

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into by and between Visionary Related Entertainment, Inc. ("VREI") & Visionary Related Entertainment, II, Inc. ("VREI-II"), (hereinafter referred to as either "Seller or "Sellers"), and VISIONARY RELATED ENTERTAINMENT, LLC, a California corporation, (hereinafter referred to as "Buyer").

W I T N E S S E T H

WHEREAS, VREI is the licensee of Broadcast Radio Stations KAOI FM, KAOI AM, KDLX, KQNG AM/FM, KUAI AM, KNUQ FM and KSRF FM located in the state of Hawaii, and VREI II is the licensee of Broadcast Radio Station KNUQ also located in Hawaii(hereafter the "Stations"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"), and wishes to assign said license to Buyer; and

WHEREAS, each Seller is the owner of and desires to sell substantially all the personal property, tangible and intangible (the "Assets"), used and/or usable in the respective Stations' operations, and Buyer desires to purchase the same and each Seller and Buyer desire to enter into certain other agreements pertaining thereto, all subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Sellers and Buyer hereby agree as follows:

## ARTICLE I - DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the following meaning:

1.1.1 "FCC's Order." An order of the FCC (or any successor federal governmental agency the approval of which is required before a broadcast license can be assigned) consenting to the assignment to Buyer of the license of station.

1.1.2 "Final Order." An FCC Order as to which the time for filing a request for administrative or judicial review or reconsideration has expired without any such filing having been made, or in the event of such filing the FCC Order has been reaffirmed or upheld and the time for seeking further administrative or judicial review with respect thereto has expired without any request for further review having been filed.

1.1.3 "Closing Date." 10:00 a.m. at the law offices of Peter A. Casciato, A Professional Corporation, 8 California Street Suite 701 San Francisco CA 94111 (or such other place as may be agreed to by the parties), on the date established as hereinafter provided in Article VII.

1.1.4 "Authorizations." The license, permits, or other authorizations issued by the FCC in connection with the Stations as described in Exhibit 1 hereto as well as any pending applications filed by Seller.

## ARTICLE II - SALE AND PURCHASE OF ASSETS

2.1 Seller's Assets. On the Closing Date, subject to the

terms and conditions set forth herein, each Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase and accept from each Seller, the Assets as defined below:

2.1.1 The furniture, fixtures, machinery, equipment (including the transmitter, antenna, any ground system, and other equipment), supplies, spare parts, inventory and all other tangible personal property owned by each respective Seller and used in the operation of the respective Stations, together with any replacements thereof or additions thereto made between the date hereof and the Closing Date, as described in Exhibit 2.

2.1.2 All leases, contracts, and other agreements and commitments of each Seller relating to the respective Stations or the respective Stations' operations, as described in Exhibit 3 and which will be in effect on the Closing Date.

2.1.3 Prepaid expenses, deposits and deferred charges of the Stations, if any, determined in accordance with generally accepted accounting principles as of the Closing Date.

2.1.4 Goodwill, privileges, licenses, permits, copyrights, service or trademarks and trade names and other tangible rights, including rights to the call letters of Stations and slogans, jingles, and other combinations of words, phrases, music and/or sounds, owned by each Seller and used in the operation of the Stations or in connection with any other asset, contract, license, or other item subject of this Agreement.

2.1.5 All other things acquired for and used or to be used

in the operation of the Stations, as described in Exhibit 4 hereto.

2.1.6 The assets to be conveyed to Buyer do not include cash on hand or in banks, accounts receivable, or cash equivalents of each Seller in existence on the Closing Date.

2.2 Conveyance. On the Closing Date, each Seller shall execute and deliver to Buyer all documents and instruments set forth in Paragraph 7.4 of this Agreement.

2.3 Records. Each Seller shall deliver to Buyer all of the respective Stations' records, operating and maintenance logs, and other records reasonably requested by Buyer relating to the operation of the Stations including any and all documents filed with, or received from, the FCC and other than each Seller's corporate records and books of account.

2.4 Sellers' Liabilities. Each Sellers' Assets to be purchased by Buyer are to be transferred free and clear of all liabilities, including, by way of example and not limitation, all debts, mortgages, liens, security interests, encumbrances, payable, or similar obligations of any sort, except as set forth in Exhibit 5. Each Seller shall execute and deliver all documents as may be required by this Agreement and as Buyer may reasonably request to effectuate and/or demonstrate the foregoing.

2.5 Buyer's Assumption of Certain Future Obligations. On the Closing Date, Buyer will assume only those liabilities and

obligations of each Seller accruing after the Closing in connection with the continuing contracts, agreements, and leases, listed in Exhibits 6. Each Seller shall execute and deliver to Buyer, and Buyer shall accept, execute and deliver to each Seller, all documents and instruments as may be required by this Agreement or as either each Seller or Buyer may reasonably request to effectuate such assumption of future obligations including (but not limited to) an Assumption Agreement in a form agreeable to Buyer.

