, state, and local governments (and all agencies thereof) concerning the environment and public health and safety (the "Environmental Laws"), and, to Seller's knowledge, no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Seller alleging any failure to comply with any such Environmental Law.

b. To Seller's best knowledge, no hazardous or toxic waste, substance or material, as those or similar terms are defined in or for purposes of applicable federal, state and local environmental laws, and including without limitation, any asbestos, or asbestos-related products, oils or petroleum-derived compounds, CFCs, or PCBs (collectively "Hazardous Substances") are contained in structures or equipment used in the operation of the Stations or are located on or about the Real Property unless, in the case of equipment containing CFC's and PCB's, such CFC's and PCB's are properly contained and labeled. No "underground storage tank" (as that term is defined in regulations promulgated by the federal Environmental Protection Agency) is used in the operation of the Stations or, to Seller's knowledge, is located on the Real Property. To Seller's best knowledge: (i) the Real Property has not previously been used for the manufacture, refining, treatment, storage, or disposal of any Hazardous Substances; (ii) none of the soil, ground water, or the surface water of the Real Property is contaminated by any Hazardous Substances; (iii) no Hazardous Substances are being emitted, discharged or released from the Real Property, directly or indirectly, into the environment; and (iv) neither Seller nor any former owner or operator of the Real Property is liable for cleanup or response costs with respect to the emission, discharge, or

release of any Hazardous Substance due to its ownership, occupation, use or operation of such premises. The present operation of the Stations complies in all applicable federal, state and local laws relating to electrical transformers and human exposure to radio frequency radiation and, to Seller's best knowledge, complies in all material respects with all other applicable federal, state and local environmental laws.

**Financial Statements.** Seller has furnished Buyer with copies of the following financial statements:

2002 Financial Statements dated December 29, 2002

2001 Financial Statements dated December 30, 2001

These financial statements and any to be supplied in the future will be or are complete and correct in all material respects, were prepared in accordance with Income Tax basis consistently applied and present fairly the financial position and results of the operation of the Stations at the dates and for the period to which they relate.

**6.12. Undisclosed Liabilities.** Except as set forth on Schedule 6.12, as of the date hereof and as of the Closing Date, there are no liabilities of Seller of any kind whatsoever with respect to the Assets or the Stations (whether absolute, accrued, contingent, known or otherwise, and whether due or to become due) that if known would be required to be reflected on, reserved against or disclosed in the notes to, a consolidated balance sheet of Seller prepared in accordance with Income Tax basis, other than liabilities and obligations (a) provided for or reserved against in Seller's Financial Statements or (b) arising after December 31, 2002 in the ordinary course of business and consistent with past practices.

## SECTION 7 WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER

Buyer covenants, represents, and warrants as follows:

**7.1. Organization and Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey and will be qualified to do business and be in good standing in the State of Maine if so registered by the laws of the State of Maine. Buyer has the full power to own its assets and to carry on its business as it is now being conducted and as the same will be conducted following the Closing.

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

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

**7.4. Litigation.** Except for administrative rule makings or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint before the Commission, other

governmental body or court of any nature, including, without limitation, a grievance, arbitration or insolvency or bankruptcy proceeding, pending or, to Buyer's knowledge, threatened against or affecting Buyer which would restrain or enjoin the Closing or the consummation of the transactions contemplated hereby.

**7.5. Information Held in Confidence.** Except with respect to Buyer's prospective lenders, if any, from the date hereof until the Closing Date, Buyer and other representatives of Buyer will hold in strict confidence, and will not disclose to any third party, any data or information obtained in connection with the transactions contemplated by this Agreement with respect to the business of Seller, except insofar as any of such data or information may be required by law to be publicly disclosed or submitted to the Commission. If the transactions contemplated by this Agreement are not consummated, Buyer will return to Seller all such data and information, including, but not limited to, all documents, copies of documents and memoranda or other materials prepared by Buyer which incorporate data or information obtained from Seller and all other data and information made available to Buyer in connection with the transactions contemplated by this Agreement, except that which may be required by law to be submitted to the Commission.

