

## **ASSET PURCHASE AGREEMENT**

This **Agreement**, dated as of February \_\_, 2001, by and among **Del Rosario Talpa, Inc.**, Inc., a California corporation ("Seller"), and **Golden Pegasus Financial Services, Inc.**, a California corporation ("Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller is the owner of radio station KSKD-FM, Chowchilla, California (FCC Facility No. 18858) (the "Station"), pursuant to certain authorizations issued by the Federal Communications Commission (the "Commission" or "FCC") and owns or leases certain assets used or useful in connection with the operation of the Station; and

**WHEREAS**, Seller desires to sell, assign and transfer the Station, all FCC authorizations for the Station and substantially all the assets and business of the Station, and Buyer desires to acquire the Station, the FCC authorizations for the Station, and the assets and business of the Station, all on the terms and subject to the conditions hereinafter set forth; and

**WHEREAS**, concurrently with the execution and delivery of this Agreement, Buyer and Seller have entered into a Time Brokerage Agreement dated as of the date hereof (the "TBA").

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, representations and warranties herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereto hereby agree as follows:

### **ARTICLE 1**

#### **Purchase and Sale of Business and Assets**

1.1 **Purchased Assets.** Subject to and upon the terms and conditions of this Agreement, Seller shall sell, transfer, convey, assign, grant and deliver to Buyer, and Buyer shall purchase, at the Closing (as hereinafter defined) all right, title and interest in and to all business, properties, assets, machinery, equipment, furniture, fixtures, franchises, and goodwill and rights of the Seller as a going concern, of every nature, kind and description, tangible and intangible, owned or leased, wheresoever located and whether or not carried or reflected on the books or records of Seller, and used or held for use in connection with the operation of, or pertaining to, the Station except the "Excluded Assets," as hereinafter defined, and including, without further limitation, all properties, assets and rights described hereto. All of the foregoing are herein collectively referred to as the "Purchased Assets" and except as noted above, without limitation shall include all of the following:

(a) **Commission Authorizations.** All right, title and interest of Seller in and to all licenses, permits, and other authorizations issued or granted by the FCC for the operation of, or used or useful in connection with, the operation of, the Station, and any and all auxiliary and/or supportive transmit and/or receive facilities, boosters, and repeaters associated with the Station (hereinafter the "Commission Authorizations"), including, without limitation, all of those listed in Schedule 1.1(a), together with any applications therefor, renewals, extensions or modifications thereof and additions thereto.

(b) Other Authorizations. All right, title and interest of Seller in and to all licenses, permits, variances, franchises, certifications, approvals, construction permits and authorizations issued or granted by any administrative body or licensing authority or governmental or regulatory agency, other than Commission Authorizations, used or useful in connection with the operation of the Station and/or the ownership and/or use of the Purchased Assets (hereinafter the "Other Authorizations" and, collectively with the Commission Authorizations, the "Authorizations"), including, without limitation, all of those listed in Schedule 1.1(b), together with any applications therefor, renewals, extensions or modifications thereof and additions thereto.

(c) Tangible Personal Property. All right, title, and interest of Seller in and to the fixed and tangible personal property used directly, or held for use, by the Station, including, but not limited to, physical assets and equipment, leasehold improvements, machinery, vehicles, furniture, fixtures, transmitting towers, transmitters, antennae, office materials and supplies, spare parts and music libraries, including, without limitation, those listed in Schedule 1.1(c), together with all replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property").

(d) Real Property. All right, title and interest of Seller in all leaseholds and other interests in real property and the buildings and improvements thereon and appurtenances thereto, including, without limitation, easements, and variances with respect to any of the foregoing, used, or held for use, by the Station and/or Seller in connection with the business or operation of the Station, including the leases attached hereto in Schedule 1.1(d) (the foregoing, as well as all land, buildings, structures and improvements and appurtenances thereto used or leased by Seller being hereinafter collectively called the "Real Properties").

(e) Advertising Contracts. All right, title and interest of Seller in and to all orders and agreements for the sale of advertising time on any of the Station for cash and all trade, barter and similar agreements for the sale of advertising time and for the production of any programming on the Station other than for cash, and all such orders and agreements for advertising time entered into between the date hereof and the Closing Date, each in the ordinary course of business, and to the extent the foregoing have not been performed as of the Closing Date, in each case to which Seller or the Station is a party and to be assumed by Buyer pursuant to this Agreement (hereinafter collectively "Advertising Contracts").

(f) Agreements. All right, title and interest of Seller in and to the contracts, agreements, and leases listed in Schedule 1.1(f) (the "Assumed Contracts").

(g) Intangibles. All rights and interest of Seller in and to the call letters "KSKD-FM" together with all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, applications for any of the foregoing, telephone numbers and listings, trade secrets, confidential or proprietary information and other intangible property, and all goodwill associated with any of the above (hereinafter collectively the "Intangibles").

(h) Deposits and Prepaid Items. All right, title and interest in and to all deposits and prepaid items relating to any of the Purchased Assets and/or leased Real Properties or the operation or business of the Station (other than unearned insurance premiums).

(i) Computer Programs. All computer systems hardware (including without limitation, management information and order systems, servers, computers, printers, scanners, monitors, peripheral and accessory devices and the related media, manuals, documentation and user guides) of or used by or for the Business, all related claims, credits, and rights of recovery and set-off with respect thereto, and to

the extent they are being transferred to Buyer, all rights, title and interest (including by reason of license or lease) of Seller or the Business in or to software, computer programs or software products owned, used, developed or being developed by or for the Business, whether for internal use or for sale or license to others, and software, computer programs or software products licensed by Seller for use by the Business, and all proprietary rights of Seller or the Business, whether or not patented or copyrighted, associated therewith (collectively, "Programs").

(j) Documentation. All documentation, records and software, whether in electronic or print form, in the possession or under the control of Seller evidencing, representing or containing or relating to any Program or used in or necessary to the Business that is being transferred to Seller, including, without limitation, any manuals, functional and design specifications, user and programmer instructions, coding, testing notes, error reports and logs, patches and patch instructions, itemizations of development tools, and all other writings which would be necessary or helpful to a skilled programmer to understand, maintain and enhance any Program (collectively, "Documentation").

(k) FCC Logs. All FCC logs and similar records that relate to the operation of the Station ("FCC Logs").

(l) Records. All contents of the public inspection files required by the FCC, and all engineering reports, historical reports relating to advertisers, programming studies, consulting reports, marketing data, technical information, specifications, research and development information, engineering drawings, manuals, computer programs, tapes and software, business records, mailing and listener lists, lists of vendors or other suppliers and any other information in tangible form, used, or held for use, or useful, by or for the Station and/or Seller in connection with the business or operation of Station or relating to any of the Purchased Assets (hereinafter collectively "Station Records").

(m) Goodwill. All goodwill in and going concern value of the Station.

1.2 Excluded Assets. The Purchased Assets shall not include the following (the "Excluded Assets"):

(a) All cash, cash equivalents or similar type investments of Seller, such as certificates of deposit, Treasury bills and other marketable securities on hand and/or in banks, and unearned insurance premiums.

(b) All supplies and similar items of tangible personal property consumed in the ordinary course of business between the date of this Agreement and the Closing Date and in conformity with the terms and provisions of this Agreement.

(c) Seller's corporate seal, minute books, organizational documents, and such books and records as pertain solely to the corporate organization and capitalization of Seller; Seller's legal files; and Seller's financial files, tax returns and associated files, financial statements, personnel records, general ledger and related subsidiary ledgers ("Financial Records" and, together with the Station Records, the "Business Records").

(d) Any assets of any compensation or benefit plan, contract or arrangement in effect as of the Closing Date including, without limitation, all pension, retirement, welfare, profit sharing, stock option or stock purchase, savings and thrift, bonus, incentive or deferred compensation, severance pay, vacation, sick pay, personal day and medical, vision, dental, accident, disability, life and other health

and hospitalization insurance plans in which any current or former employee (or dependent of any such employee) of Seller or any Station participates or is entitled to benefits (the "Employee Benefit Plans").

1.3 Title to Purchased Assets. Seller shall transfer title to all of the Purchased Assets to Buyer free and clear of any liens, pledges, charges, mortgages, security interests, restrictions, easements, liabilities, claims, title defects, encumbrances or rights of others of every kind and description (collectively, "Liens"), except for those Liens listed in Schedule 1.3, said Liens so listed being herein called the "Permitted Liens."

1.4 The Business. The business, operations, obligations and activities of Seller pertaining or relating to the Station and the use of the Purchased Assets and the Real Properties in connection therewith are herein collectively referred to as the "Business."