2.6 Accounts Receivable. All of the respective Stations' accounts receivable from broadcasts on or before the Effective Closing Date of the Sale shall be the property of the respective Seller. All accounts receivable from broadcasts over the Stations after the Effective Date shall be the property of Buyer. On the Effective Date, or within five business days thereafter, each Seller shall present Buyer with a list of each Seller's accounts receivable as of the Effective Date. For a period of 120 days after the Effective Date, Buyer shall collect such accounts receivable for the benefit of the respective Seller, and on the 30th, 60th, 90th, and 120th day after the Effective Date, make an accounting and pay over to Seller, by check, the amounts received during those periods. All of the respective Seller's accounts receivable not collected by the 120th day shall be turned over to each Seller for collection by the respective Seller; however, during the 120 day collection period each Seller shall not

attempt to collect each respective Seller's accounts receivable without the written approval of Buyer.

### ARTICLE III - PURCHASE PRICE

3.1 Purchase Price. The purchase price for the assets and rights subject to this Agreement is \$4.7 Million (\$4,700,000.00), and a \$7.0 Million (\$7,000,000.00) Membership Management Preferred Equity Interest, as defined in (insert document name) in Buyer all of which shall be paid at Closing.<sup>1</sup>

3.1.3 Prorations. All accounts payable, prepayments on written contracts expressly assumed by Buyer hereunder, local transfer taxes, if any, applicable to the conveyance or sale of the Assets, and incidental expenses of operating the Stations(either prepaid or due and owing), including, without limitation, utility charges, real property and other taxes, rents and insurance shall be prorated, to the extent the amounts of such items are then known, between the Seller and the Buyer as of Hawaii time 12:01 a.m. on the day after Closing. Buyer and Sellers shall cooperate in the preparation of a final accounting and proration of all remaining items, which accounting shall be made and all sums due thereunder transferred within sixty (60) days after the Closing.

3.1.4 Prior to the Closing Date, the parties agree to allocate the Purchase Price in accordance with the requirements

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<sup>1</sup> John, we need to more specifically identify this. It is a membership interest, I assume.

of Section 1060 of the Internal Revenue Code of 1986.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES

4.1 Buyer. Buyer represents and warrants to Seller as follows:

4.1.1 Authority. Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_; and has full power and authority to operate in the state of Hawaii, to own its assets and to carry on its business as it has been and/or is proposed to be conducted. Buyer has or shall have at the Closing full power and authority to make and perform this Agreement (including, without limitation, the purchase of Seller's Assets as contemplated herein). Buyer's execution and performance of this Agreement has or by the Closing will have been duly authorized by all necessary action on the part of Buyer's Members. This Agreement is, and the other documents to be executed and delivered by Buyer hereunder will be, when executed and delivered, the after formation of the corporation, the valid, legally binding, and enforceable obligations of Buyer. Neither the making nor performance of this Agreement by Buyer nor the consummation of the transactions contemplated hereby conflicts with, is or will be prohibited by Buyer's Certificate of Formation or Operating Agreement, nor has it constituted nor will it constitute a default under any contract or commitment to which Buyer is a

party.

4.1.2 Litigation There is no pending and no other judicial or administrative proceedings which would materially adversely affect Buyer's power, authority, or ability to enter into this Agreement and to carry out the transactions contemplated thereby, and Buyer is aware of no such proceedings threatened or contemplated by, but not yet commenced, or of any circumstances which might give rise to such proceedings.

4.1.3 FCC Approval To the best of its knowledge, Buyer is qualified under the Communications Act of 1934, as amended, and the rules, regulations and policies promulgated thereunder, to obtain FCC approval of the application referred to in 5.2 of this Agreement and serve as the licensee of the Station, and Buyer has no knowledge of any material reason, fact, allegation or claim not stated herein that may impair Buyer's qualifications and knows of no reason why the FCC would not approve the application. Between the date hereof and the Closing, Buyer will take no action knowingly that would substantially delay FCC approval or make it not qualified to be the licensee of the Station.

4.1.4 No Insolvency No insolvency proceedings of any nature, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Buyer are pending, and Buyer has not made an assignment for the benefit of creditors nor taken any action with view to, or which would constitute the basis for,



the institution of any such insolvency proceedings.

4.1.5 No Conflict. The execution and performance of this Agreement by Buyer will not conflict with, or result in any breach of any of the terms, conditions or provision of, or constitute a default under, any indenture, mortgage, agreement or other instrument to which Buyer is a party or by which it is bound.

