

**EXECUTION COPY**

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (this "*Agreement*"), made as of the \_\_\_\_ day of November, 2004, is by and between Unity Broadcasting, Inc., a Michigan corporation ("*UBI*"), Noordyk Broadcasting, Inc., a Michigan corporation ("*NBI*"), Donald James Noordyk, an individual residing at 400 East Maple, Fremont, Michigan ("*Noordyk*," who together with UBI and NBI may be referred to herein as "*Seller*") and Citadel Broadcasting Company, a Nevada corporation ("*Buyer*").

**RECITALS**

UBI is the licensee of and operates radio broadcast stations WLCS(FM), 98.3 MHz, North Muskegon, Michigan, Facility ID No. 5396; WEFG-FM, 97.5 MHz, Whitehall, Michigan, Facility ID No. 53960; and WUBR(AM), 1490 kHz, Whitehall, Michigan, Facility ID No. 53962 (the "*UBI Stations*"), pursuant to licenses issued by the Federal Communications Commission (the "*FCC*").

NBI is the licensee of and operates radio broadcast station WSHN-FM, 100.1 MHz, Holton, Michigan, Facility ID No. 73994 (the "*NBI Station*"), pursuant to licenses issued by the FCC.

Noordyk is the permittee of an unconstructed radio broadcast station 971217MC, 92.5 MHz, Newaygo, Michigan, Facility ID No. 89477 (the "*Permit*"), pursuant to FCC File No. BMPH-20030609ACU. Together, the UBI Stations, the NBI Station, and the Permit may be referred to herein as the "*Stations*."

Seller and Buyer have agreed that Seller will sell and Buyer will acquire certain assets used in connection with the operation of the Stations, on the terms and subject to the conditions set forth in this Agreement.

Seller has agreed that it shall assign to Buyer that certain lease dated September 16, 2004 by and between Heritage Professional Center ("*Heritage*") and Unity Broadcasting, as listed on Schedule 1.2(b) hereto (the "*Studio Lease*"), the terms of which provide that Heritage shall build out, on a barter basis subject to Buyer's reasonable prior approval, studio/office space upon the leased premises in accordance with the specifications set forth in Exhibit A hereto (the "*New Studios*");

Buyer has agreed that it shall build out, at Buyer's expense, a tower for the facilities authorized by the licenses granted pursuant to the STL Applications, as defined herein, at the New Studios, as set forth in Section 9.8 hereto (the "*New STL Tower*");

Therefore, the parties agree as follows:

## **ARTICLE 1**

### **ASSETS TO BE CONVEYED**

**1.1. Closing.** Subject to Section 17.1 hereof and except as otherwise mutually agreed upon by Seller and Buyer, the closing of this transaction (the "*Closing*") shall take place on a date agreed upon by Buyer and Seller within ten business (10) days after all of the conditions specified in Sections 11.2 and 12.2 hereof have been fulfilled (or waived by the party entitled to waive such condition). The Closing shall be held at 10:00 a.m. local Muskegon, Michigan time at the offices of a title company mutually selected by Buyer and Seller, or at such other place and time as the parties may otherwise agree. To the extent practicable, closing documents may be exchanged by facsimile and/or overnight courier.

**1.2. Stations Assets.** At the Closing, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, certain assets used in connection with the business and operation of the Stations, including but not limited to the following assets:

(a) Seller's rights in and to all of the licenses, permits and other authorizations issued to Seller by any governmental authority and used in the conduct of the business and operation of the Stations, including those listed in Schedule 1.2(a), together with any additions thereto (including renewals or modifications of such licenses, permits and authorizations and applications therefor) between the date hereof and the Closing Date (the "*Stations Licenses*") and all of Seller's rights in and to the call letters "WLCS," "WEFG-FM," "WUBR," and "WSHN-FM"; provided, however, that Seller shall retain the right to use the call letters "WSHN(AM)."

(b) Seller's right and interest in and to the real property used in the conduct of the business and operation of the Stations, including that listed in Schedule 1.2(b), together with any additions thereto between the date hereof and the Closing Date, including but not limited to any easements, rights of ingress and egress, and rights of way associated therewith, and the buildings, towers, and fixtures located thereon (the "*Real Property*"); provided, however that the Real Property shall not include the real property in Fremont, Michigan used as the current studio for the NBI Station and the UBI Stations (the "*Current Studios*");

(c) all equipment, office furniture and fixtures, office materials and supplies, inventory, spare parts, motor vehicles and other tangible personal property of every kind

and description, owned, leased or held by Seller and used or useful in the conduct of the business and operation of the Stations, including that which is listed in Schedule 1.2(c), together with any replacements thereof and additions thereto, made between the date hereof and the Closing Date (the “*Personal Property*”);

(d) subject to the provisions of Article 3 hereof, all of Seller’s rights under and interest in all Contracts listed in Schedule 1.2(d) hereto, the Time Sales Agreements and the Trade Agreements, together with all of Seller’s rights under and interest in all Contracts entered into or acquired by Seller between the date hereof and the Closing Date in accordance with this Agreement (the “*Assumed Contracts*”);

(e) all of Seller’s rights in and to all registered and unregistered trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, slogans, licenses, patents, Internet domain names, Internet URLs, Internet web sites, content and databases, permits and privileges, and other intangible property rights and interests applied for, issued to or owned by Seller for use in the conduct of the business and operation of the Stations, including those listed in Schedule 1.2(e), together with any additions thereto between the date hereof and the Closing Date (the “*Intellectual Property*”);

(f) all files, records, books of account, and logs relating to the operation of the Stations, including, without limitation, receivable records, the Stations’ public inspection files, filings with the FCC related to the Stations, invoices, statements, technical information and engineering data, sales correspondence, filings with the FCC and copies of all written Contracts to be assigned hereunder;

(g) all rights under manufacturers’ and vendors’ warranties as exist at Closing and which relate to any of the Stations Assets, as defined herein; and

(h) all computer software and programs used or held for use in the operation of the Station.

The assets to be transferred to Buyer hereunder are hereinafter collectively referred to as the “*Stations Assets*.” The Stations Assets shall be transferred to Buyer free and clear of any debts, liens, or encumbrances of any kind or nature, except for any debts, liens, or encumbrances that Buyer expressly agrees to assume under this Agreement.

**1.3. Excluded Assets.** The Stations Assets shall not include the following (the “*Excluded Assets*”):

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

(b) all cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, treasury bills, and other marketable securities on hand and/or in banks;

(c) all insurance policies, except for any rights that may be assigned pursuant to Article 20 hereof; and

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

(e) all accounts receivable and notes receivable arising in connection with the operation of the Stations prior to the Closing Date and outstanding and uncollected as of the Closing Date (the "*Accounts Receivable*");

(f) the real property in Fremont, Michigan used as the Current Studios; and

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

## **ARTICLE 2**

### **PURCHASE PRICE**

**2.1. Purchase Price.** The total consideration to be paid by Buyer for the Stations Assets shall be Three Million Eight Hundred Thousand Dollars (\$3,800,000) (the "*Purchase Price*"), subject to upward or downward adjustment, as the case may be, on and after the Closing Date, pursuant to Article 5.

**2.2. Payment of Purchase Price.** Upon the execution of this Agreement, Buyer shall deposit an irrevocable letter of credit in form satisfactory to Seller in the amount of Two Hundred Thousand Dollars (\$200,000) (the "*Escrow Deposit*") with Sunbelt Media, Inc. ("*Escrow Agent*") to be held pursuant to the terms and conditions of an Escrow Agreement of date even herewith by and among Buyer, Seller, and Escrow Agent. At the Closing, Buyer shall pay the Purchase Price, as adjusted pursuant to Article 5, by wire transfer of immediately available federal funds pursuant to wire instructions that shall be delivered by Seller to Buyer at least two (2) business days prior to the Closing Date, and Buyer and Seller shall jointly instruct Escrow Agent to return the Escrow Deposit, and any interest accumulated thereon, to Buyer.