1.5 Assignments of Contracts. Buyer and Seller acknowledge that certain of the Contracts to be included in the Purchased Assets, and the rights and benefits thereunder necessary or appropriate or relating to the conduct of the business and activities of Seller and/or the Station, may not, by their terms, be assignable. Anything in this Agreement or in the Obligations Undertaking (as hereinafter defined) to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any such Contract and Buyer shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights under any such Contract of Buyer or Seller thereunder. In such event, Seller will cooperate with Buyer in all lawful ways to provide for Buyer all benefits to which Seller is entitled under such Contracts so long as Buyer undertakes to perform or cause to be performed the obligations of Seller under such Contracts, and any transfer or assignment to Buyer by Seller of any such Contract or any right or benefit arising thereunder or resulting therefrom which shall require the consent or approval of any third party shall be made subject to such consent or approval being obtained. Seller will use its best efforts prior to, and if requested by Buyer after, the Closing Date to obtain all necessary consents to the transfer and assignment of the Contracts. Buyer will cooperate with Seller, to the extent reasonably requested by Seller, to obtain any such consents provided that Buyer shall have no obligation to expend significant expense or grant any financial accommodation to obtain any such consent.

1.6 Satisfaction of Liens and Certain Leases.

(a) At the Closing, Seller shall cause all Liens on or relating to any of the Purchased Assets (other than Permitted Liens), to be released, extinguished and discharged in full, and shall deliver to Buyer instruments releasing, extinguishing and discharging all such Liens, and all rights and claims of any holder(s) of any of such Liens with respect to any of the Purchased Assets, all in such form and substance as Buyer shall reasonably require (collectively the "Lien Release Instruments").

(b) At or prior to the Closing, Seller shall cause those equipment leases identified in Schedule 1.6 to be paid and satisfied in full so that Buyer shall acquire at the Closing good and marketable title to the assets and properties covered thereby.

**ARTICLE 2**  
**Purchase Price; Payment;**  
**Escrow Deposit; Assumption of Obligations**

2.1 Purchase Price. Subject to and upon the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants and agreements of Seller contained herein, and in full

payment and consideration for the sale, conveyance, assignment, transfer and delivery of the Purchased Assets by Seller, upon Closing Buyer will pay a total amount of (i) Four Hundred and Fifty Thousand Dollars, plus (ii) the principal balance owed at Closing on that certain secured promissory note (the "Senior Note") between Seller and Educations Media Foundation ("EMF") attached hereto in Schedule 2.1 (but not including any payment of penalties, administrative charges, or fees due under the Note due to any previous late payments). The Purchase Price shall be paid as follows:

(a) Concurrent with the execution of the TBA and the APA, Buyer shall deliver to the Client Trust Account of MCH Enterprises, Inc., via wire funds or cashier's check, the sum of One Hundred Five Thousand One Hundred Dollars (\$105,100.00) (the "Advance Payment"). The Advance Payment shall be credited to Buyer's account and shall be applied to the Purchase Price at consummation of the Assignment Application. The Advance Payment shall be deposited to a federally-insured, interest-bearing account to the mutual benefit of the parties, and subject to the terms contained herein. The Advance Payment shall be secured by a lien on the Assets subordinate to any liens of EMH, and the proceeds from any future sale of the Station Assets to any third party. Simultaneously with the execution of the Agreement, Seller will enter into a Security Agreement in the form attached hereto as Exhibit 2.1. The parties agree that MCH Enterprises, Inc., shall disburse such funds from the Advance Payment as follows:

(i) An amount equal to the monthly payments in arrears, plus any penalties and/or default interest owed by Seller to EMF pursuant to the Senior Note, inclusive of the monthly payment due for the month of February 2001. Monthly payments due EMF are Five Thousand Sixty Seven Dollars and Three Cents plus any late charges and/or default interest;

(ii) Twenty-Five Thousand Dollars to MCH Enterprises, Inc., as partial payment by Seller of Seller's broker's commission, with the balance due upon the consummation of the assignment application, it being clear that all Broker's commissions due hereunder are the responsibility of Seller;

(iii) Ten Thousand One Hundred Twenty-Eight Dollars to Fletcher, Heald & Hildreth, PLC, for payment of legal fees; and

(iv) The remaining balance shall be delivered to Seller.

**2.2 Allocation.** Seller and Buyer agree to allocate the Purchase Price among the Purchased Assets in accordance with the allocation schedule attached hereto as Schedule 2.2, which allocation schedule will be determined after the date hereof (the "Allocation Schedule").

### **2.3 Certain Closing Prorations and Adjustments.**

(a) Except as contemplated by the TBA, all utilities charges, real estate and personal property taxes, monthly rental payments under leases of Real Properties to be assumed by Buyer pursuant to this Agreement, monthly equipment rental payments under Personal Property Leases (as hereinafter defined) assumed by Buyer pursuant to this Agreement, amounts payable in respect of contracts and agreements assumed by Buyer pursuant to this Agreement, association dues, business, license and annual FCC fees and similar deposits and prepaid items (to the extent included in the Purchased Assets) and similar accrued expenses, and those items, if any, specified in Schedule 2.3(a) ,

shall be prorated between Seller and Buyer as of Midnight on the day immediately preceding the Closing Date to the extent such items are then ascertainable by the parties, and the net amount resulting from the foregoing in favor of Buyer or Seller, as the case may be, shall then be paid to such party at the Closing or credited against the Purchase Price in the event Seller is to pay Buyer any such amount. If all the apportionments set forth above are not accomplished at the Closing, then, as soon as practicable thereafter, representatives of Seller and Buyer shall examine all appropriate books and records in order to make the determination of said apportionments. Payments in respect thereof shall be made within ten (10) days after each such determination, provided that if payments with respect to real or personal property taxes are based in whole or in part on the previous year's taxes, there shall be a later adjustment to reflect the current year's taxes when the bills are finally rendered.

(b) All amounts paid to Seller prior to the Closing under all contracts, orders or commitments of the Station for the sale of air time or for the production of programming to be performed or aired on or after the TBA Commencement Date shall be turned over to Buyer by Seller or, at Buyer's option, credited against the Purchase Price, at the Closing.

(c) An adjustment to the Purchase Price for the value of trade time and goods and services shall be made as of the TBA Commencement Date as follows: on all agreements or arrangements pursuant to which advertising is exchanged for goods and services ("Barter Agreements") for which an obligation to broadcast advertising time remains as of the TBA Commencement Date, Buyer shall be entitled to an adjustment in its favor equal to the value of the advertising time which remains to be broadcast as of the TBA Commencement Date to the extent that such value exceeds the value of goods yet to be received and services yet to be used. The amount to be attributed to the value of remaining broadcast advertising time and goods and services hereunder shall be the amount specified in the Barter Agreement in question, as established at the time the Barter Agreement was entered into. Promptly after the date hereof, Seller shall deliver a reconciliation of the Barter Agreements as of the TBA Commencement Date for review and approval by Buyer.

(d) During the term of the TBA, Buyer shall make on a timely basis the monthly payments due on the Senior Note on behalf of Seller (the "Monthly Payment"). At Closing, Seller shall receive a credit toward the Purchase Price equal to that portion of the Monthly Payment attributable to the interest paid by Buyer on the Senior Note during the 90 day period beginning on the TBA Commencement Date.

(e) In the event of any dispute between the parties as to prorations or adjustments under this Section 2.3, the amounts not in dispute shall nonetheless be paid and adjusted for at the Closing and such disputes shall be promptly presented for resolution to an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties and a judgment may be entered thereon, provided, however, that any such accountant shall have no authority to assess damages or award attorney's fees or costs. The fees and expenses of such accountant shall be paid one-half (1/2) by Seller and one-half (1/2) by Buyer.

**2.4 Assumed Obligations.** Buyer shall, at the Closing, execute and deliver to Seller an Obligations Undertaking (the "Obligations Undertaking"), substantially in the form of Exhibit 2.4 hereto pursuant to which Buyer shall assume and agree to perform the obligations of Seller set forth in the Obligations Undertaking in each case, to the extent that the same shall be documented to a commercially reasonable extent and also shall not have been performed prior to the Closing (hereinafter collectively referred to as the "Assumed Obligations"). Except as expressly provided in the Obligations Undertaking, Buyer shall not and does not assume any liability or obligation of Seller, fixed or contingent, disclosed or undisclosed, and assumes no liability for any claim, debt, default, duties,

obligations or liabilities of Seller of any kind or nature, whether known or unknown, contingent or fixed, including without limitation any obligations described in the Obligations Undertaking as "Excluded Liabilities" (collectively the "Excluded Liabilities"), all of which, to the extent that they exist from and after the Closing shall be retained and discharged by Seller. Except as expressly provided by the Obligations Undertaking, Buyer shall not be required to defend any suit or claim arising out of any act, event or transaction occurring prior to the Closing in connection with the ownership or operations of or otherwise relating to the Business or Seller.

### ARTICLE 3

#### **Application to and Consent by Commission**

3.1 Commission Consent. Consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer to close under this Agreement are subject to the condition that the Commission shall have issued its written approval, without any condition which Buyer reasonably determines to be materially adverse to Buyer, of the assignment (the "Assignment") of the Commission Authorizations to Buyer in accordance with the terms of this Agreement (the "Initial Order"), and, if Buyer shall so require, such approval shall have become a Final Order (as hereinafter defined). In the event Seller requests that the parties consummate the purchase and sale provided for herein upon Initial Order, Buyer will, in good faith, consider such request. In the event any such Commission approval fails, or is expected not, to cover any particular Commission Authorization, Buyer may, at its option, elect to waive such failure by written notice to Seller, and in such event such approval shall nevertheless be deemed an Initial Order for purposes of this Agreement. For purposes of this Agreement, the term "Final Order" shall mean a final order of the Commission which is not reversed, stayed, enjoined or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition or notice of appeal or for review by the Commission, and for any reconsideration, stay or setting aside by the Commission on its own motion or initiative, has expired.