**7.6. Buyer's Qualifications.** There is no fact that would, under present law and the present rules and regulations of the Commission, including, but not limited to, the Communications Act of 1934, as amended, the numerical ownership limits on radio stations, and current FCC staff policy or procedures with respect to Buyer's proposed share of local advertising revenue, disqualify Buyer from being the assignee of the Assets or owner of the Stations or that would delay the Commission's approval of the Assignment Application. Buyer has sufficient financial resources to certify to its

financial qualifications in the Assignment Application. Should Buyer become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such disqualification. Buyer will not take, or fail to take, any action that Buyer knows, or has reason to believe, would result in such disqualification.

**7.7. Purchase Price.** Buyer has the funds necessary to pay the Purchase Price to Seller in accordance with Section 2.2.

**7.8. Reliance.** Neither Buyer nor any person acting as Buyer's representative or on Buyer's behalf has relied on any representation or statement of Seller or any other person except as expressly set forth in this Agreement. Buyer acknowledges that it has been given full opportunity to examine, to its satisfaction, the Agreements and the Tangible Personal Property.

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

**8.1. Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Assets and their operation, and during such period, Seller shall, subject to the terms of any local marketing agreement or time brokerage agreement with Buyer:

8.1.1. Operate the Stations' facilities in good faith and in a manner consistent with the normal and prudent operation of similar commercial broadcast station facilities and in accordance with the rules and regulations of the Commission and the Commission Authorizations and maintain all of the Assets in good operating condition, ordinary wear and tear excepted.

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

8.1.3. Deliver to Buyer within ten (10) days after filing thereof copies of any and all reports, applications and/or responses relating to the Stations which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller will furnish a written summary thereof if prepared by Seller for such inquiry).

8.1.4. Give prompt notice to Buyer of any occurrence that comes to Seller's attention that may constitute a misrepresentation, breach of warranty or non-fulfillment of any covenant or condition on the part of Seller or Buyer contained in this Agreement.

**8.2. Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld:

8.2.1. Cancel, modify, alter, amend, encumber or in any way discharge, terminate or impair the Agreements.

8.2.2. By any act or omission surrender, modify adversely, forfeit or fail to renew under regular terms the Commission Authorizations or give the Commission grounds to institute any proceeding for the revocation, suspension or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations (other than the Assignment Application which shall be governed by Section 4 hereof).

8.2.3. Other than in the usual and ordinary course of business, sell or dispose of any of the Assets; Seller shall replace all Assets thus disposed of in the usual and ordinary course of business with assets having an aggregate value at least equal to the aggregate value of the Assets sold or otherwise disposed of.

8.2.4. Create or suffer or permit the creation of any Lien (other than Permitted Liens).

8.2.5. Take any action that would prevent Seller from consummating the transactions contemplated in this Agreement.

**8.3. Access to Information.**

8.3.1. Access to the Assets. Between the date hereof and the Closing Date, Seller will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers and other representatives, reasonable and mutually agreeable access during reasonable business hours to the Assets. Seller shall furnish to Buyer such information and materials concerning the operation of the Stations' facilities and the Assets as Buyer may reasonably request.

**8.4. Restrictions on Buyer.** Nothing contained in this Agreement shall give Buyer any right to control the programming or operation of the Stations prior to the Closing.

**8.5. Buyer's Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will take no action, or fail to take any action, that would disqualify it from becoming the assignee/licensee of the Commission Authorizations or delay the grant of the Assignment Application by the Commission. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that

may constitute a misrepresentation, breach of warranty or non-fulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

## **SECTION 9 CONDITIONS FOR CLOSING**

**9.1. Closing.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require in person, by mail or air courier and by Buyer delivering the Purchase Price, as adjusted, to Seller in accordance with Section 2.2 on a date set by the parties; provided that, unless the parties agree to an earlier date, such date shall be within five (5) days after the Assignment Application becomes a Final Order (the “Closing Date”). For purposes of this Agreement, a “Final Order” means an action by the Commission as to which (a) no request for stay by the Commission is pending, no such stay is in effect, and the deadline for filing a request for any such stay has passed; (b) no appeal, petition for rehearing or reconsideration, or application for review is pending before the Commission and the deadline for filing any such appeal, petition or application has passed; (c) the Commission has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, of the Commission’s action is pending or in effect, and the deadline for filing any such appeal or request has passed.