## **ARTICLE 3**

### **ASSUMPTION OF OBLIGATIONS**

**3.1. Assumption of Obligations.** Subject to the provisions of this Article 3 and of Article 5 of this Agreement at the Closing Buyer shall assume and undertake to pay, satisfy or discharge the liabilities, obligations and commitments of Seller under the Stations Licenses, the Contracts listed in Schedule 1.2(d), and the Trade Agreements and Time Sales Agreements, to the extent that either (1) the obligations and liabilities relate to the period after the Effective Time and arise out of events related to Buyer's ownership of the Stations Assets or Buyer's operation of the Stations on or after the Effective Time or (2) the Purchase Price was reduced pursuant to Article 5 as a result of the proration or adjustment of such obligations and liabilities.

**3.2. Limitation.** Except as set forth in Section 3.1 hereof, Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations or commitments of Seller of any nature whatsoever.

#### **ARTICLE 4** **REQUIRED CONSENTS**

**4.1. FCC Application.** The assignment of the Stations Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC. No later than ten (10) business days after the date that the parties execute this Agreement, Buyer and Seller shall file the FCC Application. Seller and Buyer shall thereafter prosecute the FCC Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the FCC Application as expeditiously as practicable. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to Article 17 hereof.

**4.2. Other Governmental Consents.** Promptly after the date of this Agreement, the parties shall prepare and file with the appropriate governmental authorities any other requests for approval or waiver that are required from such governmental authorities in connection with the transactions contemplated hereby and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

**4.3. Section 73.1150 Compliance.** Seller and Buyer agree that Seller has retained no rights of reversion of the FCC Licenses, no right to the reassignment of the FCC Licenses in the future, and has not reserved the right to use the Stations' facilities in the future for any reason whatsoever.

#### **ARTICLE 5**

## **PRORATIONS**

**5.1. Proration of Expenses.** All revenues and expenses arising from the conduct of the business and operation of the Stations, including expenses under the Assumed Contracts, but excluding Trade Agreements, and similar prepaid and deferred items, shall be prorated between Buyer and Seller as of the Effective Time. Such prorations shall be based upon the principle that Seller shall be responsible for all liabilities and obligations incurred or accruing in connection with the operation of the Stations until the Effective Time, and Buyer shall be responsible for such liabilities and obligations incurred by Buyer thereafter. Such prorations shall include, without limitation, all ad valorem, real estate and other property taxes, business and license fees, FCC regulatory fees, utility expenses, any accrued sick time or vacation, liabilities and obligations under the Assumed Contracts, rents and similar prepaid and deferred items, except taxes arising by reason of the transfer of the Stations Assets as contemplated hereby, which shall be paid in accordance with Section 14.2. To the extent not known, real estate taxes shall be apportioned on the basis of taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained. Notwithstanding the foregoing, there shall be no adjustment for, and Seller shall remain solely liable with respect to any obligations or liabilities not being assumed by Buyer in accordance with Article 3 hereof. In the event that the value of the advertising time remaining to be run by the Stations under Trade Agreements as of the Effective Time exceeds by more than \$20,000 (excluding the value of trade, subject to Buyer's reasonable approval, associated with the construction of the New Studios pursuant to the Studio Lease) the value of the goods or services to be received by the Stations under such Trade Agreements as of the Effective Time, the Purchase Price shall be reduced by an amount equal to such amount in excess of \$20,000. For purposes of valuing the advertising time remaining to be run by the Stations under Trade Agreements, the parties agree that such time shall be valued according to the value of the goods or services received or to be received by the Stations for such time under such Trade Agreements.

**5.2. Payment of Proration Items.** Three (3) business days prior to Closing, Seller shall deliver to Buyer a preliminary list of all items to be prorated pursuant to Section 5.1 (the "*Preliminary Proration Schedule*"), and, to the extent feasible, such prorations shall be credited against or added to the Purchase Price at Closing. In the event Buyer and Seller do not reach a final agreement on such prorations and adjustments at Closing, Seller shall deliver to Buyer a schedule of its proposed prorations and adjustments (the "*Proration Schedule*") no later than forty-five (45) days after the Closing Date. The Proration Schedule shall be conclusive and binding upon Buyer unless Buyer provides Seller with written notice of objection (the "*Notice of Disagreement*") within ten (10) days after Buyer's receipt of the Proration Schedule, which notice shall state the prorations of expenses proposed by Buyer (the "*Buyer's Proration Amount*"). Seller shall have ten (10) days from receipt of a Notice of Disagreement to accept or reject Buyer's Proration Amount. If Seller rejects Buyer's Proration Amount, and the amount in dispute exceeds \$5,000, the dispute shall be submitted within ten (10) days to an accounting firm, mutually agreeable to the parties, that is unaffiliated with either party (the "*Referee*") for

resolution, such resolution to be made within twenty (20) days after submission to the Referee and to be final, conclusive and binding on Seller and Buyer. Buyer and Seller agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. If the amount in dispute is equal to or less than \$5,000, such amount shall be divided equally between Buyer and Seller. Payment by Buyer or Seller, as the case may be, of the proration amounts determined pursuant to this Section 5.2 shall be due five (5) days after the last to occur of (i) Buyer's acceptance of the Proration Schedule or Buyer's failure to give Seller a timely Notice of Disagreement; (ii) Seller's acceptance of Buyer's Proration Amount or failure to reject Buyer's Proration Amount within ten (10) days after receipt of a Notice of Disagreement; (iii) Seller's rejection of Buyer's Proration Amount in the event the amount in dispute equals or is less than \$5,000; and (iv) notice to Seller and Buyer of the resolution of the disputed amount by the Referee in the event that the amount in dispute exceeds \$5,000. Any payment required by Seller to Buyer or by Buyer to Seller, as the case may be, under this Section 5.2 shall be paid by check or wire transfer of immediately available federal funds to the account of the payee with a financial institution in the United States as designated by Seller in the Proration Schedule or by Buyer in the Notice of Disagreement (or by separate notice in the event that Buyer does not send a Notice of Disagreement). If either Buyer or Seller fails to pay when due any amount under this Section 5.2, interest on such amount will accrue from the date payment was due to the date such payment is made at a per annum rate equal to the Prime Rate *plus* two percent (2%), and such interest shall be payable upon demand.

**5.3. Allocation.** Buyer and Seller shall use all reasonable efforts to agree to an allocation of the Purchase Price pursuant to the requirements of Section 1060 of the Internal Revenue Code of 1986 prior to the Closing Date. The parties also agree to use such Purchase Price allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

**6.1. Organization and Standing.** Buyer is a corporation organized, validly existing and in good standing under the laws of the State of Nevada and qualified to do business in the State of Michigan.

**6.2. Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into and perform under this Agreement and the transactions contemplated hereby, and Buyer's execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Buyer and constitutes its valid and binding obligation, enforceable in

accordance with its terms, except as limited by laws affecting creditors' rights or equitable principles generally.

**6.3. Absence of Conflicting Agreements or Required Consents.** Except as set forth in Article 4 with respect to FCC and other governmental consents, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by Buyer: (a) do and will not require the consent of any third party; (b) do and will not violate any provisions of Buyer's organizational documents; (c) do and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Buyer is a party; and (d) do and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, instrument, license or permit to which Buyer is now subject.

**6.4. Absence of Litigation.** There is no claim, litigation, proceeding or investigation pending or, to the best of Buyer's knowledge, threatened against Buyer which seeks to enjoin or prohibit, or which otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

**6.5. Bankruptcy.** No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Buyer, are pending or, to the best of Buyer's knowledge, threatened, and Buyer has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

**6.6. Multiple Ownership Compliance.** The transaction contemplated by this Agreement complies with the FCC's rules and regulations set forth in 47 C.F.R. § 73.3555 (the "*Multiple Ownership Rules*") and agrees to demonstrate such compliance to either Seller or the FCC if requested or required. Buyer agrees and acknowledges that Buyer's compliance with such rules is an intrinsic element of this transaction.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

**7.1. Organization and Standing.** UBI and NBI are corporations duly formed, validly existing and in good standing under the laws of the State of Michigan, and have all necessary power and authority to own, lease and operate the Stations Assets and to carry on the business of the Stations as now being conducted and as proposed to be conducted by Seller between the date hereof and the Closing Date.