3.2 Application For Commission Consent. Seller and Buyer agree to proceed expeditiously and with due diligence and to use their reasonable efforts and to cooperate with each other in seeking and applying (the "Assignment Application") for the Initial Order and the Final Order. Within ten (10) days after the date of this Agreement, each party shall prepare its portion of and the parties shall jointly file with the Commission the Assignment Application and all exhibits, and other materials necessary and proper in connection with such Assignment Application. Each party further agrees to expeditiously prepare any Assignment Application amendments whenever such amendments are required by the Commission or its rules. For purposes of this Agreement, each party shall be deemed to be using its reasonable efforts with respect to obtaining the Initial Order and the Final Order, and to be otherwise complying with the foregoing provisions of this Section 3.2, so long as it expeditiously and truthfully provides information necessary in completing the application process, expeditiously provides its comments on any filing materials, and uses its reasonable efforts to oppose attempts by third parties to deny, modify or overturn the grant of the Initial Order or the Final Order, as the case may be; it being further understood that neither Seller nor Buyer, as the case may be, shall be required to expend any funds or efforts contemplated under this Article 3 unless the other of them is concurrently and likewise complying with its obligations under this Article 3. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. All filing fees and grant fees imposed shall be paid one-half (½) by Seller and one-half (½) by Buyer. Buyer and Seller, each at their own respective expense, shall use their respective reasonable efforts to oppose any efforts, before or after the grant or

proposed grant of the Initial Order, for reconsideration or judicial review of the grant by the Commission of the Initial Order. Seller shall, at its expense, give due notice of the filing of the Assignment Application by such means as may be required by the rules and regulations of the Commission.

3.3 Absence of Commission Consent. This Agreement, prior to the Closing, may be terminated by Seller, on the one hand, or Buyer on the other hand, upon written notice to the other(s), if (a) an Initial Order has not come into existence and effect within one year after the date of release by the FCC of public notice that the Assignment Application has been accepted for filing (the "Notice Date"), provided, however, that neither Seller nor Buyer, as the case may be, may terminate this Agreement if Seller or Buyer, as the case may be, is in default or breach under this Agreement, or if a delay in any decision or determination by the Commission respecting the Assignment Application has been caused or materially contributed to: (i) by any failure of Seller or Buyer, as the case may be, to furnish, file or make available to the Commission information within its control; (ii) by the willful furnishing by Seller or Buyer, as the case may be, of incorrect, inaccurate or incomplete information to the Commission; or (iii) by any other action taken by Seller or Buyer, as the case may be, for the purpose of delaying the Commission's decision or determination respecting the Assignment Application.

3.4 Designation For Hearing. In the event the Commission shall, prior to the Closing, designate for hearing any aspect of the Assignment Application, Seller, on the one hand, or Buyer, on the other hand, shall be entitled, upon notice to the other(s), which notice must be given within twenty (20) days after the terminating party's receipt of notice of such designation for hearing, to terminate this Agreement; provided, however, that neither Seller nor Buyer, as the case may be, shall be entitled to terminate this Agreement if Seller or Buyer, as the case may be, is in default or breach of this Agreement.

3.5 Effect of Termination. No termination under this Article 3 shall affect any rights or obligations under this Agreement arising by reason of any breach or default by any party under this Agreement prior to such termination or any remedy to which any party hereto may be entitled by reason of such breach or termination, each of which shall survive such termination.

## ARTICLE 4

### **Closing; Deliveries; Conditions Precedent**

#### 4.1 Closing.

(a) The Closing under this Agreement (the "Closing") shall take place by fax and mail 30 days after the FCC has issued an Final Order granting consent to this transaction, provided, however, that Buyer may elect to proceed to Closing after an Initial Order by giving Seller a ten (10) day prior written notice. The date of the Closing is herein called the "Closing Date".

(b) All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

#### 4.2 Seller's Deliveries. At the Closing, Seller shall deliver to Buyer:

(a) the Bill of Sale, executed by Seller;



(b) with respect to each real property lease listed in Schedule 1.1(d) hereto (each a "Lease"), the following: (i) the written consent and estoppel agreement of the landlord thereunder, in form and substance reasonably required by Buyer or Buyer's lending institutions, with respect to each Lease, and consenting to an assignment of the lease.

(c) copies of corporate and stockholder resolutions of Seller authorizing by approval of the board of directors and requisite stockholders of Seller, the execution and delivery of this Agreement, the TBA and each exhibit hereto and the consummation of the transactions contemplated hereby and thereby, certified by the President of Seller;

(d) a certificate of good standing with respect to Seller, issued as of a recent date by the Secretary of State of the State of California;

(e) separate instruments of assignment and transfer of all the Commission Authorizations and the Intangibles, executed by Seller, in form reasonably required by Buyer and such other good and sufficient instruments of conveyance, assignment and transfer, as Buyer shall require, each in form and substance reasonably required by Buyer, and presented in advance of Closing for comment by Seller, and as shall be effective to vest in Buyer title to the Purchased Assets as contemplated by this Agreement; and

(f) all other documents required by the terms of this Agreement to be delivered to Buyer at the Closing.

**4.3 Buyer's Deliveries.** At the Closing, Buyer will deliver:

(a) the Purchase Price, as the same may be adjusted in accordance with the terms of this Agreement;

(b) the Obligations Undertaking, duly executed by Buyer;

(c) copies of all necessary corporate resolutions of Buyer authorizing the execution and delivery of this Agreement, the TBA and each exhibit hereto and the consummation of the transactions contemplated hereby and thereby, certified by an officer of Buyer;

(d) a cancellation of the Security Agreement for the Advance Payment;

(e) evidence of payment in full of the principal balance owed under the Senior Note; and

(f) all other documents required by the terms of this Agreement to be delivered to Seller at the Closing.

**4.4 Further Assurances.** At any time and from time to time after the Closing, at Buyer's request, and without further consideration, Seller will execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and take such actions, as Buyer may reasonably deem necessary in order more effectively to transfer, convey and assign to Buyer, and to confirm Buyer's title to, all of the Purchased Assets, to put Buyer in actual possession and operating control thereof.

**4.5 Buyer's Conditions Precedent.** The obligations of Buyer under this Agreement to proceed with the transactions contemplated hereby are, at the option of the Buyer, subject to the fulfillment of the following conditions at or prior to the Closing:

(a) no action, suit or proceeding shall have been instituted against Seller or against Buyer by, in or before any court, tribunal or governmental body or agency, and be unresolved, and no order shall have been issued, to restrain, prevent, enjoin or prohibit, or to obtain substantial damages by reason of, any of the transactions contemplated hereby (in each case other than any caused by any breach hereof by Buyer);

(b) the representations and warranties of Seller contained in this Agreement, any of the Schedules and Exhibits hereto and/or any certificates or documents delivered in connection with this Agreement shall be true and correct in all material respects when made, and, except for changes expressly permitted by this Agreement, shall also be true and correct in all material respects at the time of Closing with the same force and effect as though such representations and warranties were made at that time;

(c) each covenant, agreement and obligation required by the terms of this Agreement to be complied with and performed by Seller at or prior to the Closing shall have been duly and properly complied with and performed;

(d) the Initial Order shall have been granted by the Commission, and, unless Buyer shall have determined to effect the Closing upon the effectiveness of the Initial Order, the Final Order shall have been granted by the Commission, and Buyer shall be entitled to be the holder of the Commission Authorizations;

(e) all consents necessary to the assignment to Buyer of those Assumed Contracts listed in Schedule 1.1(f) shall have been obtained, and there shall have been delivered to Buyer executed counterparts reasonably satisfactory in form and substance to Buyer of such consents (the "Closing Consents");

(f) there shall be delivered to and for the benefit of Buyer and Buyer's lenders a certificate of Seller executed on the Closing Date that the conditions set forth in subsections (b) through (e) of this Section 4.5 have been fulfilled; and

4.6 Seller's Conditions Precedent. The obligations of Seller under this Agreement to proceed with the transactions contemplated hereby are, at the option of Seller, subject to the fulfillment of each of the following conditions at or prior to the Closing:

(a) the representations and warranties of Buyer contained in this Agreement or any exhibits hereto or any certificates or documents delivered by it to Seller in connection with this Agreement shall be true and correct in all material respects when made, and shall also be true and correct in all material respects at the time of the Closing with the same force and effect as though such representations and warranties were made at that time, except for changes expressly permitted by this Agreement;

(b) each covenant, agreement and obligation required by the terms of this Agreement to be complied with and performed by Buyer at or prior to the Closing shall have been duly and properly complied with and performed;

(c) the Initial Order shall have been granted by the Commission and Buyer shall be entitled to be the holder of the Commission Authorizations;

(d) there shall be delivered to Seller a certificate of Buyer executed on the Closing Date that the conditions set forth in subsections (a) and (b) of this Section 4.6 have been fulfilled.