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

9.2.1. Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.2.2. Each of Seller's representations and warranties contained in this Agreement or in any schedule, certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, if specifically qualified by materiality, shall be true and correct in all respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, and if not so qualified, shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

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

9.2.4. The Assignment Application shall have become a Final Order.

9.2.5. All outstanding Liens (other than Permitted Liens) shall have been discharged and satisfied, or arrangements made to discharge same at Closing.

9.2.6. All consents of third parties to the transactions contemplated by this Agreement shall have been obtained as are necessary to validly and effectively transfer and assign ownership of the Assets to Buyer without any material impairment.

**9.3. Conditions Precedent to Obligations of Seller.** The performance of the obligations of Seller under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Seller may, at its election, waive

any of such conditions at Closing, notwithstanding that such condition is not fulfilled on the Closing Date):

9.3.1. Buyer shall have delivered to Seller the Buyer's Closing Documents as described in Section 10.2 below.

9.3.2. Each of Buyer's representations and warranties contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, if specifically qualified by materiality, shall be true and correct in all respects at and as of Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, and if not so qualified, shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

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

9.3.4. Buyer shall have agreed, in a form reasonably acceptable to Seller, to assume all obligations specified in Section 5.3 of this Agreement.

9.3.5. The Assignment Application shall have become a Final Order.

9.3.6. All consents of third parties to the transactions contemplated by this Agreement shall have been obtained as are necessary to validly and effectively transfer and assign ownership of the Assets to Buyer without any material impairment.

## **SECTION 10 OBLIGATIONS AT CLOSING**

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

10.1.1. An executed bill of sale in form and substance reasonably satisfactory to Buyer transferring to Buyer all Tangible Personal Property to be transferred hereunder.

10.1.2. An executed assignment and assumption agreement in form and substance reasonably satisfactory to the parties assigning to Buyer the obligations being assumed by Buyer pursuant to Schedule 1.17 and Section 5.2 hereof.

10.1.3. An executed assignment and assumption agreement in form and substance reasonably satisfactory to the parties assigning and transferring to Buyer all of the Commission Authorizations.

10.1.4. An executed deed (with covenants against Seller's acts) transferring title to the owned Real Property.

10.1.5. A certificate executed by Seller's chief executive officer certifying that the conditions specified in Sections 9.2.2 and 9.2.3 hereof have been satisfied.

10.1.6. All Business Records.

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

10.1.8. Instructions executed on behalf of Seller directing the Escrow Agent to apply the principal of the Escrow Deposit toward payment of the Purchase Price.

10.1.9. Such other documents and instruments as may be necessary to affect the intent of this Agreement and to consummate the transactions contemplated hereby.

10.1.10. Lien search reports dated within ten (10) days of the Closing Date and such other documentation as may be necessary to establish Seller's compliance with Section 9.2.5 hereof.

10.1.11. Opinion of \_\_\_\_\_, Seller's FCC counsel in the form and substance agreed to.

10.1.12. Opinion of \_\_\_\_\_, Seller's counsel, in the form and substance agreed to.

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

10.2.1. The Purchase Price as provided in Section 2.2 hereof.

10.2.2. A certificate executed by Buyer's chief executive officer certifying that the conditions specified in Sections 9.3.2 and 9.3.3 hereof have been satisfied.

10.2.3. An executed assignment and assumption agreement in form and substance reasonably satisfactory to the parties assigning to Buyer the obligations being assumed by Buyer pursuant to Schedule 1.17 and Section 5.2 hereof.

10.2.4. An executed assignment and assumption agreement in form and substance reasonably satisfactory to the parties assigning and transferring to Buyer all of the Commission Authorizations.

10.2.5. Instructions executed on behalf of Buyer directing the Escrow Agent to apply the principal of the Escrow Deposit toward payment of the Purchase Price.

10.2.6. Such other documents and instruments as may be necessary to affect the intent of this Agreement and to consummate the transactions contemplated hereby.