**7.2. Authorization and Binding Obligation.** Seller has all necessary power and authority to enter into and perform this Agreement and the transactions contemplated hereby, and Seller's execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action its part. This Agreement has been duly executed and delivered by Seller and constitutes its valid and binding obligation, enforceable in accordance with its terms, except as limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

**7.3. Absence of Conflicting Agreements or Required Consents.** Except as set forth in Article 4 with respect to FCC and other governmental consents and/or as disclosed on Schedules 1.2(d) and 7.3, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by Seller (a) do not and will not require the consent of any third party; (b) do not and will not violate any provisions of Seller's organizational documents; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Seller is a party or by which it or the Stations Assets are bound; (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under any lease, contract, agreement, instrument, license or permit to which either Seller or the Stations Assets are now subject; and (e) do not and will not result in the creation of any lien, charge or encumbrance on any of the Stations Assets.

**7.4. FCC Authorizations.**

(a) Schedule 1.2(a) contains a true and complete list of the Stations Licenses, including their expiration dates. Seller has delivered to Buyer true and complete copies of the Stations Licenses. The Stations Licenses and other licenses, permits and authorizations listed in Schedule 1.2(a) are validly held by Seller pursuant to Final Order, and are in full force and effect, have been issued for the full terms customarily issued to radio broadcast stations in the State of Michigan, and none is subject to any restriction or condition which would limit in any respect the full operation of the Stations as now operated. The UBI Stations and the NBI Station are being operated in all material respects in accordance with the terms and conditions of the FCC Licenses and the rules and regulations of the FCC.

(b) There are no applications, complaints or proceedings pending or, to the best of Seller's knowledge, threatened before the FCC relating to the operation of the Stations or that may result in the revocation, materially adverse modification, non-renewal or suspension of any of the Stations Licenses, or the imposition of any fines, forfeitures, or other administrative actions with respect to any of the Stations or their operation other than proceedings affecting the broadcasting industry generally. Seller is not subject to any outstanding judgment or order of the FCC relating to the Stations. Seller is not aware of any action other than rule-making

proceedings of general applicability to the radio industry which would adversely affect the FCC protected service areas of the Stations as such service areas are presently authorized by the FCC. All required FCC regulatory fees with respect to the Stations Licenses have been paid.

(c) There are no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify Seller as the assignor of the Stations Licenses.

## **7.5. Title to and Condition of Real Property.**

(a) Schedule 1.2(b) contains descriptions of all of Seller's interests, including leasehold interests, easements and rights in and agreements with respect to the Real Property. The Real Property and the use thereof by Seller comply in all respects with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local governmental authorities, including, without limitation, those relating to zoning. Any improvements upon the Real Property and the present use thereof comply or conform in all material respects with all deed restrictions, restrictive covenants, building codes, and federal, state and local laws, regulations and ordinances, and no permits, licenses or certificates pertaining to ownership or operation of the Real Property, other than those that are transferable with the Real Property, are required by any federal, state or local government, agency, board or other governmental authority having jurisdiction over the Real Property. To the best of Seller's knowledge, all such improvements are in good working condition and repair, are insurable at standard rates, and are in compliance with the rules and regulations of the FCC, the Federal Aviation Administration and all other applicable federal, state and local statutes, ordinances, rules and regulations. There are no structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the improvements on the Real Property. All towers located upon the Real Property, are structurally sound, comply with current wind-loading requirements and are not in need of repair or maintenance. There are no modifications or improvements to the Real Property required to bring it into compliance with any law, notwithstanding that Seller's current operations on the Real Property may be grandfathered or otherwise subject to an exception, exemption or waiver. Seller has paid, or shall have paid prior to Closing all amounts owed to any contractor, architect or subcontractor for labor or materials performed, rendered or supplied in connection with the Real Property, all contributions required to have been paid by a landlord or Seller in connection with the construction of, or modification to, any leased Real Property have been paid.

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

(c) Seller has good and marketable fee simple title, or valid and subsisting leasehold interests, insurable at standard rates, to the Real Property, free and clear of all Liens, of any nature whatsoever, and without any reservation or exclusion of any mineral, timber, or other rights or interests, except for liens disclosed on Schedule 1.2(b).

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

(e) Seller has delivered to Buyer true and complete copies of all deeds, leases and easements held by Seller pertaining to the Real Property and copies of all title policies and surveys in its possession pertaining to the Real Property. The Real Property, including the improvements thereon (i) is in good condition and repair, and (ii) is available for immediate use in the conduct of the business and operations of the Stations.

(f) Seller has full legal and practical access to the Real Property, including to the towers located upon the Real Property, and all easements, rights-of-way, and real property licenses included in the Real Property have been properly recorded in the appropriate public recording offices.

**7.6. Title to and Condition of Personal Property.** Schedule 1.2(c) lists all material items of Personal Property used or held for use in conducting the business and operations of the Stations as now conducted. Seller has good and marketable title to all Personal Property free and clear of all Liens. To the best of Seller's knowledge, all of the items of tangible personal property and facilities included in the Stations Assets are in good operating condition and repair (reasonable wear and tear excepted), are insurable at standard rates, have been properly maintained in accordance with industry standards, are performing satisfactorily and in accordance with standards of good engineering practice, comply in all respects with applicable rules and regulations of the FCC, the terms of the Stations Licenses, and with other applicable federal, state and local statutes, ordinances, rules and regulations, and are available for immediate use in the operation of the Stations. Seller has no knowledge of any defect in the condition or operation of any item of Personal Property which is reasonably likely to have a material adverse effect on the operations of the Stations.

**7.7. Contracts.** Seller has delivered to Buyer true and complete copies of all written Contracts and true and complete memoranda of all oral Contracts, including any amendments and other modifications to such Contracts. The Assumed Contracts constitute valid and binding obligations of Seller and, to the best of Seller's knowledge, of all other parties thereto, and are in full force and effect as of the date hereof. Seller is not in default under any of the Assumed Contracts and, to the best of Seller's knowledge, the other parties to such Assumed Contracts are not in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto. Except as disclosed on Schedule

1.2(d), Seller has all requisite power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and such assignment will not affect the validity, enforceability or continuity of any such Assumed Contracts. Except as set forth on Schedule 1.2(d), there are no Time Sales Agreements or Trade Agreements with terms expiring later than December 31, 2004, or for which rates or material terms differ between calendar year 2004 and calendar year 2005.

## **7.8. Personnel Information.**

(a) Schedule 7.8 contains a true and complete list of all persons employed at the Stations, including each person's job title or the capacity in which employed, date of hire, and a description of all compensation including bonus arrangements and employee benefit plans or arrangements applicable to each such employee. Seller is not a party to any agreement, written or oral, with employees except as described on Schedule 1.2(d) or Schedule 7.8. Seller has no employment agreement of any kind, oral or written, express or implied, that would require Buyer to employ any employee of Seller after the Closing, or that would otherwise confer any obligation on Buyer.

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

(c) Except as set forth in Schedule 7.8, Seller is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"), whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan.

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

**7.9. Intellectual Property.** Schedule 1.2(e) lists all Intellectual Property applied for, issued to or owned by Seller for use in the operation of the Stations, or under which Seller is licensed or franchised to be assigned hereunder, all of which rights and interests are issued to or owned by Seller, or if licensed or franchised to Seller, are valid and uncontested. Seller has delivered to Buyer copies of all documents, if any, establishing such rights, licenses or other authority. There is no pending or, to the best of Seller's knowledge, threatened proceeding or litigation affecting or with respect to the Intellectual Property. Seller is not infringing upon or otherwise acting adversely to any trademarks, trade names, service marks, service names,

copyrights, patents, patent applications, internet domain names, know-how, methods, or processes owned by any other person or persons, and there is no claim or action pending, or to the knowledge of Seller threatened, with respect thereto. The Intellectual Property listed on Schedule 1.2(e) comprise all material intangible property interests used or held for use in conducting the business and operations of the Stations as now conducted.