## ARTICLE 5

### Representations and Warranties of Seller

Each representation and warranty set forth below is qualified by any exception or disclosures set forth in the Disclosure Schedule attached hereto, which exceptions specifically reference the Section(s) to be qualified. In all other respects, each representation and warranty set out in this Section 5 is not qualified in any way whatsoever, will not terminate on Closing or by reason of the execution and delivery of any agreement, document or instrument at the Closing, will remain in force on and after the Closing Date, and is made with the intention of inducing Buyer to enter into this Agreement. Seller hereby makes each of the following representations and warranties to Buyer:

#### 5.1 Organization, Standing and Qualification; Sufficiency of Assets.

(a) Seller is a corporation validly existing and in good standing under the laws of the State of California, and is not required to be qualified to do business in any other jurisdiction in connection with the operation of the Station or the Business; and has all requisite power and authority and is entitled to own, lease and operate its properties and to carry on its business as and in the places such properties are now owned, leased or operated and where such business is presently conducted;

(b) the Purchased Assets are sufficient to conduct the Business of the Station and there is no asset used in the Business that is material to the operation of the Business that is not included in the Purchased Assets and being transferred as part of the transactions contemplated hereunder.

#### 5.2 Authority of Seller.

(a) Seller has all corporate requisite power and corporate authority to execute, deliver and perform this Agreement, the TBA and each other agreement, document and instrument to be executed, delivered or performed by Seller in connection with this Agreement (collectively with the TBA, the "Seller Documents") and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when executed and delivered at the Closing, each other Seller Document will constitute, the legal, valid and binding obligation of such of Seller or Shareholder as is party thereto. All corporate and shareholder proceedings and corporate and shareholder action required to be taken by Seller relating to the execution, delivery and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly taken.

(b) The names of each record and beneficial owner of the presently issued and outstanding shares of capital stock of Seller are as set forth in Schedule 5.2(b).

5.3 No Violation. Except for the filing of the Assignment Application and the granting of the Initial Order and the Final Order:

(a) The execution, delivery and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or violate any provision of the Certificate of Incorporation or By-Laws of Seller, (ii) with or without the giving of notice or the passage of time, or both, result in a breach of, or violate, or be in conflict with, or constitute a default under, or permit the termination of, or cause or permit acceleration under, any

agreement or instrument or any debt or obligation to which Seller or the Station is a party or to or by which any of them or the Station or any of the Purchased Assets is subject or bound, or result in the loss or adverse modification of any of the Authorizations or Intangibles, (iii) result in the creation or imposition of any Lien upon any of the Purchased Assets, or (iv) violate any law, rule or regulation or any order, judgment, decree or award of any court, governmental authority or arbitrator to or by which Seller or the Station or any of the Purchased Assets is subject or bound.

5.4 No consent, approval or authorization of, or declaration, filing or registration with, or notice to, any governmental or regulatory authority, or any party to any agreement or commitment to which Seller or the Station is a party, or to or by which any of them or the Purchased Assets is subject or bound, is required to be obtained or made by Seller or the Station in connection with the execution, delivery and performance of this Agreement or the Seller Documents or the consummation of the transactions contemplated hereby and thereby, except as listed on Schedule 5.4 (each so listed being a "Required Consent.").

#### 5.5 Title to and Condition of Purchased Assets.

(a) Seller has, and upon Closing Buyer will acquire, good and marketable title to all of the Purchased Assets, free and clear of all liens and encumbrances.

(b) The Purchased Assets and the Real Properties are in good operating condition and repair, are suitable for the purposes used, and are adequate and sufficient for the operations of Seller and the Station, and conform to all applicable rules and regulations of the FCC and the Act and all other applicable laws, rules and regulations. Except for the Commission Authorizations and the Required Consents, no license or consent from, or payment to, any person or entity is or will be necessary for Buyer to operate the Station or to use the Purchased Assets in the manner in which Seller has operated and used the same.

#### 5.6 Real Property.

(a) Schedule 1.1(d) contains descriptions of all real property leased by Seller used or held for use in connection with the business and operations of the Station and leases or licenses or other rights to possession of any real property so used or held which identifies the particular property used for each Station's respective studio and transmitter site.

(b) Seller's interests in Real Property are as follows: Seller leases, as a tenant, the premises described on Schedule 1.1(d), which specifies the name of the lessor, the lessee, the lease term, the square footage of the premises leased, basic annual rental and other amounts paid or payable with respect thereto and any purchase or renewal options exercised or exercisable by Seller. The leases listed in Schedule 1.1(d) hereto constitute all the Real Property leases to which Seller is a party (either as lessor or lessee) and which are required or useful in the conduct of the business of the Station. Seller has delivered to Buyer true and complete copies of such leases.

(c) With respect to the leases of Real Property listed in Schedule 1.1(d) hereto, Seller has good title to its interest in such Real Property, free and clear of all Liens (other than Permitted Encumbrances). With respect to each such lease, (i) each such lease, is in full force and effect, and is valid, binding and enforceable in accordance with its terms; (ii) Seller is the named tenant or is a duly authorized assignee of all such leases, (iii) all accrued and currently payable rents and other payments required thereunder have been paid; (iv) each such lease was entered into in the ordinary course of business and provides for peaceable possession since the beginning of the original term thereof; (v) each party thereto has

complied with all respective covenants and provisions of thereof; (vi) no party is in default in any respect thereunder; (vii) no party has asserted any defense, set off or counterclaim thereunder; (viii) no waiver, indulgence, or postponement of any obligations thereunder has been granted by any party; (ix) no notice of default or termination has been given or received, no event of default has occurred, and no condition exists and no event has occurred that, with the giving of notice, the lapse of time, or the happening of any further event would become a default or permit early termination thereunder; (x) neither Seller nor any other party has violated any term or condition thereunder; and (xi) the validity or enforceability thereof will in no way be affected by the sale of the Station Assets as contemplated herein. Each such lease provides sufficient access to the Station's facilities without need to obtain any other access rights.

(d) The real property leases, as well as the present uses thereof, conform in all respects with all material restrictive covenants and with all applicable zoning, environmental, and building codes, laws, rules and regulations. There are no pending or, to the best of Seller's knowledge, threatened condemnation or eminent domain proceedings that may have a material adverse effect on Buyer's use of the real property for the operation of the Station after Closing. To the best of Seller's knowledge, there are no structural defects in the towers, buildings, structures and other improvements located on the real property. All utilities that are necessary for the present operation of the Station have been connected to the Real Property and are in working order. To the best of Seller's knowledge, no utility lines serving the Station pass over the lands of others except where appropriate easements or licenses have been obtained. To the best of Seller's knowledge, Seller's use and occupancy of the real property comply in all material respects with all regulations, codes, ordinances, and statutes of all governmental authorities, including without limitation all zoning, health, environmental protection and sanitary regulations and all occupational safety and health regulations. The transmitting facilities of the Station, including the tower, guy wires and ground systems, are now and on the Closing Date will be located entirely on the confines of the Real Property leased by Seller. Seller represents that it has access to the real property as set forth in Schedule 1.1(d).

5.7 Litigation. Except as disclosed in Schedule 5.7, there is no claim, action, suit, proceeding or, to Seller's knowledge, investigation against Seller, or any of its officers, directors, shareholders, relating to the Station, the Purchased Assets or any of Seller's officers, directors, shareholders, or to Seller's knowledge, relating to Seller's employees or agents, which is currently pending or to Seller's knowledge threatened. There is no grievance or arbitration proceeding pending or to Seller's knowledge threatened, and there is no actual or threatened strike or work stoppage with respect to the Station, the Purchased Assets or Seller's employees, nor is Seller aware of any basis for such proceeding or event. There is not outstanding any order, writ, injunction, award or decree of any court or arbitrator or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality to which the Station or Seller is subject or otherwise applicable to any of the Purchased Assets or to Seller's knowledge, any employee or agent of Seller at the Station, nor to Seller's knowledge is any of them in default with respect to any such order, writ, injunction, award or decree.

#### 5.8 Compliance; Properties; Authorizations.

(a) Seller and the Station have materially complied, and are in compliance with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to Seller, any of the employees or agents thereof, the Station or Real Properties and/or any aspect of Seller's or any Station's operations, including, without limitation, any laws, rules, regulations, ordinances, codes, orders, judgments or decrees as to zoning, building requirements or standards, hiring, employment, or environmental, health and/or safety matters, including, but not limited to, the FCC's guidelines regarding RF radiation. Neither the ownership nor use of the Purchased Assets, nor the conduct of the Business or the operation or use of

any Station or any of the Purchased Assets or Real Properties, conflicts with the rights of any other person or entity or violates, or with or without the giving of notice or the passage of time, or both, will violate, conflict with or result in a default, right to accelerate or loss of rights under, any terms or provisions of its certificate of incorporation or by-laws, or any order, judgment or decree, or any lease, license, agreement, commitment, law, ordinance, rule or regulation, to which Seller or any Station is a party or by which it or any of the Purchased Assets may be bound or affected.