4.2 Sellers. Each Seller represents and warrants to Buyer as follows:

4.2.1 Corporate Data and Authority. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of California, and has full power and authority to own its assets and to carry on its business as it has been conducted. Seller has full power and authority to make and perform this Agreement (including, without limitation, the sale of Seller's Assets to Buyer as contemplated herein). The making and performance of this Agreement have been duly authorized by all necessary action on the part of Seller. This Agreement is the valid, legally binding, and enforceable obligation of Seller. Neither the making nor performance of this Agreement by Seller nor the consummation of the transaction contemplated hereby conflicts with or is prohibited, by its nor has it constituted nor will it constitute a default under any contract or commitment to which Seller is a party or by which any of the Assets are bound, nor has it resulted, nor will it result

in the creation or imposition of any lien or encumbrance in favor of any third party with respect to any of the Assets.

4.2.2 Title of Assets. Seller on the Closing Date will have good and marketable title to all of the assets subject of this Agreement, free and clear of all debts, mortgages, liens, security interests, encumbrances, accounts payable, or other liabilities whatsoever which would impair such marketability, except as noted in Exhibit 5 attached hereto.

4.2.3 FCC Licenses - Seller on the Closing Date, will be the holder of the licenses issued by the FCC for the operation of its respective Station together with any auxiliary FCC licenses, and such licenses shall be in full force and effect, and unimpaired by any acts or omissions of Seller, its officers, directors, employees or agents. The Stations, at Closing, shall be capable of full authorized power and in compliance with its licenses, the Communications Act of 1934, as amended, and the rules and regulations of the FCC. There is not now pending, or to the knowledge of Seller threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew, in the ordinary course, any or all of its FCC licenses. There is not now pending, issued or outstanding by or before the FCC, or to the knowledge of Seller threatened, any investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability or of Forfeiture or material complaint against the Stations or against Seller. In the event of any such action, or the filing

or issuance of any such order, notice, or complaint, or knowledge of the threat thereof, Seller shall promptly notify Buyer of same in writing and shall take all reasonable measures to contest in good faith or seek removal or rescission of such action, order, notice, or complaint. Seller agrees that prior to the Closing Date, if it becomes aware of any violation of the Rules and Regulations of the FCC, it will to the best of its ability endeavor to remove all such violations and Seller shall remain liable and indemnify and hold Buyer harmless for same pursuant to paragraph 6.2 hereof.

4.3 Personal Property - The material tangible assets of the Stations are listed and described in Exhibit 2. The sale also includes all other tangible assets normally used in connection with each Station and not specifically excluded herein. Seller now has, or on the Closing Date will have, good, valid, and marketable title to said assets, free and clear of all mortgages, liens, charges, claims, pledges, security interests, and encumbrances whatsoever, except as otherwise stated in this Purchase Agreement.

4.4 Condition and Adequacy of Assets - Seller now owns and on the Closing Date will own all assets utilized for the operation of the respective Station(s), except as stated otherwise herein. The plant and equipment of the respective Station(s) are in a condition to be operated as commercial radio stations and are in compliance with all FCC rules and regulations

and all state and local laws, regulations and ordinances.

4.5 Contracts. Exhibits 2 and 3 contain a complete list and short description of all real property leases, contracts, purchase orders, sales contracts, agreements, employees' contracts, and other undertakings, written or oral, relative to the respective Stations and in existence as of the execution of this Agreement, which Buyer is to assume and perform. All contracts evidencing time sales to agencies or sales representatives will expire in their ordinary course within one year and are at prices which do not represent a discount greater than 20% from the rate card. Unless otherwise disclosed to and agreed to by Buyer, Seller will indemnify Buyer against all claims arising out of contracts allegedly entered into by Seller which are not on this list. Seller will not become a party to any contract or other commitment relating to the operation of the respective Stations after the signing of this Agreement which is not (i) cancelable at Seller's or Buyer's option at no expense to Buyer and (ii) entered into in the normal course of business. Seller is not in material breach or default on any of the contracts listed in Exhibit 2 or 3, and there is no claim of such breach or default known to Seller. On the Closing Date, each such contract on which Seller owes money shall be currently paid, not in default in any manner, and Seller will have full legal rights and power to assign its rights under all such contracts.

4.6 Authorizations. Exhibit 1 contains a true and complete

list of all FCC authorizations and pending applications currently held or filed by Seller for the respective Stations. There are no adverse restrictions in any such authorization not shown thereon. Except as described in Exhibit 1, there is no application, petition to deny, material complaints, or proceedings known by Seller to be pending before the FCC which would materially and adversely affect the authorizations to be transferred hereunder.