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

**7.11. Taxes.** Seller has duly, timely and in the required manner filed all federal, state, local and foreign income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid. As of the time of filing, such returns were true, complete and correct in all material respects. There are no governmental investigations or other legal, administrative, or tax proceedings pending, or to the best of Seller's knowledge, threatened pursuant to which Seller is or could be made liable for any taxes, penalties, interest, or other charges, the liability for which could extend to Buyer as transferee of the business of the Stations, or could result in a Lien on any of the Stations Assets, and no event has occurred that could impose on Buyer any transferee liability for any taxes, penalties, or interest due or to become due from Seller.

**7.12. Bankruptcy.** No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Stations Assets, are pending or, to the best of Seller's knowledge, threatened, and Seller has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

**7.13. Environmental Matters.** (a) There has been no release, nor is there a threat of a release, of any Hazardous Substance or Hazardous Waste at or from the Real Property; (b) there are no Hazardous Substances or Hazardous Wastes present on the Real Property except for ordinary quantities of properly stored Hazardous Substances or Hazardous Wastes found in consumer or commercial products that are used in the normal course of broadcast station operations, including grounds and building operation and maintenance; (c) there are no aboveground or underground storage tanks, whether in use or closed, on or under the Real Property; and (d) neither the Real Property, equipment or installations on the Real Property nor any Personal Property contain PCBs or asbestos in quantities sufficient to mandate the labeling or removal of such PCBs or asbestos in accordance with federal, state or local government

environmental standards or to warrant the imposition of any penalty, civil or criminal, against Seller. The terms “*Hazardous Substance*” and “*Hazardous Waste*” shall have the meanings set forth in the Resource Conservation and Recovery Act, as amended from time to time, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, any other applicable Environmental Law, and the regulations promulgated under all such laws. Seller has obtained all environmental, health and safety permits necessary for the operation of the Stations, all such permits are in full force and effect, and the Seller is in compliance with the terms and conditions of all such permits. Seller has not received any notice, nor does Seller have any knowledge of any administrative or judicial investigations, proceedings or actions with respect to violations, alleged, or proved, of any Environmental Law involving station operations or the Real Property.

**7.14. UCC Financing Statements.** All of the Stations Assets are and have been located in the State of Michigan since the Stations Assets were acquired by Seller and no party has filed a deed of trust, mortgage or UCC financing statement with respect to the Stations Assets, except as set forth on Schedule 7.14 hereto.

**7.15 Insurance.** The business, properties (including the Stations Assets) and employees of the Stations are insured against loss, damage, or injury in amounts customary in the broadcast industry.

**7.16 Financial Statements.** Seller has provided Buyer with true and complete copies of unaudited statements of income and expense (including a statement of earnings before taxes, depreciation and amortization and any extraordinary items of income or loss) of the Stations for its most recently concluded two fiscal years and for all full months since elapsed (the “Financial Statements”). The Financial Statements were prepared in accordance with the books and records of the Stations, and in conformity with Seller’s internal accounting principles and policies, consistently applied, and fairly present in all material respects the information purported to be presented therein as of the dates and for the respective periods covered thereby, and fairly reflect the results of operation of the Stations on a stand-alone basis. Seller has furnished Buyer a true and complete copy of Seller’s month-by-month budget for the Stations for Year 2004, which includes all budgeted capital expenditures.

**7.17 Sufficiency of Stations Assets.** Except for the equipment listed on Schedule 1.3(g) hereto, the Stations Assets include all assets that are necessary to operate the UBI Stations and the NBI Station in all material respects as currently operated.

## **ARTICLE 8**

### **COVENANTS OF BUYER**

**8.1. Notification.** Buyer shall notify Seller of any litigation, arbitration or administrative proceeding pending or threatened against Buyer which challenges the transactions

contemplated hereby, including any challenges to the FCC Application, and shall use reasonable efforts to remove any such impediment to the transactions contemplated by this Agreement.

**8.2. No Inconsistent Action.** Buyer shall not take any action materially inconsistent with its obligations under this Agreement or that would hinder or delay the consummation of the transactions contemplated by this Agreement.

**8.3. Construction of New STL Tower.** Between the date of this Agreement and the Closing, Buyer shall use all commercially reasonable efforts to complete construction, at Buyer's expense, of the New STL Tower or to otherwise fulfill the requirements of Section 9.8 hereto.

## **ARTICLE 9**

### **COVENANTS OF SELLER**

**9.1. Interim Operation.** Between the date of this Agreement and the Closing Date, except with the prior written consent of Buyer:

(a) Seller shall conduct the operation of the Stations solely in the ordinary and normal course of operation consistent with past practice, including continuation of the current broadcast hours of the Stations and the carriage of programming during such hours;

(b) Seller shall not sell, assign, lease or otherwise transfer or dispose of any of the Stations Assets, except where no longer used or useful in the operation of the Stations or where replaced by a like asset;

(c) Seller shall not create, assume or permit to exist any mortgage, lien, pledge, or encumbrance of any nature whatsoever upon the Stations Assets, except for those in existence on the date of this Agreement, all of which will be removed on or prior to the Closing Date, and for taxes which are not yet due;

(d) Seller shall operate the Stations in compliance with the FCC's rules and regulations and the Stations Licenses and with all other applicable laws, regulations, rules and orders;

(e) Seller shall comply in all respects with the Contracts;

(f) Seller shall promptly notify Buyer of any default by, or claim of default against, any party under any of the Contracts or Leases which are material, individually or in the aggregate, to the operation of the Stations, and any event or condition which, with notice or lapse of time or both, would constitute an event of default under such Leases;

(g) Seller shall maintain insurance policies on the Stations and the Stations Assets; and

(h) Seller shall maintain the Stations Assets in good operating condition; repair or replace all items of Personal Property at time intervals consistent with prior practice; maintain adequate supplies of spare parts consistent with past practices; and repair or replace (subject to Article 20) any Stations Asset that may be damaged or destroyed with items of equal or greater value and utility

**9.2. Access to Stations.** Between the date of this Agreement and the Closing Date, upon reasonable prior notice given by Buyer, Seller shall give Buyer and Buyer's counsel, accountants, engineers and other representatives, reasonable access during normal business hours to all of Seller's properties, records and employees relating to the Stations, and shall furnish Buyer with all information related to the Stations that Buyer reasonably requests. The rights of Buyer under this Section 9.2 shall not be exercised in such a manner as to interfere unreasonably with or disrupt the business or operation of the Stations.

**9.3. Notification.** If Seller receives notice thereof or otherwise becomes aware of same, Seller shall notify Buyer of any litigation, arbitration or administrative proceeding pending or threatened against Seller which challenges the transactions contemplated hereby, including any challenges to the FCC Application, and shall use its reasonable efforts to take such steps as may be necessary to remove any such impediment to the transactions contemplated by this Agreement.

**9.4. Third-Party Consents.** Seller shall use its best efforts to obtain the consent of any third party necessary for the assignment to Buyer of any Lease or Contract to be assigned hereunder.

**9.5. Closing Covenant.** On the Closing Date, Seller shall transfer, convey, assign and deliver to Buyer the Stations Assets as provided in Article 1 of this Agreement.

**9.6. Payment of Indebtedness; Financing Statements.** Except as specifically noted on Schedule 7.14, Seller shall secure the release of all liens or encumbrances on the Stations Assets that secure the payment of any indebtedness and shall deliver to Buyer at the Closing releases or terminations under the Uniform Commercial Code and any other applicable federal, state or local statutes or regulations of any financing or similar statements filed against any Stations Assets in (a) the jurisdictions in which the Stations Assets are and have been located since such Stations Assets were acquired by Seller, and (b) any other location specified or required by applicable federal, state or local statutes or regulations.