(b) Seller validly holds all approvals, certificates, authorizations, consents, licenses, franchises, orders and permits, including, without limitation, all Authorizations, necessary or useful to the operation of the Station, the conduct of the Business and/or the use of the Purchased Assets and the Real Properties, all of which are identified in Schedule 1.1(a), Schedule 1.1(b), Schedule 1.1(c) and Schedule 1.1(d) and have the expiration dates indicated thereon. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended (the "Communications Act"). The Commission Authorizations identified in Schedule 1.1(a) constitute all of the licenses and authorizations required under the Communications Act or the current rules, regulations, and policies of the FCC in connection with the Business or the operation of the Station as currently operated. The Commission Authorizations are in full force and effect and are unimpaired by any act or omission of Seller or any of the officers, directors, stockholders, employees, agents or affiliates of Seller. There are no conditions imposed by the FCC as part of any Commission Authorization that are neither set forth on the face thereof as issued by the FCC nor contained in the rules and regulations of the FCC applicable generally to stations of the type, nature, class or location of the Station. Except as provided in Schedule 5.8(b), all FCC regulatory fees for the Station have been paid, and all broadcast towers owned by Seller from which the Station operates have been duly registered with the FCC and the Federal Aviation Administration (the "FAA"). There is no action pending nor, to the knowledge of Seller, threatened by or before the FCC or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations, or any action which may result in the denial of any pending application, the issuance of any cease and desist order, or the imposition of any administrative sanction with respect to the Station or its respective operation. To Seller's knowledge, there is not pending any investigation, by or before the FCC, or any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint by, before or with the FCC against Seller or any of the officers, directors, stockholders, employees, agents or affiliates of Seller nor, to the knowledge of Seller, is any of the foregoing threatened. Each Station is and has been operating in material compliance with the Commission Authorizations, the Communications Act, and the current rules, regulations, and policies of the FCC. Seller has in a materially timely manner filed all reports, forms and statements required to be filed with the FCC. All applications for the Authorizations were true and correct when made. Except as permitted under the FCC rules, the Station is not shortspaced to any present or proposed broadcast station or frequency/channel allotment. To the best of Seller's knowledge, no Station is causing, or is receiving, any interference that the FCC would deem to be objectionable.

#### 5.9 Schedules. The Schedules contain a true, complete and accurate list of the following:

(a) all Real Properties, together with each lease, sublease or license under which Seller holds any leasehold or other interest or right to the use thereof (the "Real Property Leases") or pursuant to which Seller has leased, assigned, sublet or granted any rights therein or with respect thereto;

(b) all items of machinery, equipment, vehicles, furniture, fixtures, transmitting towers, transmitters, antennae, office materials and supplies, spare parts, music libraries and other tangible personal property owned, leased or used by Seller and included in the Purchased Assets, except for items having a value of less than \$1,000 which do not, in the aggregate, have a total value of more than

\$10,000, setting forth with respect to all such listed property all leases relating thereto (the "Personal Property Leases");

(c) all trademarks, trademark registrations, and applications therefor, service marks, service mark registrations, and applications therefor, service names, trade names, patents and patent applications, copyrights and copyright registrations, and applications therefor, domain names, names of websites, wholly or partially owned, held or used by Seller in its operation of the Station and which are included in the Purchased Assets; and all contracts, agreements, commitments or licenses relating to any of the foregoing; and

(d) all agency and representative agreements and all agreements providing for the services of an independent contractor to which Seller is a party or by which Seller is bound for the benefit of the Station that are included in the Purchased Assets;

True and complete copies of all contracts, agreements, plans, arrangements, commitments and documents required to be listed pursuant to this Section 5.9 (to the extent in writing or if not in writing, an accurate summary thereof), together with any and all amendments thereto, have been delivered to Buyer and Buyer acknowledges receipt of same. Moreover, Seller has previously delivered to Buyer a schedule listing all Receivables with respect to the Station as of that date, together with an aging thereof.

Except as indicated in Schedule 5.9, all of the contracts, agreements and commitments required to be listed pursuant to this Section 5.9 (other than those which have been fully performed) are in full force and effect, do not require the consent or approval of any party to the assignment thereof, except for the Required Consents, and will be unaffected by the TBA or the sale or other transfer of the Purchased Assets to Buyer. There is not under any contract, agreement or commitment required to be listed pursuant to this Section 5.9, any material default or event which, after notice or lapse of time, or both, would constitute a material default or result in a right to accelerate or loss of rights.

5.10 Absence of Changes or Events. Except as set forth in Schedule 5.10, since December 31, 2000, Seller has conducted the Business only in the ordinary course in a manner consistent with past practices. Without limiting the foregoing, since such date, Seller has not, except as set forth on said Schedule 5.10:

(i) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations incurred in the ordinary course of business and consistent with its prior practice, none of which liabilities, in any case or in the aggregate, materially and adversely affects the condition (financial or otherwise), assets, liabilities, operations or prospects of the Business or any Station;

(ii) mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any of the Purchased Assets;

(iii) accepted any prepayment for the sale of air time that has not been fully performed, or canceled or compromised any substantial debt or claim, or waived or released any right of substantial value or collected or compromised any accounts receivable other than in the ordinary course of business consistent with past practice;

(iv) encountered any labor union organizing activity, had any actual or threatened employee strikes, work stoppages, slow downs or lockouts, or had any material change in its

relations with its employees, agents, landlords, advertisers, customers or suppliers or any governmental regulatory authority or self-regulatory authorities;

(v) instituted, settled or agreed to settle any litigation, action or proceeding before any court or governmental body;

(vi) entered into any transaction, contract or commitment other than in the ordinary course of business on customary terms and conditions, or paid or agreed to pay any brokerage, finder's fee, or similar compensation in connection with, or incurred any severance pay obligations by reason of, this Agreement or the transactions contemplated hereby; or

(vii) entered into any agreement or made any commitment to take any of the types of actions described in any of subsections (i), (ii), (iii), (iv), or (vi) above.

5.11 Intangibles. Seller owns or possesses all rights necessary to use the call letters "KSKD-FM", together with all copyrights, trademarks, trade names, logos, slogans, jingles, service marks and other proprietary rights and Intangibles of or used by Seller and currently used in connection with or necessary to the operation of the Station as presently operated and that are included in the Purchased Assets. Seller has no knowledge of any infringement or unlawful, unauthorized or conflicting use of any of the foregoing, or of the use of any call letters, slogan or logo by any broadcast station in the areas served by the Station which may be confusingly similar to any of the call letters, slogans and logos currently used by the Station and that are included in the Purchased Assets. To Seller's knowledge, Seller is not infringing upon or otherwise acting adversely to any copyrights, trademarks, trademark rights, service marks, service mark rights, trade names, service names, slogans, call letters, logos, jingles, licenses or any other proprietary rights owned or used by any other person or entity that are part of the Purchased Assets.

#### 5.12 Environmental Matters.

(a) To Seller's knowledge, no Hazardous Substance (as hereinafter defined) is present or at any time has been stored, treated, released, disposed of or discharged on, about, from or affecting any of the Real Properties in any material amounts, except such products that have been used and maintained in compliance with all applicable rules, laws and regulations of all competent governmental authorities and all applicable manufacturer instructions, and Seller has no liability which is based upon or related to the environmental conditions under or about any of the Real Properties, and there is no reasonable basis for any such liability arising; and, to Seller's knowledge, none of the Real Properties contains any asbestos or asbestos-containing materials or any underground storage tank. Each of the towers and transmission facilities and equipment utilized by the Station is in compliance with the FCC's guidelines regarding RF radiation. The term "Hazardous Substance" as used in this Agreement shall include, without limitation, gasoline, oil and other petroleum products, explosives, radioactive materials and related and similar materials, and any other substance or material defined as a hazardous, toxic or polluting substance or material by any federal, state or local law, ordinance, rule or regulation, including asbestos and asbestos-containing materials.

(b) Neither Seller, nor, to the knowledge of Seller, any prior or current owner, tenant or occupant of any part of any of the Real Properties, has received (i) any notification or advice from or given or been required to have given any report or notice to any governmental agency or authority involving the use, management, handling, transport, treatment, generation, storage, spill, escape, seepage, leakage, spillage, emission, release, discharge, remediation or clean-up of any Hazardous Substance on or about any of the Real Properties or caused by any Selling Party or any affiliate thereof



(a "Hazardous Discharge"), or (ii) any complaint, order, citation or notice with regard to a Hazardous Substance or any other environmental, health or safety matter affecting any of the Real Properties or the business or operations conducted thereat (an "Environmental Complaint"), under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or under any other federal, state or local law, ordinance, rule or regulation.

5.13 Taxes. All taxes, fees, assessments and charges, including, without limitation, income, property, sales, use, franchise, added value, employees' income withholding and social security taxes, imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due and payable by Seller, or for which Seller may be liable, (including any for which Seller may be liable by reason of its being a member of an affiliated, consolidated or combined group with any other company at any time on or prior to the Closing Date), and all interest and penalties thereon (collectively, "Taxes" or "Tax"), have been paid in full, all Tax returns required to be filed in connection therewith have been accurately prepared and filed, and all deposits required by law to be made by Seller with respect to employees' and other withholding Taxes have been duly made. No deficiency for any Tax or claim for additional Taxes has been proposed, asserted or assessed against Seller.

