

## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this 24th day of April, 2009, by and between Vox AM/FM, LLC, a Delaware limited liability company ("Seller"), and Burton Barlow and Lori Young-Barlow (collectively referred to herein as "Buyer").

### Recitals

WHEREAS, Seller is the owner and operator of WVTK-FM, licensed to Port Henry, New York (the "Station");

WHEREAS, subject to the consent of the Federal Communications Commission ("FCC"), Buyer desires to acquire the Station, and all or substantially all of the assets, leases, contracts, agreements, and licenses currently used in the operation of the Station, with certain exceptions as provided herein, and Seller desires to transfer such assets to Buyer; and

WHEREAS, Buyer has previously provided to Seller a deposit in the amount of Fifty Thousand Dollars (\$50,000.00) for the purchase of the Station and related assets.

### Agreement

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1 **Sale and Transfer of Assets.** At the Closing, Seller will sell, assign, transfer and deliver to Buyer the following assets related to the Station (all of which are hereinafter collectively called the "Assets"):

1.1 All licenses, permits and authorizations issued by any governmental or regulatory agency which are transferable or assignable, used or useful in the operation of, or in connection with the operation of, the Station, as listed on Schedule 1.1 (the "Licenses");

1.2 All fee and leased real estate described on Schedule 1.2 (the "Real Property").

1.3 All other tangible assets of Seller used in the operation of the Station and any replacements therefor acquired prior to Closing, together with all other equipment, supplies, inventory and tangible property used (including those not in operating condition) in the operation of the Station, all of which are listed on Schedule 1.3 (the "Tangible Assets");

1.4 The leases, contracts and agreements listed and described on Schedule 1.4 and all oral or written contracts or agreements to air advertising for cash on the Station (collectively, the "Assigned Contracts");

1.5 All right, title and interest of the Seller in and to the use of the call letters for the Station (the "Call Letters");

1.6 All goodwill, copyrights, trademarks or other similar rights, if any, which the Seller may have acquired or used in the operation of the Station as set forth on Schedule 1.6 (the "Intellectual Property");

1.7 All customer lists, vendor lists, books and business records of the Station relating to their operation, but not including tax records and original journals and ledgers (the "Business Records");

1.8 All prepaid items and expenses related to the Station paid by or on behalf of the Seller prior to Closing.

The Assets to be transferred hereunder shall not, however, include any of Sellers' vehicles, accounts receivable, cash, bank accounts, investments, deposits, security deposits, books and records pertaining to corporate organization, employee pension and other benefit plans or collective bargaining agreements, all of which shall remain the property of the Seller.

**2 Purchase Price and Payment.** The Buyer shall at Closing pay to Seller as consideration for all of the Assets to be sold and bought hereunder pursuant to Section 1, Five Hundred and Fifty Thousand Dollars and no cents (\$550,000.00) (the "Purchase Price"), the value of which shall be allocated among the Assets as set forth on Schedule 2. The Purchase Price shall be paid at Closing by the Buyer in the following manner: (i) by application of the Fifty Thousand Dollar (\$50,000.00) deposit previously paid by the Buyer to the Seller; (ii) by the delivery to Seller of a note (the "Note") in the principal amount of Fifty Thousand Dollars (\$50,000.00); and (iii) by the wire transfer to Seller of Four Hundred and Fifty Thousand Dollars (\$450,000.00) in immediately available funds. The Purchase Price shall be subject to the pro-rations set forth in Section 9.1(i) and to the pro-ration or adjustment at Closing of any pre-paid expenses of the Station and any trade or barter balances. The Note shall include the following terms: (i) no interest shall accrue or be payable during the period beginning on the date of the Closing and ending on the first anniversary thereof, (ii) interest at the rate of 8% per annum, compounding quarterly, shall accrue during the period beginning on the first anniversary of the Closing and ending on the last day of the term of the Note, (iii) all principal and accrued interest shall be due and payable on the day that is the second anniversary of the Closing Date, or, if such second anniversary is not a business day in New Hampshire, on the next business day occurring thereafter; and (iv) such note shall be secured by a security interest in all the Assets, subordinated solely to Buyer's bank financing as agreed by Seller.

**3 No Assumption of Liabilities.** Buyer shall not assume and shall not be obligated to pay any of the liabilities or obligations of Seller, except liabilities and obligations arising or

accruing on or after the Closing Date with respect to the Assigned Contracts. Upon assumption by Buyer of the Assigned Contracts, Buyer shall be entitled to all of Seller's rights and benefits thereunder and shall relieve Seller of its obligations to perform the same.

3.A Shared Contracts.

3.A.1. Some of the Assigned Contracts may be used in the operation of multiple Station or other business units (the "Shared Contracts"). Except as provided by *Schedule 1.4*, the rights and obligations under the Shared Contracts shall be equitably allocated among Station and such other business units in a manner reasonably determined by Seller in accordance with the following equitable allocation principles:

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

3.A.2. Buyer shall cooperate with Seller in such allocation, and the Assigned Contracts will include only Buyer's allocated portion of the rights and obligations under the Shared Contracts (without need for further action and whether such allocation occurs before or after Closing). If designated by Seller, such allocation will occur by termination of the Shared Contract and execution of new contracts. Completion of documentation of any such allocation is not a condition to Closing.