**9.7. No Inconsistent Action.** Seller shall not take any action which is materially inconsistent with its obligations under this Agreement or that would hinder or delay the consummation of the transactions contemplated by this Agreement.

**9.8. Studio to Transmitter Link (“STL”) Licenses.** Seller shall coordinate, prepare and file an application or applications with the FCC reasonably acceptable to Buyer, requesting new STL licenses sufficient to link the New Studios and the Stations’ towers (the “*STL Applications*”), pursuant to the approval of the FAA, FCC and city of Muskegon Heights. The costs of coordinating, preparing and filing the STL Applications shall be borne equally by the Seller and Buyer. In the event the STL Applications are denied or in the event STL facilities prove impracticable or unworkable, the parties shall cooperate to find an alternative solution reasonably acceptable to Buyer.

**9.9. Construction of New Studios.** Between the date of this Agreement and the Closing, Seller use all commercially reasonable efforts to complete construction of the New Studios as per the specifications set forth in Exhibit A hereto.

**9.10. Amendment of Studio Lease.** Seller shall, prior to the Closing, provide an amendment to the Studio Lease, executed by the landlord thereunder and Seller, clarifying that under Section 2.B thereof, the terms of the renewal term, if any, shall be as set forth in the addendum to the Studio Lease, dated September 14, 2004, a copy of which is attached hereto as Exhibit B.

**9.11. Employment of Station Employees.** (a) On the Closing Date, Seller shall terminate the Stations’ employees and shall be responsible for all liabilities, including severance and accrued benefits arising therefrom. Buyer may offer employment to any such terminated employees of the Stations, such employment to become effective as of the Effective Time (any such terminated employees who accept employment with Buyer as of the Closing Date are the “*Transferred Employees*”). Seller shall be responsible for all liabilities and accrued benefits arising from the termination of the Transferred Employees.

(b) Seller acknowledges and agrees that Buyer shall not acquire any rights or interests of Seller in, or assume or have any obligations or liabilities of Seller under, any benefit plans maintained by, or for the benefit of any employee of Seller prior to the Effective Time, including obligations, if any, for severance or vacation accrued but not taken as of the Effective Time.

(c) Seller acknowledges and agrees that Buyer may, at any reasonable time, but subject to the specific prior approval of Seller, prior to the Closing Date interview and discuss employment terms and issues with the employees of the Stations.

**9.12. Additional FCC Applications.** Seller shall (i) prior to the expiration of the construction permit to relocate WSHN-FM's facilities (FCC File No. BPH-20010921AAP), file an application for a license to cover BPH-20010921AAP; and (ii) prior to the Closing, reassociate Remote Pickup license KC28641 with station WSHN-FM, or obtain a license for a new Remote Pickup license for use by station WSHN-FM. Together, the applications to be filed by Seller pursuant to this Section 9.12 shall be known as the "*Additional FCC Applications*."

## **ARTICLE 10**

### **JOINT COVENANTS**

**10.1. Conditions.** If any event should occur between the date hereof and the Closing, either within or without the control of any party hereto, which would prevent fulfillment of the conditions upon the obligations of any party to consummate the transactions contemplated by this Agreement, the parties shall use their reasonable efforts to cure the event as expeditiously as possible.

**10.2. Commercially Reasonable Efforts.** Between the date of this Agreement and the Closing, each party shall use commercially reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the other party to consummate the sale and purchase under this Agreement.

**10.3. Control of Stations.** Between the date of this Agreement and the Closing, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Stations. Such operations shall be the sole responsibility of Seller and, subject to the provisions of Article 9, shall be in its complete discretion.

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

**10.5. Access to Records.** For a period of two (2) years from the Closing Date, each party to this Agreement shall provide to the other party access during normal business hours to such financial records as may be necessary for either party to prepare any required tax filings.

**10.6. Environmental Studies.** Buyer shall have the right to obtain, within forty-five (45) days after the execution of this Agreement, a completed Phase I environmental audit report (the "Phase I Report") at Buyer's sole expense regarding the Real Property, which

Phase I Report shall be reasonably satisfactory to Buyer in all respects, and Buyer agrees to notify Seller of any objection to the status of the Phase I Report and to provide Seller with a copy of the Phase I Report within ten (10) days after Buyer's receipt of the Phase I Report. To the extent Buyer does not notify Seller within such ten (10) day period of any objection to the Phase I Report, Buyer hereby waives any right to refuse to consummate this Agreement or to terminate this Agreement as a result of any noncompliance with Environmental Laws disclosed in the Phase I Report. If, in Buyer's reasonable judgment, a Phase II environmental audit report "(Phase II Report)" is necessary in light of the contents of the Phase I Report and Buyer has timely objected to the applicable Phase I Report, Buyer shall obtain such Phase II Report within thirty (30) days following Buyer's objection to the Phase I Report, at Buyer's sole expense, which shall be satisfactory to Buyer in all respects. In the event that a Phase I Report and/or a Phase II report discloses an environmental condition or matter which is reasonably unsatisfactory to Buyer and to which Buyer objects on a timely basis, Seller shall have sixty (60) days from Seller's receipt of notice to remediate and eliminate such condition or matter and bring such Real Property into compliance with all Environmental Laws. If the environmental condition or matter is not remediated and eliminated by Seller within the prescribed 60 day period, Buyer may terminate this Agreement, without any further liability hereunder.

**10.7. Title Insurance and Surveys.** Within thirty (30) days after the execution of this Agreement, at Buyer's option, Buyer may obtain at Buyer's expense: (a) a commitment for an ALTA title insurance policy related to the Real Property reasonably acceptable to Buyer (the "Title"); or (b) a staked-on-ground boundary survey of the Real Property reasonably acceptable to Buyer, certified current as of the date of delivery thereof, prepared by a duly licensed and registered land surveyor acceptable to Buyer (the "Survey"). The Title and the Survey will be ordered by the Buyer, and shall in all respects be reasonably acceptable to Buyer. Buyer agrees to notify Seller of any objection to the status of the Title and/or Survey and to provide Seller with a copy of the Title and/or Survey within ten (10) days after Buyer's receipt of the Title and Survey. In the event that the Title and/or Survey are reasonably unsatisfactory to Buyer and Buyer has timely objected thereto, Seller shall have sixty (60) days from Seller's receipt of notice to eliminate such condition or matter. If the condition or matter is not eliminated by Seller within the prescribed 60 day period, Buyer may terminate this Agreement, without any further liability hereunder.

## **ARTICLE 11**

### **CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

### **11.1. Representations, Warranties and Covenants.**

(a) All representations and warranties of Seller made in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of that date.

(b) All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to Closing Date shall have been complied with or performed in all material respects.

**11.2. Governmental Consents.** The conditions specified in Article 4 of this Agreement shall have been satisfied, and the FCC Consent shall have been granted and become a Final Order, provided that Buyer may waive the requirement that the FCC Consent shall have become a Final Order, and the STL Applications and the Additional FCC Applications shall have been granted or the provisions of Section 9.8 otherwise fulfilled to Buyer's reasonable satisfaction. If the Closing occurs before the FCC Consent has become a Final Order, the parties will, at Buyer's option, enter into a mutually acceptable unwind agreement. Buyer shall have received any necessary governmental approvals, including but not limited to local zoning, FAA, and FCC approvals for the New STL Tower, and construction of the New STL Tower shall have been completed, or the requirements of Section 9.8 shall have been otherwise fulfilled to Buyer's reasonable satisfaction.

**11.3. Governmental Authorizations.** Seller shall be the lawful holder of the Stations Licenses and all other material licenses, permits and other authorizations listed in Schedule 1.2(a), and there shall not have been any modification of any of such licenses, permits and other authorizations which would have a material adverse effect on the operations of the Stations. No proceeding shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, fail to renew, suspend or modify adversely any of the Stations Licenses or any other material licenses, permits or other authorizations relating to the Stations.