5.14 Records. The FCC Logs and the Business Records of Seller and each Station are complete and correct in all material respects, and there have been no transactions involving Seller or the Station which properly should have been set forth therein and which have not been accurately so set forth.

5.15 Receivables. All accounts receivable of Seller for advertising have arisen only from bona fide transactions with unrelated third parties in the ordinary course of business.

5.16 Barter. Schedule 5.16 hereto sets forth as of the date set forth therein, all agreements and arrangements pursuant to which advertising is exchanged for goods and services for which an obligation to broadcast advertising time is outstanding and indicating the value of goods yet to be received and services yet to be used.

5.17 Disclosure. Seller is not aware of any facts pertaining to Seller, the Purchased Assets or the Station which affects the Station or the Purchased Assets in a materially adverse manner or which will in the future affect the Station or the Purchased Assets in a materially adverse manner. No representation or warranty by Seller contained in this Agreement nor any written statement or certificate furnished or to be furnished by or on behalf of Seller to Buyer or any of their representatives in connection with this Agreement contains or will contain any untrue statement of a material fact. The representations and warranties contained in this Agreement or any document delivered in connection with this Agreement shall not be affected or deemed waived by reason of the fact that Buyer and/or any of their representatives should have known that any such representation or warranty is or might be inaccurate in any respect.

5.18 Brokers and Finders. Neither Seller nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fee, commission or finder's fee in connection with the transactions contemplated by this Agreement, other than fees to be paid to MCH Enterprises, Inc., and Seller shall pay all fees to which such firm may be or become entitled.

## **ARTICLE 6**

### **Representations and Warranties of Buyer**

Each representation and warranty set forth below is qualified by any exception or disclosures set forth in the Disclosure Schedule, which exceptions specifically reference the Section(s) to be qualified. In all other respects, each representation and warranty set out in this Article 6 is not qualified in any way whatsoever, will not terminate on Closing or by reason of the execution and delivery of any agreement, document or instrument at the Closing, will remain in force on and after the Closing Date, and is made with the intention of inducing the Seller to enter into this Agreement. Buyer represents and warrants to Seller as follows:

6.1 Organization and Standing. Buyer is a California corporation validly existing and in good standing under the laws of the State of California.

6.2 Authority of Buyer. Buyer has all requisite limited liability company power and limited liability company authority to execute, deliver and perform this Agreement, the TBA and each other agreement, document and instrument to be executed, delivered or performed by Buyer in connection with this Agreement (collectively with the TBA, the "Buyer Documents") and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when executed and delivered at the Closing, each other Buyer Document will constitute, the legal, valid and binding obligation of Buyer. All limited liability company proceedings and limited liability company action required to be taken by Buyer relating to the execution, delivery and performance of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby have been duly taken.

6.3 No Violation. Except for the filing of the Assignment Application and the granting of the Initial Order and the Final Order, and except for the Contracts or as indicated in Schedule 6.3, the execution, delivery and performance of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or violate any provision of the Articles of Incorporation or By-Laws of Buyer, (ii) with or without the giving of notice or the passage of time, or both, result in a breach of, or violate, or be in conflict with, or constitute a default under, or permit the termination of, or cause or permit acceleration under, any material agreement or instrument or any material debt or obligation to which Buyer is a party, (iii) require the consent of any party to any material agreement or commitment to which Buyer is a party, or (iv) except for any of same directly relating to the Station itself and which are the responsibility of Seller, violate any law, rule or regulation or any order, judgment, decree or award of any court, governmental authority or arbitrator to or by which Buyer is subject or bound.

## **ARTICLE 7**

### **Certain Covenants**

7.1 Conduct of Business. Except as otherwise provided in the TBA, during the period from the date of this Agreement to and including the Closing Date, Seller shall cause the Station, and the Business, to be operated and conducted in the ordinary and usual course of business and consistent with past practices and in a manner consistent with Seller's obligations under the TBA. Without limiting the foregoing, prior to the Closing, Seller, without the prior written consent of Buyer, shall not:

(a) by any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms any of the Authorizations, or give the FCC or FAA grounds to institute any proceeding for

the revocation, suspension or modification of any of the Authorizations, or fail to prosecute with due diligence any pending application with respect to any of the Authorizations;

(b) dissolve, liquidate, merge or consolidate or sell, transfer, lease or otherwise dispose of any of its assets or properties, other than supplies consumed in the ordinary and customary course of business, or obligate itself to do so;

(c) amend, modify, change, alter, terminate, rescind or waive any rights or benefits under any contract, agreement or commitment required to be listed, or enter into any contract, agreement or commitment which, if in existence as of the date of this Agreement would have been required to be listed, under Schedule 1.1(f);

(d) subject to Buyer's maintenance obligations under the TBA, fail to maintain the Purchased Assets and the Real Properties in their current condition and otherwise in good repair and condition, reasonable and ordinary wear and tear excepted; or cancel or fail to renew any of the current insurance policies or any of the coverage thereunder maintained for the protection of any of the Real Properties, the Station or Purchased Assets; or

(e) perform, take any action or incur or permit to exist any of the acts, transactions, events or occurrences of the type described in clauses (i), (ii), (iii), (iv), or (vi) of Section 5.9 hereof which would have been inconsistent with any of the representations and warranties set forth in Section 5.9 hereof had the same occurred prior to the date hereof.

7.2 Operations. Subject to the operating procedures contemplated by the TBA, during the period from the date of this Agreement to the Closing Date, Seller shall have ultimate responsibility for the Station and its operations, and during such period, Seller shall operate the Station in a manner consistent with and in accordance with the rules and regulations of the Commission and Authorizations and the TBA, and file all ownership reports, employment reports and other documents required to be filed during such period, and deliver to Buyer within five (5) days after filing thereof with the Commission copies of any and all reports, applications, and/or responses relating to the Station which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (and in the event of an oral Commission inquiry, Seller will furnish a written summary thereof).

7.3 Changes in Information. Except for information related to the financial performance of the Station during the TBA, during the period from the date of this Agreement to the Closing Date, Seller shall give Buyer prompt written notice of any change in, or any of the information contained in, the representations and warranties made in or pursuant to this Agreement or of any event or circumstance which, if it had occurred on or prior to the date hereof, would cause any of such representations or warranties not to be true and correct.

7.4 Going Off the Air. Except to the extent caused directly by Buyer's actions pursuant to the TBA, if broadcast transmissions of the Station are interrupted or impaired for a period of 72 continuous hours or more, Buyer may elect to postpone the Closing until such time as normal broadcast transmissions are resumed, provided that, if normal broadcast transmissions are not resumed within 10 days after such interruption or impairment, Buyer may terminate this Agreement. If any postponement of the Closing Date under this Section would cause the Closing to occur at any time after the period permitted by the FCC, Seller and Buyer shall file an appropriate request with the FCC for any extension of time within which to complete the Closing.

**7.5 Restrictions on Buyer.** Except as provided in the TBA, nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Station prior to the Closing Date and Seller shall have complete control of the finances, programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity with the public interest, convenience and necessity and with all other requirements of law.

**7.6 Access to Information.** During the period from the date of this Agreement to the Closing Date, Buyer and its accountants, counsel and other representatives, shall upon prior written or telephone notice be given reasonable and continuing access during normal business hours to all of the facilities, properties, books and records of Seller, and they shall be furnished with such documents and information with respect to the affairs of Seller and the Station as from time to time may reasonably be requested, and, in furtherance thereof, Buyer may retain an engineering firm of its own choosing to conduct engineering due diligence into the adequacy, operation and condition of the Station, and the transmission, receiving, broadcast, studio and production machinery, equipment, towers and facilities of and/or relating to the Station, and their compliance with the standards of applicable law.

**7.7 Preservation of Business.** During the period from the date of this Agreement to the Closing Date, except as provided in the TBA, Seller shall use its ordinary and customary efforts to preserve intact the goodwill and staff at the Station, and the relationships of the Station with advertisers, customers, suppliers, employees, contracting parties, governmental authorities and others having business relations with the Station. Seller will assist Buyer in obtaining any licenses, permits or authorizations required for carrying on the business of the Station but which are not transferable.

**7.8 Sales and Other Taxes.** Seller and Buyer shall share equally all sales taxes, transfer taxes and intangibles taxes and similar government charges, filing fees and recording and registration fees applicable to the transactions contemplated by this Agreement, including, without limitation, all taxes and similar charges, if any, payable upon the transfer of title to any Purchased Assets. The foregoing shall not apply to taxes, governmental charges or fees incurred upon the granting or recording of mortgages or deeds of trust by Buyer to Buyer's lenders, which shall be the responsibility of Buyer. Buyer and Seller will cooperate to prepare and file with the proper public officials, as and to the extent necessary, all appropriate sales tax exemption certificates or similar instruments as may be necessary to avoid the imposition of sales, transfer and similar taxes on the transfer of Purchased Assets pursuant hereto. The provisions of this Section 7.8 shall not apply to filing and grant fees associated with the Assignment Application. The payment of such fees shall be governed by Section 3.2 hereof.