**4 Sellers' Representations and Warranties.** Seller represents and warrants to Buyer as of the date hereof and as of the Closing Date, as follows with respect to itself and the Station:

**4.1 Formation, Standing and Power.** Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, and is registered or authorized as a foreign limited liability company to conduct business in, and is in good standing under the laws of, the State of Vermont. Seller has all necessary power and authority to own, use and transfer its properties and Assets and to transact its business as now being conducted. There are no other jurisdictions in which the character or use of Seller's assets or the nature of its business makes necessary the licensing or qualification of Seller to do business.

**4.2 Authority for Transaction.** Seller's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby have all been duly and validly authorized by all necessary

action on the part of Seller, including approval by the Seller's stockholders and directors, and this Agreement is valid and binding upon Seller in accordance with its terms.

4.3 **Licenses.** Seller is, and on the Closing Date will be, the holder of the Licenses, all of which are in full force and effect.

4.4 **Condition of Assets.** On the Closing Date, each item comprising the Assets shall be in the same or better operating condition as on the date of execution of this Agreement, reasonable wear and tear excepted, and operating in conformance with the requirements of the Station's Licenses and applicable rules of the FCC.

4.5 **Title.** Other than Permitted Liens, Seller has, and shall transfer to Buyer at the Closing, title to the Real Property described in Schedule 1.2, and to each item comprising the Assets other than the Real Property, free and clear of any debts, liens or encumbrances of any kind or nature except any obligations or liabilities expressly assumed in writing by Buyer or Permitted Liens. "Permitted Liens" shall include all liens for taxes not yet due and payable, and all easements, rights of way, building and use restrictions and other exceptions to title that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of business of the Station.

4.6 **Contracts, Leases, Agreements, Etc.** The Licenses, contracts, leases, agreements, and other intangible assets to be transferred or assigned to Buyer under Section 1.1 and Sections 1.4 through 1.6 inclusive of this Agreement will, on the Closing Date, be in force and binding on the Seller. Each such contract, lease or agreement may be assigned in accordance with its terms, except for such Assigned Contracts marked in the schedules as requiring consent to assign, for which Seller will use commercially reasonable efforts to obtain consent to assignment prior to the Closing. To the extent that any Assigned Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing and to the extent that any Assigned Contract has not been effectively assigned to Seller pursuant to the terms of Seller's Clear Channel Agreement (defined below), this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Assigned Contract; provided, however, with respect to each such Assigned Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Assigned Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Assigned Contract from and after Closing in accordance with its terms.

4.7 **Employees and Agreement Relating to Employment.** The names of all employees of the Station, their current rate of basic compensation and all fringe benefits are as set forth in Schedule 4.7 and have been previously provided to Buyer. Except as set forth on Schedule 4.7, there is (i) no written employment contract with any employee of the Station, (ii) no obligation, contingent or otherwise, under any employment arrangement, (iii) no collective bargaining agreement, (iv) no employee pension, retirement, profit sharing, bonus or similar plans, and (v) no union has been certified or sought recognition as a bargaining agent for any employee of the Station.

4.8 **Legal Proceedings, Etc.** No litigation, court or administrative proceeding is pending or, so far as is known to the Seller, no investigation, litigation, or court or administrative proceeding is threatened against Seller relating to the Station or any Asset to be conveyed hereunder which would affect Buyer's enjoyment of the Assets, or which would hinder or prevent the consummation of the transactions contemplated by this Agreement, and Seller does not know, or have reasonable grounds to know, of any basis for any such possible action.

4.9 **Compliance with Licenses, Laws, Regulations and Orders.** Seller, at Closing, will be in compliance with all material terms and conditions of all Licenses, laws, regulations and orders applicable to its business and operations including, without limitation, compliance with the Communications Act of 1934, as amended (the "Federal Communications Act") and all regulations issued by the FCC, and Seller is not charged with violating or, to the knowledge of Seller, threatened with a charge of violating or under investigation with respect to a possible violation of, any provision of any License, or any federal, state or local law or administrative ruling or regulations relating to any aspect of its business. All of Seller's Assets operate in compliance with all material terms and conditions of its FCC licenses and will at the Closing Date.

4.10 **No Conflict.** Neither the execution and delivery of this Agreement by Seller, nor compliance by Seller with any of the provisions hereof, nor the consummation of the transactions contemplated hereby, will:

(a) conflict with or result in a breach of any provision of the Seller's Articles of Incorporation or Bylaws;

(b) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, encumbrance or other instrument or obligation to which Seller is a party or by which Seller or any of Seller's properties or assets may be bound, except for such contracts, encumbrances, instruments and obligations set forth in Schedule 4.10 or Schedule 1.4 as needing consent of the other party thereto for assignment to Buyer; or

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, or any of its properties or assets.

Except for the approval of the FCC, and such consents and/or notices as are necessary for assignment of the Assigned Contracts, no consent, waiver or approval by, notice to or filing with any person is required in connection with the execution and delivery of this Agreement by Seller, compliance by Seller with any of the provisions hereof or the consummation of the transactions contemplated hereby.

4.11 **Operation of Station.** The Station at Closing will be operated in substantial compliance with all laws, regulations and orders, including without limitation, compliance with the Federal Communications Act and all regulations issued by the FCC

thereunder, and the terms and conditions of the Licenses, and Seller knows of no breach or facts which might amount to a breach of any such law, regulation or order. There are no yearly contracts to air advertising at rates below the published rate card.

4.12 **Insurance.** Seller will maintain insurance policies with respect to the Station Assets at all times during its ownership of the Station prior to the Closing.