4.7 Employees. On the Closing Date Seller will have paid to or on behalf of the respective Station's employees all wages and salaries earned, including commissions, bonuses, and incentive compensation, through the end of Seller's most recent pay period prior to the Closing Date, all amounts for vacations or sick leave carried over from any prior year, and all taxes thereon. Seller has no written assumable employment contracts with persons employed in the operation of the respective Stations, nor any employee benefit plans for such persons. Seller has, in the conduct of the affairs of the respective Stations, complied with applicable laws, rules and regulations relating to wages, hours collective bargaining, equal employment opportunity, and the payment of FICA, FUTA, and similar federal, state, and local employment taxes, and is not liable for any arrears of wages or any tax or other penalties for failure to comply with any of the foregoing. As of the date of this Agreement, there are no controversies pending or, to the best of

Seller's knowledge, threatened between Sellers and any of its employees, past and present.

4.8 Taxes. Seller shall bear and remit to the appropriate authority any and all federal, state and municipal income, federal and state withholding, Federal Insurance Contributions Act, federal employment and state unemployment taxes, bulk sales taxes, and other charges or taxes levied or imposed upon or in connection with Seller or its operations that are payable or have accrued prior to the Closing Date.

4.9 Conduct of Station's Business. Between the date hereof and the Closing Date, , Seller shall (a) conduct the business of the respective Stations in the usual manner, in good faith, and with due diligence and shall at its own expense maintain the respective Stations in accordance with the terms of its license and directives of the FCC and keep in a normal state of repair and operating efficiency all tangible personal property and assets to be transferred hereunder now in place in the respective Stations' operation; (b) maintain at normal level, and in no event at a level below that as of the date hereof (ordinary wear and tear excepted), its equipment, supplies and other tangible personal property used in the business or operation of the respective Stations; (c) not increase the compensation payable or to become payable to any of the respective Stations' employees, not approve of or pay any bonuses nor make any changes in its personnel policies with respect to benefits of any kind

whatsoever without the express prior written consent of Buyer; and (d) not enter into any contracts relating to operation of the respective Stations other than commercial advertising, and no contracts shall be in force relating to operation of the Stations respective except those described herein other than those consented to by Buyer.

4.10 Trade-Out and Other Agreements. (i) All existing arrangements for the exchange of advertising time for consideration other than money ("trade-out agreements") are listed in Exhibit 9. At Closing there will be no trade-out agreements that will extend beyond 90 days after Closing except as may be approved in writing by Buyer.

(ii) Seller has not rendered billings for or collected progress or other advance payments under any other contract or other commitment providing for such payments in excess of amounts which will be billed prior to the Closing Date on the basis of work actually completed thereunder.

(iii) Between the date hereof and the Closing Date, Seller shall not enter into any new trade-out agreements, or extensions, renewals, or modifications to any existing trade-out agreements, which are not consistent with past procedures without the prior written consent of Buyer.

4.11 Litigation. Except with respect to the application to be filed with the FCC for the assignment of the authorizations contemplated in this Agreement, or as set forth in Exhibit 10,

there is no litigation, proceeding or governmental investigation pending, or to the best knowledge of Seller threatened in any court, arbitration board, administrative agency or tribunal against or relating to Seller, that might materially adversely affect the Assets, or the operation of the respective Stations, or that would prevent or impede the consummation of this Agreement by Seller, nor does Seller know of any basis for such litigation, proceeding or investigation, and the execution and performance of this Agreement by Seller will not result in the default by Seller in respect of any judgment, order, writ, injunction, decree, rule or regulation of any court or administrative agency which could have a materially adverse effect on the operation of the respective Stations or the Assets to be conveyed to Buyer at Closing. Seller shall advise Buyer in writing immediately (and in no event more than 10 days after Seller has knowledge) of the filing of, or threat of a person or entity to file, any action of the type referred to herein.

4.12 Insurance. The assets of the respective Stations are presently covered by insurance policies in amounts which are reasonably deemed sufficient by Seller, and such policies (or adequate replacements thereof) will be duly in force at the Closing Date.

4.13 Financial Reports. Seller has no knowledge of any material liabilities of any nature, whether accrued, absolute, contingent, or otherwise including, without limitation, tax



liabilities due or to become due, and whether incurred in respect of or measured by each Seller's income for any period prior to Closing, or arising out of transactions entered into, or any state of facts existing, prior thereto that have not been disclosed to Buyer. Seller represents and warrants that it does not know or have reasonable grounds to know of any basis for the assertion against Seller as of Closing, or any liability of any nature or in any amount not fully reflected or reserved against. It is recognized that Buyer is entering into this Agreement based upon, among other things, the truth and completeness of these representations.

