

ASSET PURCHASE AGREEMENT

by and between

BARNACLE BROADCASTING CO., LTD.

and

APEX BROADCASTING, INC.

for the Sale and Purchase of

Station WJZX(FM), Port Royal, South Carolina

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into as of this 26th day of October, 2001, by and between Barnacle Broadcasting Co., Ltd., a corporation organized under the laws of the State of South Carolina ("Seller"), and Apex Broadcasting, Inc., a corporation organized under the laws of the State of Mississippi ("Buyer").

WITNESSETH:

WHEREAS, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission") for the operation of Station WJZX(FM), Port Royal, South Carolina (the "Station"); and

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

WHEREAS, Seller and Buyer recognize that the disposition of the proceeds of the transactions contemplated herein may be subject to the outcome of the pending civil proceeding in Barnacle Broadcasting Inc. v. Baker Broadcasting Inc. (Civil Action # 97-CP-07-1251 ("Barnacle Litigation")), or settlement of the claims at issue in the Barnacle Litigation prior to Closing. A description of the issues, positions of the parties, and procedural posture of the Barnacle Litigation is attached hereto as Schedule 6.10.

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

SECTION 1
ASSETS TO BE SOLD

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

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

1.1.2. **Real Property.** Subject to any required consent of the Lessor to such assignment, all of Seller's rights and interests in and to the premises at Orleans Avenue, Hilton Head, South Carolina used in connection with the operation of the Station, including, but not limited to a summary of the terms of such interests and the present status thereof, attached as Schedule 1.1.2 (the "Studio Lease").

1.1.3. **Tangible Personal Property.** Except for the tangible personal property which is part of the Station Tower (as defined in section 1.2.9), all of Seller's rights in and to the fixed and tangible personal property used in the operation of the Station, including, but not limited to the physical assets and equipment, leasehold improvements, furniture, fixtures, receivers, programming, tapes, transmitters, switches and related equipment, and music libraries listed in Schedule 1.1.3, together with replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property").

1.1.4. **Agreements.** Subject to any required consents of the other parties to such contracts, agreements, and leases, all of Seller's rights to and in the contracts and agreements,

and leases to which Seller or the Station is a party and which are listed in Schedule 1.1.4 (hereinafter collectively "Agreements"), together with all contracts, agreements and leases entered into or acquired by the Seller between the date hereof and the Closing Date, which Buyer elects to assume, except for those contracts, agreements and leases which are among the Excluded Assets. Subject to Buyer's obligations hereunder, Seller agrees to use commercially-reasonable efforts to secure third-party consents to assignment of each of the Agreements to Buyer, by the Closing Date, if such consents are required by the terms of such Agreement. Provided, however, that Buyer agrees to use commercially-reasonable efforts to assist Seller in securing such consents, including (without limitation) satisfying any reasonable conditions to such consent which may be imposed by the party whose consent is required, except curing any default of Seller arising prior to the Closing Date

1.1.5. **Intangibles.** All right, title and interest of Seller in and to the call letters "WJZX," and the good will of the business associated with such call letters. (hereinafter collectively the "Intangibles").

1.1.6. **Business Records.** Such business and personnel records relating primarily to the business or operation of the Station or to assets or agreements purchased by Buyer, if any, as the Seller has in its possession (hereinafter collectively "Business Records").

1.1.7. **Accounts Receivable.** Subject to Section 11 of this Agreement, the Accounts Receivable of the Station as of 11:59 PM, local time, on the day prior to the Closing Date, for collection purposes only, as provided in Section 11.

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

1.2.1. All cash, cash equivalents or similar type investments of Seller, such as certificates of deposit, Treasury bills and other marketable securities on hand and/or in banks;

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

1.2.3. All agreements and leases that have terminated or expired prior to the Closing Date in the ordinary course of business and as permitted hereunder; any leases or Agreements as to which the Seller is unable, despite commercially-reasonable efforts, to secure third-party consent to assignment to the Buyer by the Closing Date; and any and all agreements with performing rights societies, including (without limitation) ASCAP, BMI and SESAC.