4.13 **Intentionally Omitted.**

4.14 **Financial Statements.** Seller has delivered to the Buyer financial statements relating to the Station for the previous three years of operation by Capstar Radio Operating Company and certain other third parties (the "Third Parties"), including without limitation, annual income statements and balance sheets, as well as sales records (collectively the "Financial Statements"). Such Financial Statements were provided to Seller by the Third Parties with representations that, with the exception of intercompany arrangements entered into by the Third Parties and the absence of footnotes, such Financial Statements (i) were prepared in accordance with GAAP consistently applied, and (ii) in the aggregate present fairly in all material respects the results of operations of the Station, and Seller has seen no information contradicting the accuracy of such representations.

4.15 **Liabilities.** As of the Closing Date, all of Seller's liabilities, except for those liabilities arising on or after the Closing Date relating to the Assigned Contracts, shall have been fully paid and discharged and no creditors of Seller shall have any claim on the Assets for payment of such liabilities.

4.16 **Broker.** No broker, finder or consultant has been retained by Seller in connection with this transaction or the Station. Seller shall be solely responsible for any brokerage fee or commission claimed by any broker, finder or consultant claiming to have been retained or hired by Seller and shall indemnify Buyer against such claims.

5 **Buyer's Representations and Warranties.** The Buyer represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

5.1 **Buyer's Qualifications.** Buyer is legally, financially and otherwise qualified to become a licensee of the Station under the Communications Act and the rules, regulations and policies of the FCC.

5.2 **Formation, Standing and Power.** Buyer is a natural person with all necessary power and authority to execute and deliver this Agreement, to comply with the provisions hereof and to consummate the transactions contemplated hereby.

5.3 **Authority for Transaction.** Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby have been duly and validly authorized by all necessary action

on the part of Buyer, and this Agreement is valid and binding upon Buyer in accordance with its terms.

5.4 **No Conflict.** Neither the execution and delivery of this Agreement by Buyer, nor compliance by Buyer with any of the provisions hereof, nor the consummation of the transactions contemplated hereby will:

(a) conflict with or result in a breach of any provision of Buyer's Certificate of Formation or Limited Liability Company Agreement, if applicable;

(b) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, encumbrance or other instrument or obligation to which Buyer is a party or by which it or any of its properties or assets may be bound; or

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or assets.

Except for the approval of the FCC, no consent, waiver or approval by, notice to or filing with any person is required in connection with the execution and delivery of this Agreement by Buyer, compliance by Buyer with any of the provisions hereof or the consummation of the transactions contemplated hereby.

5.5 **Legal Proceedings, Etc.** There is no legal, equitable, administrative or arbitration action, suit, proceeding or known investigation pending or, to Buyer's knowledge, threatened against or affecting Buyer or any of its assets which, if adversely determined, would adversely affect the ability of Buyer to consummate the transactions contemplated hereby.

5.6 **Broker.** No broker, finder or consultant has been retained by Buyer in connection with this transaction or the Station. Buyer shall be solely responsible for any brokerage fee or commission claimed by any broker, finder or consultant claiming to have been retained or hired by Buyer and shall indemnify Seller against such claims.

5.7 **Control.** Prior to the Closing Date, Buyer shall not directly or indirectly control, supervise or direct the operation of the Station. Until the Closing Date, Buyer shall not, and shall cause its officers, directors, employees, agents and representatives not to, except as may expressly be allowed hereunder, take any action which would materially interfere with the operation of the Station and the conduct of the Station' business.

## 6 **Seller's Covenants.**

### 6.1 **Indemnification.**

(a) The sole and exclusive remedy which Buyer shall have against Seller under this Agreement after the Closing Date shall be the right to proceed for

indemnification in the manner and only to the extent provided by this Section 6. Except with respect to the litigation matters set forth in Schedule 4.8 for which Seller's indemnification hereunder shall continue in effect for so long as such claims remain outstanding, Seller hereby indemnifies Buyer and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Buyer, as provided by this Section 6.1, within one year after the Closing Date from, against and in respect of:

(1) all liabilities, obligations, claims against and contracts of Seller of every kind and nature whatsoever, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller, arising out of or by reason of this or any other transaction or event occurring prior or subsequent to the Closing, which have not been assumed by Buyer; and

(2) all losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or nonfulfillment of any covenant or agreement, of Seller made in this Agreement; and

(3) all actions, suits, proceedings, claims, demands, assessments, judgments, fines, amounts paid in settlement, costs and expenses (including reasonable attorneys' fees and expenses) incident to any of the foregoing.

(b) If a demand for indemnification arises out of a claim made against Buyer by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim"), Buyer shall give prompt notice thereof to Seller, stating in reasonable detail the nature of the Third Party Claim, the identity of the Third Party Claimant and the specific representations, warranties or covenants which Buyer contends Seller has breached. Such notice shall also indicate whether Buyer intends to defend against the Third Party Claim. If Buyer shall defend against the Third Party Claim, Seller shall cooperate in all reasonable respects with Buyer in such defense, shall make available to Buyer all records and other materials reasonably required by Buyer in such defense, and shall have the right to participate in such defense. If Buyer does not intend to defend against the Third Party Claim, then Seller may assume defense of the Third Party Claim through legal counsel of its choice reasonably satisfactory to Buyer, in which event Buyer shall cooperate in all reasonable respects with Seller in such defense, and shall make available to it all records and other materials reasonably required by it in such defense, but Seller shall at all times control such defense. So long as a Third Party Claim is pending and is not resolved, Buyer shall hold in abeyance its demand for indemnification. If Seller reaches a settlement with the Third Party Claimant which results in any liability to Buyer, or if a judgment is rendered against Buyer which judgment is not properly appealed or appealable, then Buyer shall be entitled to indemnification in an amount sufficient to discharge the Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Third Party Claim except that Seller shall pay (i)

Buyer's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Seller and which shall be found to have constituted a breach of Seller's representations, warranties and covenants hereunder, and (ii) Buyer's actual costs and expenses (including legal fees) incurred in asserting and proving its entitlement to indemnification.