4.14 Miscellaneous. (i) Seller knows of no reason, circumstance or condition existing which would result either in a finding by the FCC that it is not qualified to sell the respective Stations or in an extraordinary delay in the processing by the FCC of the assignment application referred to hereinafter.

(ii) No representation or warranty by Seller in this Agreement, nor any statement, financial report or exhibit furnished or to be furnished by the Seller pursuant to this Agreement or in connection with the transactions contemplated by the Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

(iii) Seller shall obtain all permits, authorizations and consents of third parties necessary to effectuate this sale (and assignment of FCC Authorizations) including the assignment of all promissory notes, security agreements, leases, contracts, and agreements as described in Exhibits 3 and 4 attached hereto.

(iv) Seller agrees to give Buyer notice of any material operating problems or developments between the date hereof and the Closing Date, and keep Buyer apprised of all matters having any material financial impact on Seller or its Station(s).

(v) Seller warrants that the Stations' public files are complete and up-to-date.

(vi) All ownership reports, renewal applications, financial reports and other reports and documents required to be filed by Seller with the FCC regarding the respective Stations have been filed and will continue to be filed as of Closing, and all such reports, applications and documents are true and correct in all material respects.

(vii) Seller shall give to Buyer and Buyer's attorneys, accountants, and other representatives, during normal business hours, between the date hereof and the Closing Date, reasonable access to the respective Stations' books, contracts, commitments and records. Subsequent to the Closing Date, Seller will furnish Buyer in a timely manner with a copy of all reports and information not previously filed as may be required by the FCC with respect to the respective Stations in the period prior to

Closing Date, and will file with the FCC any material required to be filed by the FCC as a condition of Closing.

4.15 Environmental Compliance. The operations of the Stations do and have at all times complied with all applicable environmental laws and Seller has not received any notice or claim to the effect that it is or may be liable to any person as a result of the release or threatened release of contaminant.

#### ARTICLE VI - FCC MATTERS

5.1 FCC Consent to Assignment. Notwithstanding anything herein to the contrary, the terms and conditions of this Agreement are subject to and conditioned upon issuance of an Order of the FCC prior to the Closing Date granting consent to the application mentioned in Paragraph 5.2.

5.2 Applications for Consent. Buyer and Sellers shall file any applications requesting FCC consent to assignment of the respective Stations' Authorizations subject to this Agreement as soon as possible, but not later than twenty (20) days from the date of this Agreement. Buyer and Sellers respectively shall promptly and diligently file and expeditiously prosecute all necessary amendments to that application, briefs, pleadings, documents, and supporting data, and take all such actions and give all such notices as may be required or requested by the FCC or as may be appropriate in an effort to expedite the approval of the FCC of the assignment.

5.3 Operation of the Stations Before Closing. Between the

date of this Agreement and the Closing Date, each Seller will continue, consistent with directives and orders of the FCC, to operate the respective Stations in the public interest, convenience, and necessity, and will file with the FCC all documents required to be filed in connection with the operation of the respective Stations.

5.4 Control and Access. Prior to Closing, Buyer and its agents shall not directly or indirectly control, supervise, or direct, or attempt to control, supervise, or direct, the operations of the Stations. Such operations shall be the sole responsibility of and in the complete discretion of respective Seller.

5.5 Time for FCC Consent. If no Final Order of the FCC is secured on or before eight (8) months from the date of acceptance of the assignment application by the FCC, then this Agreement may be terminated at the option of Buyer, and Buyer and Sellers thereupon shall be released and discharged of all obligations hereunder and the deposit and interest provided for in Paragraph 3.1.1 shall be disbursed to the Buyer in accordance with the Escrow Agreement attached hereto as Exhibit 6.

#### ARTICLE VII - RISK OF LOSS AND INDEMNIFICATION

6.1 Risk of Loss. All risk of loss or destruction of or damage to any of the property transferred hereunder shall be on the respective Sellers to the time of Closing. If prior to the time of Closing any of the property described in Exhibits 2 and 3

shall be lost, destroyed, or damaged to such an extent that Stations cannot conduct normal broadcast transmission and operations and is not or cannot be restored to normal broadcast transmissions and operations by Closing Date, Buyer may, at its election, terminate this Agreement and receive its deposit noted in paragraph 3.1.1 upon demand to escrow holder, by giving written notice to Seller twenty (20) days after Buyer has actual notice of such loss, destruction, or damage, in which event, all rights and obligations of the parties hereunder shall cease and terminate. If such loss, destruction, or damage does not render the Station(s) incapable of normal transmissions and operations, and if Buyer does not elect to terminate this Agreement as provided for in this paragraph, both Buyer and Sellers shall be obligated to perform their obligations hereunder.