10.2.7. Opinion of Timothy R. Smith, Esq., Seller's counsel, in the form and substance agreed to.

## **SECTION 11 BROKERAGE**

Seller and Buyer each represent and warrant to the other that Star Media Group, Inc. has acted as the sole finder and sole broker in this transaction and that it knows of no other broker, finder, or intermediary which has been involved in the transactions contemplated by this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions provided for in this Agreement. All fees due Star Media Group, Inc. shall be paid by the Seller. Seller and Buyer hereby agree to indemnify each other from and against any claim of any such obligation or liability by any person, and any expense incurred in defending against any such claim, including reasonable attorney's fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

## **SECTION 12 INDEMNIFICATIONS**

**12.1 Breach of Seller's Agreements, Representations and Warranties.** For a period of one (1) year following the Closing, Seller undertakes and agrees to indemnify and hold Buyer and any shareholder, officer, director, agent, employee and affiliate of Buyer harmless from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments and reasonable attorneys' fees and expenses), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Buyer by reason of:

a. any breach of any warranty, representation or agreement of Seller contained under this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

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

c. any Retained Liabilities; or

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

**12.2 Breach of Buyer's Agreements, Representations and Warranties.** For a period of one (1) year following the Closing, Buyer undertakes and agrees to indemnify and hold Seller and any member, officer, manager, agent, employee and affiliate of Seller harmless from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments and reasonable attorneys' fees and expenses), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Seller by reason of:

a. any breach of any warranty, representation or agreement of Buyer contained under this Agreement or any certificate or other instrument furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

b. the operation of the Stations' facilities or the ownership of the Assets on or after the Closing Date (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed on or after the Closing Date under the Lease Agreement, or any other lease, contract or agreement);

c. any and all liabilities or obligations of Seller specifically assumed by Buyer pursuant to this Agreement, or

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

**12.3 Notice of Claim.** Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 12.1 or 12.2 hereof ("Notice of Claim"), which amount is believed to be required to discharge the obligations of the indemnifying party resulting therefrom. Within ten (10) days after having been given the Notice of Claim, the indemnifying party may deliver to the other party (i) a written notice of objection to the payment of such claim ("Notice of Objection"), which Notice of Objection shall set forth the basis for such objection; or (ii) a written notice that the indemnifying party intends to defend against such claim in good faith ("Notice of Intention to Defend"). If such a Notice of Intention to Defend is delivered, the indemnifying party shall have the right to hold in abeyance its claim for indemnification if and so long as such defense is conducted by the indemnifying party at the latter's expense in a manner effective to protect the indemnified party against such claim. If no Notice of Objection or Notice of Intention to Defend is given within the prescribed ten (10) day period, the indemnifying party shall promptly pay to the indemnified party the amount set forth in the Notice of Claim. If the parties are unable to resolve any Notice of Claim and corresponding Notice of Objection, either party may take whatever action it

deems reasonable, including without limitation, the filing of a claim, petition or other pleading in a court of competent jurisdiction.

**12.4 Sole Remedy.** Except as provided to the contrary in this Agreement, the right to indemnification pursuant to Section 12 shall be the sole and exclusive remedy of each party in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement.

### **SECTION 13 RISK OF LOSS**

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God or public enemy, or any other casualty or cause, reasonable wear and tear excepted, prior to the Closing Date, is assumed and shall be borne by Seller at all times before the Closing Date. If any such loss or damage occurs, Seller shall give prompt written notice of the loss or damage to Buyer and shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at its own cost and expense. In the event that Seller does not fully replace or restore any such lost or damaged Assets by the time the Closing otherwise would be held, Buyer may, at its option, upon written notice to Seller, either (i) terminate this Agreement, or (ii) elect to close without restoration, in which event Seller will deliver all insurance proceeds paid or payable by reason of the loss or damage to Buyer. If Buyer terminates this Agreement under this Section, each party shall bear its own expenses, and the Escrow Agent shall deliver to Buyer the Escrow Deposit and all interest earned thereon. Buyer's option to terminate this Agreement under this Section 13 shall arise only if such damage to the Station(s) is so substantial that it prevents the Station's facilities from operating in their normal and customary manner for a period of five (5) consecutive days.

**SECTION 14  
FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates or incurs in connection with the negotiation, preparation and execution of this Agreement. Unless otherwise stated in this Agreement, expenses incurred in connection with this transaction shall be borne by the party incurring same.