**11.4. Third-Party Consents.** Seller shall have delivered to Buyer all third-party consents for those Contracts designated as Material Contracts on Schedule 1.2(d), and shall have delivered to Buyer all other third-party consents that have been obtained for assignment of the Contracts.

**11.5. Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto that would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**11.6. Adverse Change.** There shall have occurred no material adverse change in the condition of the Stations or the Stations Assets between the date of this Agreement and the

Closing Date, other than any change that shall not have a Material Adverse Effect. “Material Adverse Effect” shall be defined as a material adverse effect on the Stations Assets taken as a whole or the business, operations or financial condition of the Stations taken as a whole or on the ability of Seller to perform its material obligations under this Agreement, provided that the foregoing shall not include any material adverse effect arising out of (i) factors affecting the radio broadcasting industry generally, (ii) general national, regional or local economic conditions, (iii) governmental or legislative laws, rules or regulations, or (iv) actions taken by Buyer or its Affiliate.

**11.7. New Studios.** Construction of the New Studios shall be complete as per the specifications set forth on Exhibit A hereto, and Seller shall have obtained a lease reasonably acceptable to Buyer for a main studio for the Permit facilities that complies with 47 C.F.R. § 73.1125.

**11.8. Deliveries.** Seller shall have made or stand willing to make all the deliveries required under Section 13.1.

## **ARTICLE 12**

### **CONDITIONS PRECEDENT TO SELLER’S OBLIGATION TO CLOSE**

The obligations of Seller hereunder are subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### **12.1. Representations, Warranties and Covenants.**

(a) All representations and warranties made by Buyer in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of that date.

(b) All the terms, covenants and conditions to be complied with and performed by Buyer under this Agreement on or prior to the Closing Date shall have been complied with or performed in all material respects.

**12.2. Governmental Consents.** The conditions specified in Article 4 of this Agreement shall have been satisfied, and the FCC Consent shall have been granted.

**12.3. Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against any party hereto that would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**12.4. Deliveries.** Buyer shall have made or stand willing to make all the deliveries required under Section 13.2.

**ARTICLE 13**  
**DOCUMENTS TO BE DELIVERED AT THE CLOSING**

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

(a) a certificate of an officer of Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer, certifying to the fulfillment of the conditions set forth in Sections 11.1 through 11.7 hereof;

(b) instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to Buyer, effecting the sale, transfer, assignment and conveyance of the Stations Assets to Buyer, including, but not limited to, the following:

- (i) assignment of the Stations Licenses;
- (ii) bill of sale for all Personal Property;
- (iii) assignment of the Assumed Contracts.

(c) resolutions of UBI's and NBI's directors authorizing the execution, delivery and performance of this Agreement, certified by an officer of UBI and NBI respectively;

(d) UCC Termination Statements with respect to Liens which have been placed of record on the Stations Assets;

(e) a general warranty deed for the owned Real Property, in a form acceptable in all material respects to Buyer;

(f) a Certificate of Good Standing of UBI and NBI issued by the state of Michigan;

(g) estoppel certificates, in form reasonably satisfactory to Buyer, for all leases included in the Real Property;

(h) consents from third parties required for the assignment of the Material Contracts and consents obtained for the remaining Assumed Contracts for which consent for assignment is required; and

(i) such other documents as may reasonably be requested by Buyer's counsel.

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

(a) a certificate of an officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Seller, certifying to the fulfillment of the conditions specified in Sections 12.1 through 12.4 hereof;

(b) wire transfer of immediately available funds as provided in Section 2.1;

(c) instruments, in form and substance reasonably satisfactory to Seller and its counsel, pursuant to which Buyer assumes obligations, liabilities and commitments as provided in Article 3;

(d) such other documents as may reasonably be requested by Seller's counsel.

## **ARTICLE 14**

### **FEES AND EXPENSES; TRANSFER TAXES**

**14.1. Governmental Filing or Grant Fees.** Except as otherwise specified herein, any filing or grant fees imposed by any governmental authority, the consent of which is required for the transactions contemplated hereby, including all filing fees incurred pursuant to Article 4, shall be borne equally by Buyer and Seller.

**14.2. Transfer Taxes.** Any taxes arising by reason of the transfer of the Stations Assets as contemplated hereby shall be paid by Seller.

**14.3. Expenses.** Each party hereto shall be solely responsible for and shall pay all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

## **ARTICLE 15**

### **BROKER'S COMMISSION OR FINDER'S FEE**

**15.1. Buyer's Representation and Agreement to Indemnify.** Buyer represents and warrants to Seller that neither it nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, nor has it or any person or entity acting on its behalf taken any action on which a claim for any such payment could be based. Buyer further agrees to indemnify and hold Seller harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of a claim by any person or entity based on any such arrangement or agreement made or alleged to have been made by Buyer.

**15.2. Seller's Representation and Agreement to Indemnify.** Seller represents and warrants to Buyer that, except as regards Sunbelt Media, Inc., whose commission shall be the sole responsibility of Seller, neither it nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, nor has it or any person or entity acting on its behalf taken any action on which a claim for any such payment could be based. Seller further agrees to indemnify and hold Buyer harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of a claim by any person or entity based on any such arrangement or agreement made or alleged to have been made by Seller.

## **ARTICLE 16**

### **INDEMNIFICATION**

**16.1. Indemnification by Seller.** Notwithstanding the Closing, Seller hereby agrees to indemnify, defend and hold Buyer harmless against and with respect to, and shall reimburse Buyer for:

(a) Any and all losses, direct or indirect, liabilities, or damages resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant or obligation by Seller contained herein or in any certificate, document or instrument delivered to Buyer hereunder;

(b) Any and all obligations of Seller not assumed by Buyer pursuant to the terms of this Agreement;

(c) Any and all losses, liabilities or damages resulting from the operation or ownership of the Stations prior to the Effective Time including but not limited to any and all liabilities not assumed by Buyer pursuant to Article 3 hereof;

(d) Any and all losses, liabilities or damages resulting from the litigation listed on Schedule 6.4;



(e) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in opposing the imposition thereof, or in enforcing this indemnity, subject to the notice and opportunity to remedy requirements of Section 16.3 hereof; and

(f) Interest at the Prime Rate on any reimbursable expense or loss incurred by Buyer from the date of payment, in the case of a reimbursable expense, and from the date of incurrence, in the case of any other losses, until the date of reimbursement by Seller.

**16.2. Indemnification by Buyer.** Notwithstanding the Closing, Buyer hereby agrees to indemnify and hold the Seller harmless against and with respect to, and shall reimburse the Seller for:

(a) Any and all losses, direct or indirect, liabilities, or damages resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant or obligation by Buyer contained herein or in any certificate, document or instrument delivered to Seller hereunder;

(b) Any and all obligations of Seller assumed by Buyer pursuant to the terms of this Agreement;

(c) Any and all losses, liabilities or damages resulting from the operation or ownership of the Stations by Buyer on and after the Effective Time, including but not limited to any and all liabilities assumed by Buyer pursuant to Article 3 hereof;

(d) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in opposing the imposition thereof, or in enforcing this indemnity, subject to the notice and opportunity to remedy requirements of Section 16.3 hereof; and

(e) Interest at the Prime Rate on any reimbursable expense or loss incurred by Seller from the date of payment, in the case of a reimbursable expense, and from the date of incurrence, in the case of any other losses, until the date of reimbursement by Buyer.

**16.3. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(a) The party seeking indemnification under this Article 16 (the “*Claimant*”) shall give notice to the party from whom indemnification is sought (the “*Indemnitor*”) of any claim, whether solely between the parties or brought by a third party, specifying (i) the factual basis for the claim, and (ii) the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against Claimant, notice shall be given by

Claimant within fifteen (15) business days after written notice of the action, suit or proceeding was given to Claimant. In all other circumstances, notice shall be given by Claimant within thirty (30) days after Claimant becomes, or should have become, aware of the facts giving rise to the claim. Notwithstanding the foregoing, Claimant's failure to give Indemnitor timely notice shall not preclude Claimant from seeking indemnification from Indemnitor except to the extent that Claimant's failure has materially prejudiced Indemnitor's ability to defend the claim or litigation.