## 6.2 Indemnification by Seller

6.2.1 Each Seller hereby agrees to indemnify and hold Buyer and its successors and assigns harmless against: (i) Any and all law suits, claims, liabilities, and obligations of any kind or nature, contingent or otherwise, arising from or related to the operation of the respective Stations prior to the actual Closing on the Closing Date, including, but not limited to, any and all law suits, claims, liabilities, and obligations arising or required to be performed prior to the Closing Date under any lease, contract, or agreement assumed by Buyer hereunder, and any and all claims, liabilities and obligations arising out of any

contract not assumed by Buyer;

(ii) Any and all damages or deficiency resulting from any misrepresentation, breach of warranty, or non-fulfillment of any agreement or obligations assumed or required to be assumed by Buyer under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(iii) Any and all actions, suits, proceedings, damages, assessments, judgments, costs, and expenses including reasonable attorneys' fees, incurred by Buyer as a result of the respective Seller's failure or refusal to compromise or defend any claim incident to the foregoing provision; and

(iv) Any claims by creditors of Seller (including any taxing authority) arising out of Seller's activities before or after the Closing Date.

### 6.3 Indemnification by Buyer

6.3.1 Buyer hereby agrees to indemnify and hold each Seller and its successors and assigns harmless against:

(i) Any and all law suits, claims, liabilities, and obligations of any kind or nature, contingent or otherwise, arising from or related to Buyer's operation of the respective Stations subsequent to the Closing, including, but not limited to, any and all law suits, claims, liabilities, and obligations arising or required to be performed subsequent to the Closing

under any lease, contract, or agreement assumed by Buyer hereunder; except matters arising out of or relating to Sellers' operation of the respective Stations.

(ii) Any and all damages or deficiency resulting from any misrepresentation, breach of warranty, or non-fulfillment of any agreement or obligation assumed or required to be assumed by Buyer under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to Sellers pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(iii) Any and all actions, suits, proceedings, damages, assessments, judgments, costs, and expenses, including reasonable attorneys' fees, incurred by Sellers as the result of Buyer's failure or refusal to defend or compromise any claim incident to any of the foregoing provisions; and

(iv) Any claims by creditors of Buyer (including any taxing authority) arising out of Buyer's activities after Closing Date.

#### ARTICLE VIII - CLOSING DATE:

##### CONDITIONS TO CLOSING; CLOSING DOCUMENTS

7.1 The Closing Date. The closing of this transaction (the "Closing") shall occur on the first (1st) business day of the month following the month in which the FCC grant of approval of the assignment applications becomes Final, or on such other date as the parties may mutually agree.

7.2 Conditions to Obligations of Buyer. Buyer's

obligations to purchase the Assets subject to this Agreement at the Closing Date and to perform Buyer's other obligations hereunder shall be subject to the following conditions unless waived in writing by Buyer.

7.2.1 Representations and Warranties to be True. The representations and warranties of each Seller contained herein shall be true in all material respects as of and at the Closing Date as though made on such date. Each Seller shall have performed and complied with all obligations and covenants required by this Agreement to be performed or complied with by each Seller on or prior to the Closing Date.

7.2.2 Closing Documents. Each Seller shall have delivered to Buyer the Closing Documents described in Paragraph 7.4.

7.2.3 Litigation. Each Seller shall not be subject to any restraining order or injunction restraining or prohibiting the consummation of the sale contemplated hereby, and no action or proceeding shall have been instituted and remain pending before any court or other governmental body to prohibit such transaction, nor shall any governmental agency have notified either party to this Agreement that the consummation of the transaction contemplated hereby would constitute a violation of the laws of the United States.

7.2.4 FCC and Other Consent. The FCC shall have granted its consent to the assignment of Authorizations contemplated herein; and all authorizations, consents, approvals and



clearances of all federal, state and local governmental agencies, in addition to the FCC, required to permit the valid consummation of the transaction contemplated in this Agreement shall have been obtained. Neither any such orders nor any such authorizations, consents, approvals or clearances shall contain any conditions which materially adversely affect the operation of the Stations or the conduct of its business as conducted immediately prior to the Closing Date.

7.3 Conditions to Obligations of Sellers. The obligations of Sellers to sell, transfer and convey the Stations' Assets at the Closing shall be subject to the following conditions unless waived in writing by Sellers.

7.3.1 Representations and Warranties to be True. The representations and warranties of Buyer contained herein shall be true in all material respects as of and at the Closing Date as though made on such date. Buyer shall have performed and complied with all obligations and covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date.