**SECTION 15  
BULK SALES LAW**

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and Seller agrees to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

**SECTION 16  
DEFAULT, TERMINATION AND ARBITRATION**

16.1 A party shall "default" under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties or covenants contained in this Agreement. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing or terminating this Agreement.

16.2 If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within thirty (30) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such thirty (30) day period and continues such efforts thereafter), then the

party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings.

16.3 Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be entitled to receive as liquidated damages the Escrow Deposit, including all interest earned thereon. The parties agree that such amount shall constitute liquidated damages and shall be in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement. Buyer and Seller each acknowledge and agree that the liquidated damage amount is reasonable in light of the anticipated harm which would be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder.

16.4 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event Buyer elects to terminate this Agreement as a result of Seller's default instead of

seeking specific performance, Buyer, as its sole remedy, shall be entitled to the return of the Escrow Deposit and all interest accrued thereon.

#### 16.5 Arbitration.

(a) Unless Buyer determines to seek specific performance through suit as provided in Section 16.4, Buyer may seek such relief through arbitration as provided in this Section. And to the fullest extent permitted by law, any and all other controversy, dispute or claim arising out of, in connection with, or relating to this Agreement or any of the other documents, agreements or exhibits (collectively, the “Documents”) related to or attached to this Agreement or any transaction provided for in this Agreement or the Documents, including but not limited to any claim based on or arising from an alleged tort or an alleged breach of any provisions contained in this Agreement or the Documents, shall, at the request of any party to this Agreement (either before or after the commencement of judicial proceedings), be settled by arbitration pursuant to Title 9 of the United States Code, which the parties acknowledge and agree applies to the transactions contemplated by this Agreement and the Documents. Any Arbitration requested by any party to this Agreement shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”), and shall be held in Augusta, Maine, or at such other place as the parties agree upon. In any such arbitration proceeding: (i) all applicable statutes of limitations which would otherwise be applicable shall apply; and (ii) the proceeding shall be conducted by a panel of three arbitrators. All arbitrators shall be selected by the process of appointment from a panel pursuant to Section 13 of the AAA Commercial Arbitration Rules and each arbitrator will have AAA-acknowledged expertise in the appropriate subject matter covered by this Agreement, i.e., the purchase and sale of radio stations. Any award

rendered in any such arbitration proceeding shall be final and binding, and judgment upon any such award may be entered in any court having jurisdiction.

(b) If any party to this Agreement files a proceeding in any court to resolve any such controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration under the provisions of this Section on that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance with this section.

(c) Notwithstanding any of the foregoing provisions of this Section, the parties hereto agree that no arbitrator or panel of arbitrators shall possess or have the power to: (i) assess punitive damages; (ii) dissolve, rescind or reform this Agreement or any of the Documents (except that the arbitrator or panel of arbitrators may construe ambiguous terms); or (iii) allow discovery of attorney/client or work product privileged information or documents. The Commercial Arbitration Rules of the AAA are hereby modified to this extent for the purpose of arbitration of any dispute, controversy or claim arising out of, in connection with, or relating to this Agreement or the Documents. The parties further waive, each to the other, any claims for punitive damages and agree that neither an arbitrator, panel of arbitrators nor any court shall have the power to assess such damages.

(d) No provision of, or the exercise of any rights under, this section shall limit or impair the right of any party to this Agreement before, during or after any arbitration proceeding to: (i) exercise any self-help remedies; (ii) seek specific performance of the Agreement or injunctive relief; or (iii) obtain emergency relief from a court of competent jurisdiction to prevent the dissipation, damage, destruction, transfer, hypothecation, pledging or concealment of any of the Assets to be sold under this Agreement and the

Documents. Such emergency relief may be in the nature of, but is not limited to: pre-judgment attachments, garnishments, sequestrations, appointments of receivers, or emergency injunctive relief to preserve the status quo.

(e) In the event applicable law prohibits the submission of a particular controversy, dispute, or claim arising out of or in connection with the execution or consummation of the transactions contemplated by this Agreement or the Documents the parties to this Agreement agree that any actions or proceedings in connection therewith shall be tried and litigated only in the state courts of Delaware or the federal court sitting in Delaware. The parties to this Agreement, to the extent permitted by applicable law, waive any right to assert the doctrine of *forum non-conveniens* or to object to the venue to the extent any proceeding is brought in accordance with this sub-paragraph (e).