(c) If Buyer asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Buyer shall notify Seller thereof, stating in reasonable detail the nature of Buyer's claim and the specific representations, warranties and covenants which Buyer contends Seller has breached. Seller shall have 15 days after the effective date of such notice to accept or reject Buyer's demand for indemnification. If Seller accepts such demand for indemnification, it shall pay the amount of indemnification claimed by Buyer and shall also pay Buyer's actual costs and expenses incurred in asserting and proving Buyer's entitlement to indemnification. If no acceptance is received by Buyer within such 15-day period, Seller shall be deemed to have rejected the demand. In the event Seller rejects Buyer's demand for indemnification or fails to accept such demand within such 15-day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of Section 6.1(d). If the arbitrator(s) render an award in the arbitration proceeding in favor of Buyer, Buyer shall be entitled to indemnification to the extent provided in such award. If the arbitrator(s) render an award in favor of Seller, Seller shall have no further liability on Buyer's claim. So long as Buyer's claim is pending and is not resolved, Buyer shall hold in abeyance its demand for indemnification.

(d) If there is any disagreement between Buyer and Seller concerning the validity of any demand for indemnification asserted under Section 6.1, then such disagreement shall, as provided by Section 6.1(c) or otherwise on demand of either party, be referred to arbitration in Manchester, New Hampshire. Buyer and Seller shall attempt to agree on the appointment of a single arbitrator. If they are unable to agree, a panel of three arbitrators shall be appointed: one arbitrator shall be appointed by Buyer, one shall be appointed by Seller, and one shall be appointed by the two so appointed. The determination in writing of such arbitrator(s), signed by at least two of them (if there be more than one), shall be final and binding on the parties. Such determination shall be made as soon as practicable after the reference of the claim to arbitration. The arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association then in effect, and shall have full power to make such regulations and to give such orders and directions in all respects as they shall deem expedient, as well as in respect to the claims and differences referred to them, and also with respect to the mode and times of executing and performing any of the acts or things which may be awarded or directed to be done. The arbitrator(s) shall also allocate among the parties the fees and expenses of the arbitrators and the actual costs and expenses (including legal fees) incurred by the parties in connection with the demand for indemnification and the arbitration in an equitable manner consistent with the decision of the arbitrator(s) regarding the resolution of the claims and differences referred to them, which allocation shall form part of the arbitrator(s)' written determination.

(e) Notwithstanding anything to the contrary herein, Seller shall not have any liability to Buyer under this Section 6.1 until Buyer's aggregate costs, liabilities, fines,

assessments, deficiencies, penalties and other damages indemnified hereunder exceed \$10,000, and Seller's maximum aggregate liability to Buyer pursuant to this Section 6.1 shall not exceed \$150,000.

**6.2 Access and Information.** Following the consummation of the sale of the Station to Seller by the Third Parties, Seller shall give Buyer and its representatives full but reasonable access during normal business hours throughout the period prior to Closing to the operations, properties, books, contracts, agreements, leases, commitments and records of the Station; provided, however, that Buyer shall give Seller reasonable advance notice of exercising this right. Seller shall furnish to Buyer all information in Seller's possession concerning the Station's affairs as Buyer may reasonably request.

**6.3 Conduct of Station's Business.** Following the consummation of the sale of the Station to Seller by the Third Parties, and until Closing, without the written consent of Buyer, Seller shall not enter into any transaction with regard to the Station other than those in the ordinary course of the business of the Station; during such period the Seller shall operate the Station in the normal and usual manner; no employment contract shall be entered into by Seller relating to the Station, unless the same is terminable at will and without penalty; Seller shall not increase the compensation paid any employee of the Station or hire additional personnel for the Station, except as required in the ordinary course of business. During such period, Seller will maintain in force insurance regarding the Station; and Seller will not make any material change in the price or terms of advertising marketing. During such period, Seller may not replace or dispose of any equipment comprising Station Assets unless such equipment has failed, and then Seller shall replace such failed equipment with equipment of equivalent worth, quality and utility.

**6.4 Risk of Loss.** Seller shall bear all risk of loss or damage to any of the Assets to be transferred to Buyer hereunder occurring prior to the Closing. In the event any material loss or damage occurs, the proceeds of any insurance policy covering such loss shall be used to repair, replace or restore any such loss prior to the Closing; provided, however, that, if the proceeds of such insurance are not sufficient to repair, replace or restore the loss, and Seller does not provide additional funds for such purpose upon request by Buyer, Buyer if not then in default may terminate this Agreement.

**6.5 Other Proposals.** Seller shall not, nor shall Seller permit any of its stockholders, directors or officers, or authorize any of its employees or agents to solicit or entertain any inquiries or proposals or participate in any discussions, negotiations or agreements relating to the sale of the Station Assets prior to the Closing Date.