(b) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purposes of this investigation, the Claimant agrees to make available to the Indemnitor and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate legal remedy.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification hereunder, the Indemnitor shall have the right at its own expense to participate in or assume control of the defense of the claim, and the Claimant shall cooperate fully with the Indemnitor, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnitor. If the Indemnitor elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of the claim as its own expense. If the Indemnitor does not elect to assume control or otherwise participate in the defense of any third party claim, Claimant may, but shall have no obligation to, defend or settle such claim or litigation in such manner as it deems appropriate, and in any event Indemnitor shall be bound by the results obtained by the Claimant with respect to the claim (by default or otherwise) and shall promptly reimburse Claimant for the amount of all expenses (including the amount of any judgment rendered), legal or otherwise, incurred in connection with such claim or litigation. The Indemnitor shall be subrogated to all rights of the Claimant against any third party with respect to any claim for which indemnity was paid.

**16.4. Limitations.** Neither Seller nor Buyer shall have any obligation to the other party for any matter described in Section 16.1 or Section 16.2, as the case may be, except upon compliance by the other party with the provisions of this Article 16, particularly Section 16.3. Neither party shall be required to indemnify the other party under this Article 16 for any breach of any representation or warranty contained in this Agreement unless written notice of a claim under this Article 16 was received by the party within the pertinent survival period specified in Article 18 of this Agreement.

**16.5. Sole Remedy.** After the Closing, the right to indemnification under this Article 16 shall be the exclusive remedy of any party in connection with any breach by another party of its representations, warranties and covenants.

## **ARTICLE 17**

### **TERMINATION RIGHTS**

#### **17.1. Termination.**

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

(a) if, on or prior to the Closing Date, the other party defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained herein and such default has not been cured within ten (10) days from receipt of written notice of default from the non-defaulting party;

(b) if the FCC denies the FCC Application or designates it for a trial-type hearing;

(c) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing;

(d) if the Closing has not occurred within nine (9) months after the date the FCC Application is accepted for filing; or

(e) by Buyer, pursuant to the terms of Sections 10.6 and 10.7 hereof.

**17.2. Liability.** The termination of this Agreement under Section 17.1 hereof shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

## **ARTICLE 18**

### **SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

The representations, warranties, covenants, indemnities and agreements contained in this Agreement or in any certificate, document or instrument delivered pursuant to this Agreement are and will be deemed and construed to be continuing representations, warranties, covenants, indemnities and agreements and shall survive the Closing for a period of eighteen months after the Closing Date. No claim may be brought under this Agreement or any other

certificate, document or instrument delivered pursuant to this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the applicable survival period. In the event such a notice is given, the right to indemnification with respect thereto shall survive the applicable survival period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

## **ARTICLE 19**

### **REMEDIES UPON DEFAULT**

**19.1. Default by Seller.** Seller recognizes that, in the event Seller defaults in the performance of its obligations under this Agreement, monetary damages alone will not be adequate. Buyer shall therefore be entitled in such event, in lieu of bringing suit at law or equity for money or other damages (including costs and expenses incurred by Buyer in the preparation and negotiation of this Agreement and in contemplation of the Closing hereunder) or for indemnification under Article 16 hereof, to obtain specific performance of the terms of this Agreement. In any action to enforce the provisions of this Agreement, Seller shall waive the defense that there is an adequate remedy at law or equity and agree that Buyer shall have the right to obtain specific performance of the terms of this Agreement without being required to prove actual damages, post bond or furnish other security. In addition, Buyer shall be entitled to obtain from Seller court costs and reasonable attorneys' fees incurred by it in enforcing its rights hereunder, plus interest at the Prime Rate on the amount of any judgment obtained against Seller from the date of default until the date of payment of the judgment. As a condition to seeking specific performance, Buyer shall not be required to have tendered the Purchase Price specified in Section 2.1 of this Agreement, but shall be required to demonstrate that it is willing and able to do so and to perform its other closing obligations in all respects.

**19.2. Default by Buyer.** If the transactions contemplated by this Agreement are not consummated as a result of Buyer's material breach of this Agreement or wrongful failure to close hereunder, and Seller is not also in material breach hereunder, Seller shall be entitled to payment of Two Hundred Thousand Dollars (\$200,000) as liquidated damages in full settlement of any damages of any nature or kind that Seller may suffer or allege to suffer as the result thereof. It is understood and agreed that the amount of liquidated damages represents Buyer's and Seller's reasonable estimate of actual damages and does not constitute a penalty. Recovery of liquidated damages under this Section 19.2 shall be the sole and exclusive remedy of Seller against Buyer for breach of or failure to consummate this Agreement and shall be applicable regardless of the actual amount of damages sustained. In addition, Seller shall be entitled to obtain from Buyer court costs and reasonable attorneys' fees incurred by it in enforcing its rights hereunder, plus interest at the Prime Rate on the amount of any judgment obtained against Buyer from the date of default until the date of payment of the judgment. As a condition to obtaining liquidated damages, Seller shall not be required to have tendered the Stations Assets but shall be

required to demonstrate that it is willing and able to do so and to perform its other closing obligations in all material respects.

## **ARTICLE 20** **RISK OF LOSS**

The risk of loss or damage to the Stations Assets prior to the Effective Time shall be upon Seller. Seller shall repair, replace and restore any damaged or lost material Stations Asset to its prior condition as soon as possible and in no event later than the Effective Time. If Seller is unable or fails to repair, restore or replace a lost or damaged item required to be repaired or replaced by Seller prior to the Closing, Seller shall reimburse Buyer for the cost of the repair, restoration or replacement of such item incurred by Buyer after the Closing.

## **ARTICLE 21** **OTHER PROVISIONS**

**21.1.   Publicity.** Except as required by applicable law or with the other party's express written consent, no party to this Agreement nor any affiliate of any party shall issue any press release or similar public statement regarding the transactions contemplated by this Agreement.

**21.2.   Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither Buyer nor Seller may assign this Agreement without the prior written consent of the other party hereto, except that Buyer may assign this Agreement to an Affiliate if Buyer fully guarantees to Seller the performance hereunder of its Affiliate and further provided that such assignment does not delay the FCC Consent.

**21.3.   Entire Agreement.** This Agreement and the exhibits and schedules hereto embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought. Any matter that is disclosed in a Schedule hereto in such a way as to make its relevance to the information called for by another Schedule readily apparent shall be deemed to have been included in such other Schedule, notwithstanding the omission of an appropriate cross-reference.

**21.4. Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

**21.5. Computation of Time.** If after making computations of time provided for in this Agreement, a time for action or notice falls on Saturday, Sunday or a Federal holiday, then such time shall be extended to the next business day.

**21.6. Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Michigan without regard to its principles of conflict of law.

**21.7. Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request in writing.

If to Buyer:

Citadel Broadcasting Company  
c/o Forstmann Little & Co.  
767 Fifth Avenue, 44<sup>th</sup> Floor  
New York, NY 10153  
Attn: Mr. Farid Suleman  
Telephone: (212) 355-5656  
Facsimile: (212) 759-9059

and

Citadel Broadcasting Company  
7201 W. Lake Mead Blvd.  
Suite 400  
Las Vegas, NV 89128  
Attn: Mr. Randy L. Taylor  
Telephone: (702) 804-8202  
Facsimile: (702) 804-8292

With a copy to:

Leventhal, Senter & Lerman, P.L.L.C.  
2000 K Street, N.W.  
Suite 600  
Washington, D.C. 20006-1809  
Attention: Steven A. Lerman, Esq.