**7.9 No Shop.** Seller agrees that from after the date hereof and until the termination of this Agreement in accordance with the terms hereof, neither Seller nor any shareholder thereof will sell, transfer or otherwise dispose of any direct or indirect interest in Seller or any assets (except for dispositions of assets in the ordinary course of business as expressly permitted elsewhere in this Agreement) of Seller to be included in the Purchased Assets (or any rights in any such stock or assets), and neither Seller nor any shareholder thereof will respond to inquiries or proposals, or enter into or pursue any discussions, or enter into any agreements (oral or written), with respect to, the sale or purchase of any direct or indirect interest in Seller, or any option or warrant with respect to such interest, or the merger, consolidation, sale, lease or other disposition of all or any portion of the assets, business, rights or Authorizations of Seller or any Station. The provisions of this Section 7.9 shall not be deemed to limit or negate any other obligations of Seller under this Agreement.

**7.10 Employee Matters.** No provision in this Agreement shall create any third party beneficiary or other right in any person (including any beneficiary or dependent thereof) for any reason, including, without limitation, in respect of continued, resumed or new employment with Seller or Buyer or in

respect of any benefits that may be provided, directly or indirectly, under any plan or arrangement maintained by Seller or Buyer. Except as otherwise expressly provided in this Agreement, Buyer is under no obligation to hire any employee of Seller, provide any employee with any particular benefits, or make any payments or provide any benefits to those employees of Seller whom Buyer chooses not to employ.

## ARTICLE 8

### **Termination; Specific Performance**

8.1 Termination. If either Buyer, on the one hand, or Seller, on the other hand, desires to terminate this Agreement because it (they) believe any of the other(s) to be in default hereunder, the terminating part(y)(ies) shall provide the other(s) with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within twenty (20) business days after giving of such notice (or such additional reasonable time as the circumstances may warrant provided the default is curable and the defaulting party undertakes diligent, good faith efforts to cure the default within such twenty (20) business day period and continues such efforts thereafter), then the part(y)(ies) giving such notice may terminate this Agreement and/or exercise the remedies available to such parties pursuant to this Agreement, at law or in equity, subject to the right of the other parties to contest such action through appropriate proceedings, and in all events subject to the limitations set forth in Section 2.2 hereof. If an Event of Default (as defined in the TBA) by Seller under the TBA shall occur and be continuing, then Buyer shall likewise be entitled to terminate this Agreement pursuant to the preceding sentence, and if an Event of Default (as defined in the TBA) by Buyer under the TBA shall have occurred and be continuing, then Seller shall be entitled to terminate this Agreement pursuant to the preceding sentence, provided, however, that Seller shall have no right to terminate this Agreement and/or the TBA if, notwithstanding any Event of Default by Buyer, the Initial Order has been issued or is subsequently issued and Buyer consummates the transaction within ten (10) business days of written notice of the Event of Default, *provided, however*, that Buyer shall be under no obligation to close unless: (i) Buyer's Conditions Precedent specified in Section 4.5 have been satisfied, and (ii) Seller's Deliveries specified in Section 4.2 have been made. The remedy of termination of this Agreement in accordance with this Section 8.1, or under any other provision of this Agreement, shall not be exclusive of any other rights which a party may have to terminate this Agreement under any other provisions hereof, or of any other rights or remedies which Buyer may otherwise have under this Agreement or otherwise, all of which rights and remedies shall be cumulative.

In the event an Event of Default occurs by Seller that has not been timely cured and this Agreement has been terminated by Buyer, upon any subsequent sale of the Station, Buyer shall be entitled to a complete refund of the Advance Payment and shall receive reimbursement for the principal portion of any payment made for the Senior Note during the term of the TBA.

In the event an Event of Default has occurred by Buyer that has not been timely cured and Buyer does not or cannot immediately consummate the transaction as specified above, at Seller's option the TBA shall be terminated and Seller shall retain the Advance Payment as liquidated damages.

8.2 Specific Performance. Seller agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce the performance of Seller under this Agreement without the necessity of posting any bond or other security, and Seller hereby waives the defense in any such suit that Buyer has an adequate remedy at law. The remedy of specifically enforcing any or all of the provisions of this Agreement in accordance with this

Section 8.2 shall not be exclusive of any other rights and remedies which Buyer may otherwise have under this Agreement or otherwise, all of which rights and remedies shall be cumulative.

8.3 Confidentiality upon Termination. Upon termination of this Agreement for any reason other than breach hereof or under the TBA by the Seller, Buyer shall return all documents and other information it has received from Seller regarding the Station and will keep confidential all information it has obtained concerning the Station's finances, operations and prospects.

## ARTICLE 9 **Indemnification**

### 9.1 Obligation to Indemnify.

(a) Following the Closing, Buyer hereby agrees to save, indemnify and hold harmless Seller and Seller's officers, directors and stockholders (collectively the "Seller Indemnitees") from and against, and shall on demand reimburse the Seller Indemnitees for:

(i) any failure by Buyer to comply with the Obligations Undertaking;

(ii) any and all loss, liability, damage or deficiency suffered or incurred by any of the Seller Indemnitees by reason of any misrepresentation or breach of warranty by Buyer or nonfulfillment of any covenant or agreement to be performed or complied with by Buyer under this Agreement or in any agreement, certificate, document or instrument executed by Buyer and delivered to Seller pursuant to or in connection with this Agreement;

(iii) any and all liability, damage or deficiency suffered or incurred by any of the Seller Indemnitees arising out of Buyer's operation of the Station under the TBA or following the Closing; and

(iv) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable attorneys' fees, incident to any of the foregoing, or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing any of the obligations under this Section 9.1(a).

(b) Seller hereby agrees to save, indemnify and hold harmless Buyer and Buyer's officers, managers and members (collectively the "Buyer Indemnitees") from, against and in respect of, and shall on demand reimburse the Buyer Indemnitees for:

(i) any and all loss, liability, damage or deficiency suffered or incurred by any of the Buyer Indemnitees by reason of any misrepresentation, breach of warranty or nonfulfillment of any covenant or agreement to be performed or complied with by Seller under this Agreement or any agreement, certificate, document or instrument executed by Seller and delivered to Buyer pursuant to or in connection with this Agreement;

(ii) any and all loss, liability or damage suffered or incurred by any of the Buyer Indemnitees in respect of or in connection with any and all Excluded Liabilities, and/or any and all debts, liabilities and obligations of, and any and all violation of laws, rules, regulations, codes or orders by Seller, direct or indirect, fixed, contingent, legal, statutory, contractual or otherwise, which exist at or as of the Closing Date or which arise after the Closing Date but which are based upon or arise from any act, transaction, circumstance, state of facts or other condition which occurred or existed, on or

before the Closing Date, whether or not then known, due or payable, except to the extent specifically assumed by Buyer pursuant to the Obligations Undertaking or required to be paid by Buyer pursuant to the TBA;

(iii) any and all liability, damage, or deficiency suffered or incurred by any of the Buyer Indemnitees with respect to Seller's operation of the Station prior to the TBA Commencement Date, and Seller's actions with respect to the Station prior to the Closing Date; and

(iv) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing any of the obligations under this Section 9.1(b).

## 9.2 Survival.

Each representation, warranty, indemnity, covenant and agreement of each of the parties hereto shall survive the Closing; provided, however, that no party shall be entitled to assert claims against any other for misrepresentations or breach of warranty under or pursuant to this Agreement unless the party asserting such claim shall notify the other in writing of such claim within one (1) year after the Closing Date; provided, however that the foregoing limitations on survival shall not apply to any of the representations and warranties in or pursuant to Section 5.2, 5.5(a), and 5.11 hereof.

## 9.3 Provisions Regarding Indemnification.

(a) In connection with claims for indemnification or to be held harmless hereunder arising out of any action, suit or proceeding brought against a person or entity entitled to indemnification under this Article 9 (each, the "indemnified party") by any third party, the following shall be applicable:

(i) The indemnified party shall give prompt written notice to the indemnifying parties of any action, suit or proceeding brought against the indemnified party by a third party, which gives rise to a claim by the indemnified party against the indemnifying parties based on the indemnity agreements contained in this Agreement and copies of all pleadings relating thereto; provided, however, that the failure to so notify the indemnifying party shall not relieve the indemnifying party from its obligation to indemnify the indemnified party in such action, suit or proceeding except only and then only to the extent such party is actually prejudiced by such failure to notify.

(ii) In the event any action, suit or proceeding is brought against the indemnified party, with respect to which the indemnifying parties may have liability under the indemnity agreements contained herein, the action, suit or proceeding shall, subject to the provisions of this Section 9.3, be defended (including all proceedings on appeal or for review which counsel for the indemnified party shall deem appropriate) by the indemnifying parties, with counsel reasonably acceptable to the indemnified parties, at the indemnifying parties' sole cost and expense. The indemnified party shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the indemnified party's own expense unless (A) the employment of such counsel and the payment of such fees and the expenses shall have been authorized by the indemnifying parties in connection with the defense of such action, suit or proceeding, or (B) such indemnified party shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to the indemnifying parties, or (C) the indemnifying parties fail within a reasonable time to employ counsel to represent the indemnified party, and in any of which events the indemnifying parties shall not have the right to defend such action, suit or proceeding

on behalf of the indemnified party. The indemnified party shall be kept informed of such action, suit or proceeding at all stages thereof whether or not it is so represented, and each party shall make available to the other party and its attorneys and accountants all books and records in its possession relating to such action, suit or proceeding.