## **7 Buyer's Covenants.**

### **7.1 Indemnification.**

(a) Buyer shall be responsible for and hereby indemnifies Seller and holds Seller and its agents, successors and assigns harmless, with respect to demands for

indemnification asserted by Seller, as provided by this Section 7.1, within one year after the Closing Date from, against and in respect of:

(1) All of Buyer's post-closing obligations under the Assigned Contracts assumed by Buyer; and

(2) All losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or non-fulfillment of any covenant or agreement, of Buyer made in this Agreement; and

(3) All actions, suits, proceedings, claims, demands, assessments, judgments, fines, penalties, amounts paid in settlement, costs and expenses (including reasonable attorneys' fees and expenses) incident to any of the foregoing.

(b) If a demand for indemnification arises out of a claim made against Seller by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim"), Seller shall give prompt notice thereof to Buyer, stating in reasonable detail the nature of the Third Party Claim and the specific representations, warranties or covenants which Seller contends Buyer has breached. Such notice shall also indicate whether Seller intends to defend against the Third Party Claim. If Seller shall defend against the Third Party Claim, Buyer shall cooperate in all reasonable respects with Seller in such defense, shall make available to Seller all records and other materials reasonably required by Seller in such defense, and shall have the right to participate in such defense. If Seller does not intend to defend against the Third Party Claim, then Buyer may assume defense of the Third Party Claim, in which event Seller shall cooperate in all reasonable respects with Buyer in such defense, but Buyer shall at all times control such defense. So long as a Third Party Claim is pending and is not resolved, Seller shall hold in abeyance its demand for indemnification. If Buyer reaches a settlement with the Third Party Claimant which results in any liability to Seller, or if a judgment is rendered against Seller which judgment is not properly appealed or appealable, then Seller shall be entitled to indemnification in an amount sufficient to discharge the Third Party claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Third Party Claim except that Buyer shall pay (i) Seller's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Buyer and which shall be found to have constituted a breach of Buyer's representations, warranties and covenants hereunder, and (ii) Seller's actual costs and expenses (including legal fees) incurred in asserting and proving its entitlement to indemnification.

(c) If Seller asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Seller shall notify Buyer thereof, stating in reasonable detail the nature of Seller's claim and the specific representations, warranties and covenants which Seller contends Buyer has breached. Buyer shall have 15 days after the effective date of such notice to accept or reject Seller's demand for indemnification. If Buyer accepts such demand for indemnification, it shall pay the amount of indemnification claimed by

Seller and shall also pay Seller's actual costs and expenses (including legal fees) incurred in asserting and proving Seller's entitlement to indemnification. If no acceptance is received by Seller within such 15-day period, Buyer shall be deemed to have rejected the demand. In the event Buyer rejects Seller's demand for indemnification or fails to accept such demand within such 15-day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of Section 7.1(d). If the arbitrator(s) render an award in the arbitration proceeding in favor of Seller, Seller shall be entitled to indemnification to the extent provided in such award. If the arbitrator(s) render an award in favor of Buyer, Buyer shall have no further liability on Seller's claim. So long as Seller's claim is pending and is not resolved, Seller shall hold in abeyance its demand for indemnification.

(d) If there is any disagreement between Seller and Buyer concerning the validity of any demand for indemnification asserted under Section 7.1, then such disagreement shall, as provided by Section 7.1(c) or otherwise on demand of either party, be referred to arbitration in Manchester, New Hampshire. Buyer and Seller shall attempt to agree on the appointment of a single arbitrator. If they are unable to agree, a panel of three arbitrators shall be appointed: one arbitrator shall be appointed by Buyer, one shall be appointed by Seller, and one shall be appointed by the two so appointed. The determination in writing of such arbitrator(s), signed by at least two of them (if there be more than one), shall be final and binding on the parties. Such determination shall be made as soon as practicable after the reference of the claim to arbitration. The arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association then in effect, and shall have full power to make such regulations and to give such orders and directions in all respects as they shall deem expedient, as well as in respect to the claims and differences referred to them, and also with respect to the mode and times of executing and performing any of the acts or things which may be awarded or directed to be done. The arbitrators shall also allocate among the parties the fees and expenses of the arbitrators and the actual costs and expenses (including legal fees) incurred by the parties in connection with the demand for indemnification and the arbitration in an equitable manner consistent with the decision of the arbitrator(s) regarding the resolution of the claims and differences referred to them, which allocation shall form part of the arbitrator(s)' written determination.

(e) Notwithstanding anything to the contrary herein, Buyer shall not have any liability to Seller under this Section 7.1 until Seller's aggregate costs, liabilities, fines, assessments, deficiencies, penalties and other damages indemnified hereunder exceed \$10,000, and Buyer's maximum aggregate liability to Seller pursuant to this Section 7.1 shall not exceed \$150,000, except with regard to costs, liabilities, fines, assessments, deficiencies, penalties and other damages arising out of Buyer's post-closing liabilities arising from the Assumed Contracts, for which there shall be no maximum aggregate liability and which shall not be included in the calculations with regard to whether the \$150,000 threshold has been reached.

**7.2 Employees.** Buyer may offer post-Closing employment to the employees of the Station set forth on Schedule 4.7 hereto. With respect to all such employees, Buyer shall provide written notice to Seller indicating which employees will be offered employment no later than ten (10) days prior to the Closing. With respect to all employees hired by Buyer:

(a) Seller shall be responsible for all compensation and benefits arising prior to the Closing (in accordance with Seller's employment terms), and Buyer shall be responsible for all compensation and benefits arising after the Effective Time (in accordance with Buyer's employment terms). Buyer shall grant credit to each such employee for all unused vacation and sick leave accrued by Seller as of the Closing, and Buyer shall assume and discharge Seller's obligation to provide such leave to such employees.