7.3.2 Closing Documents. Buyer shall have delivered to Sellers the Closing Documents described in Paragraph 7.5.

7.3.3 Litigation. Neither Buyer nor Sellers shall be subject to any restraining order prohibiting the consummation of the sale contemplated hereby, and no action or proceeding shall have been instituted and remain pending before a court or other

governmental body to prohibit such transaction, nor shall any governmental agency have notified either party to this Agreement that the consummation of the transaction contemplated hereby would constitute a violation of laws of the United States.

7.3.4 Consents Obtained. The FCC shall have granted its consent to the assignment of Authorizations contemplated herein; and all authorizations, consents, approvals, permits and clearances of all federal, state and local governmental agencies, in addition to the FCC required to permit the valid consummation of the transaction contemplated in this Agreement shall have been obtained.

7.4 Instruments of Transfer to Buyer. The following instruments of transfer are required to be delivered to Buyer by Sellers on the Closing Date.

7.4.1 Bills of Sale in form satisfactory to Buyer, dated the Closing Date, executed by each Seller, in such reasonable detail as Buyer may request, conveying to Buyer good title to the assets set forth in Exhibit 2.

7.4.2 Assignment instruments in form satisfactory to Buyer, dated the Closing Date, appropriately executed, assigning the Authorizations set forth in Exhibit 1.

7.4.3 Assignments in form satisfactory to Buyer, dated the Closing Date, executed by Sellers, and Buyer, conveying to Buyer all right, title, and interest in all contracts, leases, other agreements, and all other assets subject to this transaction as

set forth in Exhibit 3.

7.4.4 Consents to the assignment of the leases and other contracts for which consent is required.

7.4.5 Such other assignments, documents, and instruments as Counsel for Buyer may reasonably require to evidence Buyer's ownership of all property rights hereunder sold.

7.4.6 A certificate, dated as of the Closing Date, signed by each Sellers' President stating that, to his best knowledge and belief, the representations and warranties of each Seller, respectively, set forth in this Agreement and in the other instruments delivered by Seller are true and correct.

7.5 Instruments of Transfer to Seller. The following documents are required to be delivered to Seller by Buyer on the Closing Date.

7.5.1 The portion of the Purchase Price payable as set forth in Paragraph 3.1 herein paid to Seller by bank cashier's check, certified check, or by wire transfer and the promissory note;

7.5.2 A written Membership Management Preferred Equity Interest in Buyer:

7.5.3 A certificate, dated as of the Closing Date, signed by Buyer's Managing Member stating that, to the best of his knowledge and belief, the representations and warranties of

Buyer set forth in this Agreement and in the other instruments delivered by Buyer are true and Correct.

7.5.4 A duly executed assumption Agreement and Assignment Agreement.

7.5.5 Such other assignments, documents, and instruments as counsel for Sellers may reasonably require to evidence the obligations and assumption of obligations required of Buyer by the terms hereof.

#### ARTICLE IX - MISCELLANEOUS

8.1 Miscellaneous Expenses. Buyer shall pay its costs and expenses arising from its duties and responsibilities under this Agreement, including by way of example and not limitation, attorneys' fees, preparation of exhibits, preparation of FCC filings, fulfillment of representation and warranties, and other expenses. Sellers shall pay their costs and expenses arising from its duties and responsibilities under this Agreement, including, by way of example and not limitation, attorneys' fees, preparation of exhibits, preparation of FCC filings, fulfillment of representations and warranties, and other expenses.

8.2 FCC Charges. Any fees imposed by the FCC on the transfer or assignment of the FCC licenses or Authorizations constituting part of the Stations' assets shall be paid equally, one half by Sellers and one half by Buyer. Any annual fees imposed by the FCC shall be paid by Sellers and prorated between

the Sellers and the Buyer at Closing.

8.3 Sellers' Right to Terminate. In the event of a material breach by Buyer prior to the Closing Date of any term or condition of this Agreement or any representation or warranty contained herein, and the continuance of said breach without cure for a period of 30 calendar days following written notice by Sellers to Buyer, then Sellers may in their respective discretion terminate this Agreement without cost, penalty or liability of any kind upon written notice to Buyer, and, if so, Buyer shall be entitled to receive Buyer's deposit plus accrued interest from the escrow account. The rights conferred by the above sentence may not be exercised unless either Seller has given Buyer thirty (30) days written notice of the specific nature of the breach and Buyer has failed to cure said breach within 30 days after said written notice, or unless the breach is not capable of correction prior to Closing.