(b) Notwithstanding the foregoing provisions of this Section 9.3, the indemnifying parties shall have no right to defend any action, suit or proceeding if: such action, suit or proceeding is brought by or before the FCC or otherwise involves the FCC, any rules or regulations thereof, or any Commission Authorization; or such action, suit or proceeding seeks injunctive or other equitable relief against the indemnified party.

(c) If an indemnified party fails to comply with any of its obligations under this Section 9.3, the sole remedy of the indemnifying parties for such failure shall be to offset against the indemnification liability otherwise payable by the indemnifying parties to the indemnified party the amount of damages actually suffered by the indemnifying parties as a result of such default.

(d) If an indemnifying party is otherwise entitled to control the settlement of an action, suit or proceeding then, subject to the requirements and limitations of this Section 9.3, the indemnifying party will be entitled to control such settlement only if (i) the terms of such settlement require no more than the payment of money (i.e., such settlement does not require any indemnified party to admit any wrongdoing or take or refrain from taking any action), (ii) the full amount of such monetary settlement is paid by the indemnifying party, and (iii) the indemnifying party receives as part of such settlement a legally binding and enforceable unconditional satisfaction and/or release, in form and substance reasonably satisfactory to the indemnifying party, providing that the action, suit or proceeding and any claimed liability or obligation of the indemnifying party with respect thereto is being fully satisfied by reason of such settlement and that the indemnifying party is being released from any and all obligations or liabilities it may have with respect thereto.

(e) No indemnifying party shall have any right to defend any such action, suit or proceeding if the indemnifying party does not unconditionally acknowledge in writing, within a reasonable period of time after any indemnified party gives notice of such action, suit or proceeding, that each of the indemnifying parties is obligated to indemnify the indemnified party in full with respect to such action, suit or proceeding as provided in Section 9.1 hereof.

(f) Notwithstanding anything in his Agreement to the contrary, no amounts shall be paid to any Indemnified Party until Losses incurred by such Indemnified Party exceed \$5,000 and then the Indemnified Party shall be entitled to indemnification for an amount equal to the total Losses incurred. From and after the Closing, the aggregate amount of all Losses that an Indemnified Party shall be entitled to receive shall in no event exceed One Hundred Thousand Dollars.

## **ARTICLE 10**

### **Risk of Loss**

10.1 Risk of Loss. Except to the extent expressly provided otherwise in the TBA, the risk of loss, damage or destruction to the Purchased Assets and/or the Real Properties from fire or other casualty or cause, shall be borne by Seller at all times up to the Closing. Except as expressly provided otherwise in the TBA, it shall be the responsibility of Seller to repair or cause to be repaired and to restore the affected property to its condition prior to any such loss, damage or destruction. In the event



of any such loss, damage or destruction, the proceeds of any claim for any loss payable under any insurance policy with respect thereto shall be used to repair, replace or restore any such property to its former condition subject to the conditions stated below. In the event that property reasonably required for the normal operation of the Station is not repaired, replaced or restored prior to the Closing, unless such damage was directly caused pursuant to Buyer's use of the Station under the TBA, Buyer, at its sole option, upon written notice to Seller: (a) may elect to postpone Closing until such time as the property has been repaired, replaced or restored, or (b) may elect to consummate the Closing and accept the property in its then condition, in which event Seller shall assign to Buyer all proceeds of insurance theretofore, or to be, received, covering the property involved; and if Buyer shall extend the time for Closing pursuant to clause (a) above, and the repairs, replacements or restorations are not completed within sixty (60) days after the date on which Final Order for the Station has come into existence and effect, Buyer may terminate this Agreement by giving written notice thereof to Seller.

## **ARTICLE 11**

### **Miscellaneous**

11.1 Binding Agreement; Assignment. All the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. This Agreement and all rights of Buyer shall be assignable by Buyer to one or more subsidiaries or affiliates of Buyer, prior to the Closing upon prior notice to Seller and with the consent of Seller, such consent not to be unreasonably withheld or delayed, and shall be assignable to Buyer's lenders, and after the Closing may be assigned by Buyer as it deems appropriate, in each case without the consent of Seller. This Agreement shall not be assignable by Seller without the prior written consent of Buyer. No assignment shall relieve the assigning party of its obligations hereunder.

11.2 1031 Exchange. Buyer and Seller each intend that the transfer of all or part of the Station Assets contemplated by this Agreement will be part of an exchange of assets that will qualify, pursuant to Section 1031 of the Code, and regulations thereunder, as a deferred like-kind exchange by Buyer and Seller. In keeping with that intention, it is expressly acknowledged that Buyer or Seller, or Seller's assignee or transferee, may, at or prior to Closing, assign, subject to Section 11.1, its rights (in whole or in part) under this Agreement to a qualified intermediary as defined in Treasury regulation section 1.1031(k)-1(g)(4), or a similar entity or arrangement ("Qualified Intermediary"), subject to all of Seller's or Buyer's rights and obligations herein and shall promptly provide written notice of such assignment to Seller or Buyer, as the case may be. Seller and Buyer each shall cooperate with the reasonable requests of Buyer's Qualified Intermediary in arranging and effecting this exchange under Section 1031 of the Code. Without limiting the generality of the foregoing, if either party has given notice of its intention to effect an exchange using a Qualified Intermediary, the party receiving such notice shall promptly provide the party giving such notice with written acknowledgment of such notice, and the Qualified Intermediary shall pay or receive, as the case may be, the purchase price for any Station Assets identified to be included in a like-kind exchange, and such payment shall satisfy the obligations of Buyer to make payment for those Station Assets or for Seller to receive payment for those Station Assets. Notwithstanding the foregoing, either party's assignment of its rights to a Qualified Intermediary will not relieve such party of any of its duties or obligations herein. Except for the obligations of Seller or Buyer set forth in this Section 11.2, Seller shall not have any liability or obligation to the other party for the failure of the contemplated exchange to qualify as a like-kind exchange under Section 1031 of the Code unless such failure is the result of the material breach by of such party of its representations, warranties, covenants and obligations herein.

11.3 Notices. All notices shall be in writing and shall be deemed to have been duly given if delivered personally or when deposited in the mail if mailed via registered or certified mail, return receipt requested, postage prepaid to the other party hereto at the following addresses:

**If to Buyer, to:**

Golden Pegasus Financial Services, Inc.  
P.O. Box 1039  
Hughson, CA 95326  
Attn: Mr. Nelson Gomez

**With a copy to:**

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21st Road  
Arlington, VA 22201

**If to Seller, to:**

Del Rosario Talpa, Inc.  
242 Robertson Blvd.  
Chowchilla, CA 93610

Att'n: Mr. Mario R. Mesa

**With a copy to:**

Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> St.  
11<sup>th</sup> Floor  
Arlington, VA 22209-3801

or to such other addresses as any such party may designate in writing in accordance with this Section 11.2.

11.3 Law To Govern. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, without regard to principles of conflict of laws.

11.4 Fees and Expenses. Except as expressly set forth in this Agreement, each of the parties shall pay its own fees and expenses with respect to the transactions contemplated hereby.

11.5 Entire Agreement; Waivers. This Agreement sets forth the entire understanding of the parties hereto in respect of the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement signed by all of the parties hereto. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter. Any failure by any party to this Agreement to comply with any of its obligations hereunder may be waived by Seller in the case of a default by Buyer and by Buyer in case of a default by Seller. No waiver shall be effective unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

11.6 Severability. Any provision of this Agreement which is rendered unenforceable by a court of competent jurisdiction shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Agreement.

11.7 No Third-Party Beneficiaries. Nothing herein, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the parties hereto, any rights, remedies or other benefits under or by reason of this Agreement or any documents executed in connection with this Agreement.

11.8 Affiliate. For purposes of this Agreement, the term "affiliate" when used with respect to any person or entity, shall mean any person or entity which directly or indirectly, alone or together with others, controls, is controlled by or is under common control with such person or entity.

11.9 Counterparts; Headings. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. The Section and paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said Sections and paragraphs.

11.10 Use of Terms. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the words "include" or "including" in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof. Unless otherwise indicated, reference in this Agreement to a "Section" or Article" means a Section or Article, as applicable, of this Agreement. When used in this Agreement, words such as "herein", "hereinafter", "hereof", "hereto", and "hereunder" shall refer to this Agreement as a whole, unless the context clearly requires otherwise. The use of the words "or," "either" and "any" shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**[the remainder of this page is intentionally left blank]**

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

**GOLDEN PEGASUS FINANCIAL SERVICES,  
INC.**

By: \_\_\_\_\_  
Nelson Gomez  
President

**DEL ROSARIO TALPA, INC.**

By: \_\_\_\_\_  
Mario R. Meza  
President