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

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

## **8 Application for FCC Approval.**

**8.1 Filing and Prosecution of Application.** Buyer and Seller shall, within fifteen days from the date of this Agreement, join in an application to be filed with the FCC requesting its written consent to the assignment of the Licenses of the Station from Seller to Buyer. Buyer and Seller shall proceed with due diligence and promptly take all steps necessary to the expeditious prosecution of such application to a favorable conclusion, using their best efforts throughout.

**8.2 Expenses.** Each party shall bear its own expenses in connection with the preparation of the applicable sections of the FCC application and in connection with the prosecution of such application. Seller and Buyer will divide and pay equally any filing fee or grant fee imposed by the FCC or any fees or expenses incurred with respect to a joint application. If Seller and Buyer use joint FCC counsel, Seller shall pay 50% of the fees of such counsel and Buyer shall pay 50%.

**8.3 Designation for Hearing.** If, for any reason, with respect to any application for assignment of the Licenses, the staff of the FCC advises that designation for hearing will be required, either party, if not then in default, shall have the right, by written notice within 30 days of such notification, to terminate this Agreement, in which event neither party shall have any rights or liabilities hereunder.

8.4 **Time of FCC Consent.** If approval of the transfer of the Licenses has not become final (all protests and appeals having been decided or dismissed, or barred by the expiration of time) within six months from the date of filing the applications for transfer with the FCC, either party, if not then in default, may terminate this Agreement by giving written notice to the other. Upon such termination, neither party shall have any further right or liability hereunder. Buyer may elect, however, at its sole risk to consummate the transactions contemplated by this Agreement under an FCC approval that has not become final as herein provided.

8.5 **Control of Station.** This Agreement shall not be consummated until the FCC has given its written consent to the transfer of the Licenses of the Station to the Buyer. Until the Closing, Buyer shall not, directly or indirectly, control, supervise, direct or attempt to control, supervise or direct the operation of the Station, but such operation shall be the sole responsibility of Seller.

## 9 **Conditions to Parties' Obligations.**

9.1 **Conditions to Buyer's Obligations.** The obligations of Buyer to complete the transactions provided for herein shall be subject, at its election, to satisfaction on or before the Closing Date of each of the following conditions:

(a) **Representations and warranties:** all representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except as may be otherwise provided in this Agreement), and Buyer shall have received a certificate to that effect, dated the Closing Date, signed by a duly authorized officer of Seller;

(b) **Pre-Closing obligations:** Seller shall have performed all obligations required to be performed by Seller hereunder, the performance of which has not been waived by Buyer, and Buyer shall have received a certificate to that effect, dated the Closing Date, signed by a duly authorized officer of Seller;

(c) **Due authorization:** Seller's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary action on the part of Seller, including due authorization and approval thereof by its sole member, and Buyer shall have received a duly certified copy of all actions taken by Seller effecting the same;

(d) **Seller's consents, etc.:** all necessary notices, filings, consents, waivers and approvals set forth in Section 4.10 shall have been given, made or obtained, as the case may be, by Seller, and Buyer shall have received a true copy of each thereof;

(e) No bar: there shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, in Buyer's reasonable judgment, restrain or prohibit, make illegal, or subject Buyer to material damage as a result of, the consummation of the transactions contemplated hereby;

(f) FCC consent: the FCC shall have given the consent contemplated by Section 8;

(g) Further closing documents: Seller shall have delivered to Buyer the following documents and instruments in form reasonably satisfactory to Buyer:

(1) certificate of the Secretaries of State of Delaware and Vermont attesting to the good standing of the Seller in such jurisdiction as of a date reasonably proximate to the Closing Date;

(2) one or more quitclaim deeds and other appropriate instruments of conveyance to convey all of Seller's interest in the Real Property, duly executed, acknowledged and in recordable form;

(3) bills of sale, assignments and other instruments of transfer and conveyance, each duly executed by Seller, transferring to Buyer title to each item comprising the Assets other than the Real Property; and

(4) an assignment, duly executed by Seller, of the Assigned Contracts together with any third party consents required by any such Contracts, to the extent required hereunder.

(h) Prorations: except as otherwise expressly provided herein, all vacation and fringe benefit accruals for employees to be hired by Buyer, taxes, assessments, utilities, insurance and water charges, and other ongoing costs of usual operation of the Station, shall have been prorated between Buyer and Seller to the Closing Date, except that all or certain of such prorations may be deferred until the date that is no later than ninety (90) calendar days after Closing;

(i) Possession: Seller shall have delivered to Buyer actual possession of the Assets;

(j) Prepaid credits: Except as otherwise provided herein, all prepaid advertisements shall have been prorated between Buyer and Seller to the Closing Date. To the extent advertisements have been paid for but not aired, Buyer shall have received a credit towards the purchase price for the amount equal to the unaired time. With respect to trade, barter or similar agreements for the sale of time for goods or services assumed by Buyer, if at Closing the Station have an aggregate negative barter balance (i.e., the amount by which the value of air

time to be provided by the Station after Closing exceeds the fair market value of corresponding goods and services), there shall be no proration or adjustment, unless the negative barter balance exceeds \$50,000, in which case the excess balance shall be treated as prepaid time sales of Seller and adjusted for as a proration in Buyer's favor.

(k) Other matters: Buyer shall have received such other instruments and documents as shall have been reasonably requested by counsel to Buyer on or before the Closing Date, including but not limited such documents reasonably requested to assist Buyer in meeting its obligations pursuant to 32 VSA 3260.