Telephone: (202) 429-8970  
Facsimile: (202) 293-7783

If to Seller:

Unity Broadcasting, Inc.  
Noordyk Broadcasting, Inc.  
P.O. Box 190  
Fremont, MI 49412  
Attn: Mr. Donald J. Noordyk  
Telephone: (231) 924-4700

With a copy to:

Booth Freret Imlay & Tepper, PC  
7900 Wisconsin Avenue, Suite 304  
Bethesda, MD 20814-3628  
Attn: Cary S. Tepper, Esq.  
Telephone: (202) 686-9600  
Facsimile: (301) 718-1820

Any such notice, demand or request shall be deemed to have been duly delivered and received (i) on the date of personal delivery, or (ii) on the date of transmission, if sent by facsimile (but only if a hard copy is also sent by overnight courier), or (iii) on the date of receipt, if mailed by registered or certified mail, postage prepaid and return receipt requested, or (iv) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

**21.8. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

**21.9. Further Assurances.** Seller shall at any time and from time to time after the Closing execute and deliver to Buyer such further conveyances, assignments and other written assurances as Buyer may reasonably request in order to vest and confirm in Buyer (or its assignees) the title and rights to and in all of the Stations Assets to be and intended to be transferred, assigned and conveyed hereunder.

## **ARTICLE 22**

## **DEFINITIONS**

Unless otherwise stated in this Agreement, the following terms when used herein shall have the meanings assigned to them below (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

*“Accounts Receivable”* shall have the meaning set forth in Section 1.3.

*“Additional FCC Applications”* shall have the meaning set forth in Section 9.12.

*“Affiliate”* shall mean any person or entity that is controlling, controlled by or under common control with the named person or entity.

*“Agreement”* shall mean this Asset Purchase Agreement, including the exhibits and schedules hereto.

*“Assumed Contracts”* shall have the meaning set forth in Section 1.2(d).

*“Buyer”* shall have the meaning set forth in the preamble to this Agreement.

*“Buyer’s Proration Amount”* shall have the meaning set forth in Section 5.2.

*“Business Day,”* whether or not capitalized, shall mean every day of the week excluding Saturdays, Sundays and Federal holidays.

*“Claimant”* shall have the meaning set forth in Section 16.3(a).

*“Closing”* shall have the meaning set forth in Section 1.1.

*“Closing Date”* shall mean the date on which the Closing is completed.

*“Contracts”* shall mean the contracts, agreements, including employment agreements, commitments and understandings of Seller or to which Seller is a party, relating to the conduct of the business and operation of the Station.

*“Current Studios”* shall have the meaning set forth in Section 1.2.

*“Effective Time”* shall mean 12:01 a.m., local Muskegon, Michigan time, on the Closing Date.

*“Environmental Laws”* shall mean any applicable federal, state or local law, statute, charter, ordinance, rule or regulation or any governmental agency interpretation, policy or



guidance, and any permit, order, directive, court ruling or order or consent decree applicable to or affecting the Real Property.

“*ERISA*” shall have the meaning set forth in Section 7.8(c).

“*Escrow Agent*” shall have the meaning set forth in Section 2.2.

“*Escrow Agreement*” shall have the meaning set forth in Section 2.2.

“*Escrow Agent*” shall have the meaning set forth in Section 2.2.

“*Excluded Assets*” shall have the meaning set forth in Section 1.3.

“*FCC*” shall mean the Federal Communications Commission.

“*FCC Application*” shall mean the application or applications that Seller and Buyer must file with the FCC requesting its consent to the assignment of the Stations Licenses.

“*FCC Consent*” shall mean the action by the FCC granting the FCC Application.

“*Final Order*” shall mean action by the FCC (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending, and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the Commission, has expired.

“*Hazardous Substance*” shall have the meaning set forth in Section 7.13.

“*Hazardous Waste*” shall have the meaning set forth in Section 7.13.

“*Indemnitor*” shall have the meaning set forth in Section 16.3(a).

“*Intellectual Property*” shall have the meaning set forth in Section 7.9.

“*Liens*” shall mean mortgages, deeds of trust, liens, pledges, collateral assignments, security interests, leases, subleases, conditional sales agreements, easements, covenants, encroachments, encumbrances, restrictions, charges or other defects of title.

“*LS&L*” shall have the meaning set forth in Section 1.1.

*“Material Adverse Effect”* shall have the meaning set forth in Section 11.6.

*“Material Contracts”* shall mean those Contracts marked as “\*\*\*” on Schedule 1.2(d) of this Agreement.

*“Multiple Ownership Rules”* shall have the meaning set forth in Section 6.6 hereof.

*“NBI”* shall have the meaning set forth in the preamble to this Agreement.

*“NBI Station”* shall have the meaning set forth in the Recitals to this Agreement.

*“New STL Tower”* shall have the meaning set forth in the Recitals to this Agreement.

*“New Studios”* shall have the meaning set forth in the Recitals to this Agreement.

*“Noordyk”* shall have the meaning set forth in the preamble to this Agreement.

*“Notice of Disagreement”* shall have the meaning set forth in Section 5.2.

*“Permit”* shall have the meaning set forth in the Recitals to this Agreement.

*“Personal Property”* shall have the meaning set forth in Section 1.2(c).

*“Phase I Report”* shall have the meaning set forth in Section 10.7.

*“Phase II Report”* shall have the meaning set forth in Section 10.7.

*“Preliminary Proration Schedule”* shall have the meaning set forth in Section 5.2.

*“Prime Rate”* shall mean a per annum rate equal to the “prime rate” as published in the Money Rates column of the Eastern Edition of The Wall Street Journal (or the average of such rates if more than one rate is indicated).

*“Proration Schedule”* shall have the meaning set forth in Section 5.2.

*“Purchase Price”* shall have the meaning set forth in Section 2.1(a).

*“Real Property”* shall have the meaning set forth in Section 1.2(b).

*“Referee”* shall have the meaning set forth in Section 5.2.

*“Seller”* shall have the meaning set forth in the preamble to this Agreement.

*“Stations”* shall have the meaning set forth in the Recitals to this Agreement.

*“Stations Assets”* shall have the meaning set forth in Section 1.2.

*“Stations Licenses”* shall mean the licenses, permits and other authorizations, including any temporary waiver or special temporary authorization, issued by the FCC to Seller in connection with the operation of the Station.

*“STL Applications”* shall have the meaning set forth in Section 9.8.

*“Studio Lease”* shall have the meaning set forth in the Recitals to this Agreement.

*“Time Sales Agreements”* shall mean contracts entered into in the ordinary course of business of the Stations for the sale or sponsorship of broadcast time on the Stations for cash.

*“Tower Lease”* shall have the meaning set forth in Section 9.8.

*“Trade Agreements”* shall mean all Contracts for the sale of advertising time for consideration other than cash.

*“Transferred Employees”* shall have the meaning set forth in Section 9.11.

*“UBI”* shall have the meaning set forth in the preamble to this Agreement.

*“UBI Stations”* shall have the meaning set forth in the Recitals to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**CITADEL BROADCASTING COMPANY**

By: \_\_\_\_\_  
Name: Judith A. Ellis  
Title: Chief Operating Officer

**UNITY BROADCASTING, INC.**

By: \_\_\_\_\_  
Name: Donald J. Noordyk  
Title: President

**NOORDYK BROADCASTING, INC.**

By: \_\_\_\_\_  
Name: Donald J. Noordyk  
Title: President

**DONALD J. NOORDYK, INDIVIDUALLY**

\_\_\_\_\_

## **SCHEDULES AND EXHIBITS**

### **Schedules**

Schedule 1.2(a)	Stations Licenses
Schedule 1.2(b)	Real Property
Schedule 1.2(c)	Personal Property
Schedule 1.2(d)	Assumed Contracts
Schedule 1.2(e)	Intellectual Property
Schedule 1.3(g)	Excluded Assets
Schedule 7.3	Required Consents
Schedule 7.8	Personnel Information and Employee Benefit Plans
Schedule 7.14	UCC Financing Statements

### **Exhibits**

Exhibit A	Specifications of New Studios Buildout
Exhibit B	Renewal Terms of Studio Lease