8.4 Buyer's Right to Terminate. In the event of a material breach by either Seller prior to the Closing Date of any term or condition of this Agreement or any representation or warranty contained herein, and the continuance of said breach without cure for a period of 30 calendar days following written notice by Buyer to Sellers, the Buyer may in its discretion terminate this Agreement without cost, penalty or liability of any kind upon written notice to each Seller, and shall be entitled to the return of its deposit plus accrued interest from the escrow

account. Buyer shall also be entitled to specific performance of this Agreement in addition to any other remedy available under law. The rights conferred by the above sentences may not be exercised unless Buyer has given the respective Seller thirty (30) days written notice of the specific nature of the breach and the respective Seller has failed to proceed diligently to cure said breach within 30 days after said written notice, or unless said breach is not capable of correction prior to Closing.

8.5 Minor Breaches. The rights conferred by Paragraphs 8.3 and 8.4 are not exclusive and failure to terminate the contract or to sue for specific performance shall not be deemed a waiver of any right to recover damages for a minor breach by either party.

8.6 Notices. All notices and communications hereunder or with respect hereto shall be deemed to have been duly give (a) upon delivery to the party receiving notice, if personally delivered, or (b) three days after being deposited in the United States mail, postage prepaid, registered or certified mail addressed as follows:

If to Sellers, to:

John Detz  
Visionary Related Entertainment, Inc.  
c/o KAOI Radio Group  
1900 Main Street  
Wailuku, HI 96793  
(808) 244-9145  
(808) 244-8247 (fax)  
kaoi@maui.net

cc:

Peter A. Casciato  
A Professional Corporation  
8 California Street, Suite 701  
San Francisco, CA 94111  
(415) 291-8661  
(415) 291-8165  
pacasciato@covad.net

If to Buyer, to:

Provided, however, that if either party shall have designated a different address by notice to the other, then to the last address so designated.

8.8 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

8.9 Brokers/Finder. Sellers and Buyer warrant and represent, one to the other, that Buyer has no obligation to any broker, entity, or other person who may have a right to a commission or fee in connection with this transaction, or who has any basis on which to make a claim to a commission or fee. Buyer shall have no obligation to pay any other commissions or fees. Each party indemnifies the other, including attorney's fees and costs, against any claim made for any other such commissions or fees claimed to be due in connection herewith.

8.10 Entire Agreement. This Agreement (including the attached Exhibits) shall constitute the full and entire

understanding of the parties with respect to the subject matter hereof, and any prior agreement, understanding or representation concerning the same is hereby terminated and canceled in its entirety and is of no further force and effect. Furthermore, each of the parties acknowledge that none of the parties, and no other person, has made any promises or representations whatsoever, expressed, implied or statutory, which are not contained herein concerning the subject matter hereof to induce the parties, or either of them, to execute this Agreement, and the parties acknowledge that they have not executed this Agreement in reliance on any promises, representation or warranty not contained herein. This Agreement may be amended only by an agreement in writing.

8.11 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective insurers, agents, administrators, employees, representatives, partners, officers, directors, shareholders, affiliates, joint venturers, attorneys, assigns, heirs and successors in interest.

8.12 Warranty of Signatory. Each of the persons signing this Agreement on behalf of an entity warrants and represents that he has the right, power, legal capacity and authority to execute this Agreement on behalf of such entity, without the concurrence or approval of any other person, any entity or any Court, and to thereby bind such entity to this Agreement.



8.13 Transfer Tax And Bulk Sales Tax. Seller shall pay all transfer taxes and shall hold Buyer harmless from bulk sales taxes imposed by any government agency on the transfer of assets contemplated by this Agreement. **John, how do you want to handle this?**

8.14 Headings. The headings in this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

8.15 Possession. Possession of the Assets to be sold to Buyer hereunder shall be given by Sellers to Buyer at the Closing Date.

8.16 Survival. The representation and warranties set forth in this Agreement and in the other instruments delivered hereunder shall survive the consummation and Closing Date hereof.

8.17 Amendment and Waiver. Any amendment to this Agreement, waiver of compliance with any provision or condition hereof or delivery of any consent contemplated herein shall be effective only if evidenced by an instrument in writing signed by the party giving such amendment, waiver or consent. The delay or waiver by either party hereto of any matter provided for herein shall not be deemed to be a waiver of any other such matter.

8.18 Counterparts. More than one counterpart of this Agreement may be executed by the parties hereto, and each fully executed counterpart shall be deemed an original.

8.19 Governing Law. This Agreement shall be construed in

accordance with and be governed by the laws of the State of California.

8.20 Attorneys' Fees. In the event of commencement of suit by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive attorneys' fees and costs as a court may adjudge reasonable in addition to any other relief granted.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year written opposite their names.

SELLER: Visionary Related Entertainment, Inc.

December , 2003 By \_\_\_\_\_

VISIONARY RELATED ENTERTAINMENT, II. INC.

December , 2003 By \_\_\_\_\_

BUYER: Visionary Related Entertainment, LLC

December \_\_\_\_, 2003 By \_\_\_\_\_