9.2 **Conditions to Seller's Obligations.** The obligations of Seller to complete the transactions provided for herein shall be subject, at its election, to satisfaction on or before the Closing Date of each of the following conditions:

(a) Representations and warranties: all representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except as may be otherwise provided in this Agreement), and Seller shall have received a certificate to that effect, dated the Closing Date, signed by Buyer or an officer of Buyer (as applicable);

(b) Pre-Closing obligations: Buyer shall have performed all obligations required to be performed by it hereunder, the performance of which has not been waived by Seller, and Seller shall have received a certificate to that effect, dated the Closing Date, signed by Buyer or an officer of Buyer (as applicable);

(c) Due authorization: Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary action on the part of Buyer, and Seller shall have received a duly certified copy of all required consents effecting the same (if any);

(d) Buyer's consents, etc.: all notices, filings, consents, waivers and approvals set forth in Section 5.4 shall have been given, made or obtained, as the case may be, by Buyer, and Seller shall have received a true copy of each thereof;

(e) No bar: there shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, in Seller's reasonable judgment, restrain or prohibit, make illegal, or subject Seller to material damage as a result of, the consummation of the transactions contemplated hereby;

(f) FCC consent: the FCC shall have given the consent contemplated by Section 8;

(g) Further closing documents: Buyer shall have delivered to Seller the following documents and instruments:

(1) Certificates of the Secretary of the State of Vermont and any state where Buyer is organized, attesting to the good standing of Buyer in such jurisdiction as of a date reasonably proximate to the Closing Date (if applicable);

(2) an instrument of assumption of the Assigned Contracts, in form reasonably satisfactory to counsel to Seller, duly executed by Buyer; and

(3) an instrument of assumption of the Licenses, duly executed by Buyer.

(h) Prorations: except as otherwise expressly provided herein, all vacation and fringe benefit accruals for employees to be hired by Buyer, taxes, assessments, utilities, insurance and water charges and other ongoing costs of usual operation of the Station shall have been prorated between Buyer and Seller to the Closing Date.

(j) Other matters: Seller shall have received such other instruments and documents as shall have been reasonably requested by counsel to Sellers on or before the Closing Date.

10 **Closing.** Subject to the terms and conditions herein stated, the parties agree as follows:

10.1 **Closing Date.** The Closing of the transactions provided for in this Agreement shall be held not later than ten days following the date upon which the order of the FCC approving the assignment of the Licenses for the Station from Seller to Buyer has become final (i.e., no action, request for stay, petition for rehearing or reconsideration, or appeal is pending and the time for filing such request, petition, or appeal has expired), or at such other time as may be mutually agreed by the parties hereto, (the "Closing Date"). Such Closing shall take place by mail or at such place as shall be agreed upon by the parties.

10.2 **Failure to Close; Termination.** This Agreement may be terminated at any time prior to the Closing Date, as follows:

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

(b) by Buyer, upon notice to Seller, if (i) events occur which, without any breach by Buyer of its obligations hereunder, render impossible compliance with one or more of the conditions set forth in Section 9.1 (and such compliance is not waived by Buyer), or (ii) the Conditions to Buyer's Obligations as set forth in Section 9.1 are not satisfied on the Closing Date; or

(c) by Seller, upon notice to Buyer, if (i) events occur which, without any breach by Seller of its obligations hereunder, render impossible compliance with one or more of the conditions set forth in Section 9.2 (and such compliance is not waived by Seller), or (ii) the Conditions to Seller's Obligations as set forth in Section 9.2 are not satisfied on the Closing Date; or

(d) as provided by Sections 6.4, 8.3, and 8.4 of this Agreement.

In the event of any termination as provided by this Section 10.2, this Agreement shall thereupon become void and of no effect, without any further liability on the part of any party.

11 **Additional Remedies.** Notwithstanding anything to the contrary herein contained, it is agreed that the rights and privileges granted to Buyer in this Agreement are special and unique and that the Buyer shall be entitled to seek injunctive and other equitable relief, including without limitation specific performance, in a court of competent jurisdiction, and if such relief is granted, the Buyer shall be entitled to recover from the Seller all costs and expenses (including reasonable attorneys' fees) incurred in securing such injunctive or other equitable relief.

12 **Further Covenants.**

12.1 **Taxes.** All sales or use taxes originating from this transaction shall be paid by the Seller. Real estate transfer taxes shall be divided equally between the parties.

12.2 **Expenses of the Parties.** Except as otherwise expressly provided in this Agreement, all expenses involved in the preparation, negotiation, authorization and consummation of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel and accountants, shall be borne solely by the party who shall have incurred the same, and no other party shall have any responsibility with respect thereto.

12.3 **Confidentiality.** Except for necessary disclosure to such party's directors, officers, employees, counsel, accountants, bankers, and other agents, and except for the disclosure contemplated by Section 8 and such disclosure as may be required by law, each party shall keep the provisions of this Agreement confidential both prior and subsequent to the Closing Date. Without limiting the generality of the foregoing, no party shall make any press release or advertisement with respect to the transactions contemplated hereby without the prior consent of the other party, unless the disclosing party determines, upon the advice of counsel, that such action is required by law, and then the disclosing party shall promptly notify the other party of such disclosure. Buyer and Seller shall cause their respective directors, officers, employees and agents to treat all information as confidential and to be bound by the provisions of this paragraph.