## **SECTION 17 SURVIVAL OF WARRANTIES**

17.1 All representations and warranties made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for a period of one (1) year. All covenants made by the parties in this Agreement to be performed on or prior to the Closing Date shall terminate as of the Closing.

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

**SECTION 18  
NOTICES**

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

If to Seller:

Mariner Broadcasting Limited Partnership  
169 Port Road  
Kennebunk, ME 04043  
Attn: Louis Vitali  
Fax: (207) 967-8671  
Phone: (207) 967-0993

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

Cohn and Marks LLP  
1920 N Street, NW, Suite 300  
Washington, DC 20036-1622  
Attn: Richard A. Helmick, Esq.  
Fax: (202) 293-4827  
Phone: (202) 293-3860

If to Buyer:

Nassau Broadcasting Holdings, Inc.  
619 Alexander Road, Third Floor  
Princeton, New Jersey 08540  
Attn: Louis Mercatanti  
Fax: (609) 452-6017  
Phone: (609) 452-9696

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

Timothy R. Smith, Esq.  
619 Alexander Road, Third Floor

Princeton, New Jersey 08540  
Fax: (609) 452-6017  
Phone: (609) 452-9696

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

## **SECTION 19 MISCELLANEOUS**

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

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

**19.3. Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the written consent of the other, except that Buyer may

assign its rights and delegate its duties under this Agreement to an entity which is controlled by Buyer at any time prior to the Closing Date, provided that (i) such assignee assumes in writing all the duties and obligations of Buyer hereunder, (ii) the Assignment Application permits assignment of the Commission Authorizations to such assignee, and (iii) the Closing Date is not delayed or postponed as a result of such assignment. No such assignment by Buyer shall in any way operate to enlarge, alter or change any obligation due to Seller or relieve Buyer of its obligations hereunder if such assignee fails to perform such obligations, with the understanding that Buyer shall be jointly and severally liable with such assignee for any non-performance of Buyer's obligations hereunder. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**19.4. Additional Documents.** The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Assets, and/or the successful processing by the Commission of the Assignment Application to be filed with it, as provided in Section 4 hereof.

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

**19.6. Legal Actions.** If either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorney's fees and other costs and expenses incurred by the prevailing party in respect of

that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding.

**19.7. Governing Law.** The parties agree that this Agreement and the transactions herein contemplated shall be interpreted, construed and enforced under and according to the laws of the State of Delaware without regard to its principles of conflicts and laws. **THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. THE PARTIES, AFTER CONSULTING WITH COUNSEL OF THEIR CHOICE, EACH HEREBY KNOWINGLY AND VOLUNTARILY, WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES BETWEEN OR AMONG THEM ARISING UNDER OR RELATED TO THIS AGREEMENT. NO PARTY SHALL BE DEEMED TO HAVE GIVEN UP THIS WAIVER OF JURY TRIAL UNLESS SUCH RELINQUISHMENT IS IN A WRITTEN INSTRUMENT SIGNED BY THE PARTY TO BE CHARGED.**

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

**19.9. Severability.** If any term or provision of this Agreement is declared to be invalid or unenforceable, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable; provided, however, neither party shall have any obligation to consummate the transactions contemplated by this Agreement if it is adversely affected in any material respect.

**19.10. Publicity.** Seller and Buyer agree that all public announcements relating to this Agreement or the transactions contemplated hereby will be made only with the consent of the other party, which consent shall not be unreasonably withheld.

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

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

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

**19.14. Format Change.** In the event Buyer changes the classical music format of all of the stations within two (2) years of the date of closing, Buyer agrees to return the classical music library of the stations to Seller.

**[Remainder of this page intentionally left blank.]**

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

SELLER:

**MARINER BROADCASTING LIMITED PARTNERSHIP**

By: /s/ Louis Vitali  
Name: Louis Vitali  
Title: President of Mariner Broadcasting Corp., General Partner

BUYER:

**NASSAU BROADCASTING HOLDINGS, INC.**

By: /s/ Louis Mercatanti, Jr.  
Name: Louis Mercatanti, Jr.  
Title: President