12.4 **Broker's Fee.** Each party will be solely responsible for any and all brokerage fees asserted against it by a person or entity claiming entitlement to such fees as a result of this transaction.

12.5 **Further Assurances.** Each party shall cooperate with the other, take such further action, and execute and deliver such further documents, as may be reasonably requested by any other party in order to carry out the terms and purposes of this Agreement. Without limiting the generality of the foregoing, from and after the Closing Date:

(a) each party shall file all tax returns consistent with the allocation of the Purchase Price set forth in Schedule 2, and no party shall take any position on audit or in litigation which is inconsistent with such allocation if such position would result in the payment of any additional tax by, or the disallowance of any deduction or credit to, any other party; and

(b) upon request, each party shall take such action and deliver to the requesting party such further instruments of assignment, conveyance or transfer and other documents of further assurance as in the opinion of counsel to the requesting party may be reasonably desirable to assure, complete and evidence the full and effective transfer, conveyance and assignment of the Assets and possession thereof to Buyer, its successors and assigns, and the performance of this Agreement by Seller and Buyer in all respects.

12.6 **Accounts Receivable.** At Closing, Seller shall assign to Buyer, for purposes of collection only, all of the Accounts Receivable that are outstanding and unpaid on the Closing Date. Buyer shall use such efforts as are reasonable and in the ordinary course of business to collect the Accounts Receivable for a period of 180 days following the Closing Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel or any other extraordinary means of collection. So long as the Accounts Receivable are in Buyer's possession, neither Seller nor its agents shall make any solicitation for them for collection purposes or institute litigation for the collection of any amounts due thereunder. All payments received by Buyer during the Collection Period from any person obligated with respect to any of the Accounts Receivable shall be applied first to Seller's account and only after full satisfaction thereof to Buyer's account; provided, however, that if during the Collection Period any account debtor contests the validity of its obligation with respect to any Account Receivable, any monies paid thereafter by that advertiser on account of services rendered by Buyer may be retained by Buyer. Buyer shall not have the right to compromise, settle or adjust the amounts of any of the Accounts Receivable without Seller's prior written consent. Within ten (10) calendar days following the expiration of each month during the Collection Period, Buyer shall furnish Seller with a list of Accounts Receivable collected during such month accompanied by a payment equal to the amount of such collections, without offset.

### 13 **General Provisions.**

13.1 **Survival of Representations, Warranties and Covenants.** The several representations, warranties and covenants of the parties herein contained, and the provisions

hereof which by their terms are to be performed after the Closing Date, shall survive the Closing Date for one year and shall be effective regardless of any investigation which may have been or may be made at the time by or on behalf of the party to whom such representations, warranties, covenants and agreements are made.

13.2 **Amendment and Waiver.** This Agreement may be amended only by a writing executed by each of the parties hereto. No waiver of compliance with any provision or condition hereof, and no consent provided for herein, shall be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.

13.3 **Assignment.** No party shall assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that Buyer may assign its rights and obligations under this Agreement to any entity it forms to perform as Buyer.

13.4 **Notices, Etc.** Each notice, report, demand, waiver, consent and other communication required or permitted to be given hereunder shall be in writing and shall be sent either by registered or certified first-class mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier, addressed as follows:

If to Seller:	Vox AM/FM, LLC 70 Walnut Street, Suite 411 Wellesley, MA 02481 Attn: Bruce G. Danziger
with a copy to:	Sheehan Phinney Bass + Green, Professional Association 1000 Elm Street, P.O. Box 3701 Manchester, NH 03105-3701 Attn: Jon S. Liland, Esq.
If to Buyer:	Burton Barlow and Lori Young-Barlow 316 Lawnwood Drive Williston VT 05495
With a copy to:	Daly & Daly, P.C. 110 Main Street, 4th Floor P.O. Box 0069 Burlington, Vermont 05401 Attn: Matthew Daly, Esq.

Each such notice or other communication given by mail shall be deemed to have been received three (3) days after it is deposited in the United States mail in the manner specified herein, and each such notice or other communication given by nationally recognized overnight courier shall be deemed to have been received on the next business day after it is deposited with such courier. Any party may change its address for the purpose hereof by giving notice in accordance with the provisions of this Section 13.4.

13.5 **Binding Effect.** Subject to the provisions of Section 13.3, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature in any person not a party hereto.

13.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

13.7 **Effect of Agreement.** This Agreement sets forth the entire understanding of the parties, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.

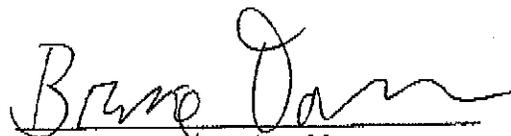
13.8 **Headings; Counterparts.** The Article and Section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**SELLER:**

Vox AM/FM, LLC

By:

  
Bruce G. Danziger, President

**BUYER:**

\_\_\_\_\_  
Burton Barlow

\_\_\_\_\_  
Lori Young-Barlow

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**SELLER:**

Vox AM/FM, LLC

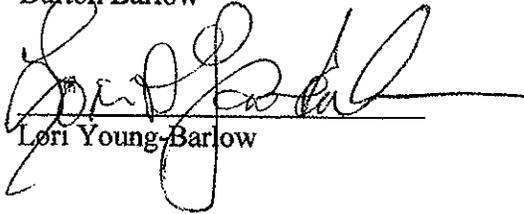
By: \_\_\_\_\_

Bruce G. Danziger, President

**BUYER:**



Burton Barlow



Lori Young-Barlow