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

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

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

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

1.2.7. The name "Barnacle Broadcasting Company".

1.2.8. **Station Tower.** The antenna tower of the Station located on Coffin Point Road, St. Helena Island, Beaufort County, South Carolina, together with all fixtures, improvements, power and transmission lines, and other equipment located there which are used or useful in the operation of the tower generally, and not the Station specifically, and all leases of antenna space on such tower, all of which shall be excluded (collectively, the "Station Tower").

SECTION 2 PURCHASE PRICE

2.1. **Purchase Price.** In consideration of Seller's performance of this Agreement, the sale, assignment, transfer, conveyance, setting over, and delivery of the Assets as defined herein above to Buyer, the total purchase price (the "Purchase Price") to be paid by Buyer to Seller shall be the sum of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00), or such lesser sum as calculated in accordance with Section 3.2 of this Agreement.

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

(a) .Upon execution and delivery of this Agreement, Buyer shall deposit, via wire transfer of immediately available funds, ONE HUNDRED FIFTY THOUSAND (\$150,000), (the "Earnest Money Escrow Deposit") in an interest-bearing escrow or trust account with an escrow agent reasonably acceptable to Seller and Buyer (the "Escrow Agent"). The Earnest Money Escrow Deposit shall be disbursed as provided in this Agreement. Seller

shall make commercially-reasonable efforts to secure the consent of Baker Broadcasting, Inc.. (“Baker”), a party in the Barnacle Litigation, to execution of this Agreement and consummation of the transactions contemplated herein, and Baker’s agreement not to interfere or attempt to interfere therewith before any tribunal. If Baker fails or refuses to so consent and agree on or before the Closing Date, then, on the Closing Date, at Buyer’s election, the entire Earnest Money Escrow Deposit, including any and all interest earned thereon, shall be returned to Buyer, this Agreement shall be of no further force and effect, and neither Seller or Buyer shall have any further obligations to one another. In no event shall Baker’s failure or refusal to consent or agree or breach of any such consent or agreement, be deemed a default by Seller hereunder, or trigger any other remedy on Buyer’s part other than a refund of the Earnest Money Escrow Deposit with interest accrued thereupon, which shall be Buyer’s sole and exclusive remedy.

In the alternative, should the parties to the Barnacle Litigation settle the case prior to the Closing Date, and should Seller deliver to Escrow Agent and Buyer a form of instrument (which is either effective when made, or conditioned upon payment of a sum of money to a designated party at Closing of the transactions contemplated herein) by which Baker agrees to relinquish and release any claim on the part of Baker to the Assets to be conveyed, then Seller and Buyer shall instruct the Escrow Agent jointly to disburse at Closing the Earnest Money Escrow Deposit, in accordance with subsection (b) & (c) hereof. If Baker fails or refuses to deliver such release, or breaches its agreement to deliver such release, then, on the Closing Date, at Buyer’s election, the Earnest Money Escrow Deposit, and any and all interest earned on the Earnest Money Escrow Deposit, shall be returned to Buyer, this Agreement shall be of no further force and effect, and neither Seller or Buyer shall have any further obligations to one another. In no event shall Baker’s failure or refusal to deliver such release upon Seller’s tender of performance

of the agreed consideration for such release, or Baker's breach of any agreement to deliver such release upon Seller's tender of the consideration for such release, be deemed a default by Seller hereunder, or trigger any other remedy on Buyer's part other than a refund of the Earnest Money Escrow Deposit with interest accrued thereupon, which shall be Buyer's sole and exclusive remedy.

(b) At Closing, upon satisfaction or express waiver of all conditions precedent, Buyer shall join with Seller in causing the Escrow Agent to pay, by wire transfer of immediately available funds to the account of Seller, the entire Earnest Money Escrow Deposit (including all interest accrued thereupon) which shall be credited toward the Purchase Price (as the same may be adjusted pursuant to Section 3.2 hereof).

(c) At Closing, upon satisfaction or express waiver of all conditions precedent, Buyer shall pay, in full, the balance of the Purchase Price (as the same may be adjusted pursuant to Section 3.2 hereof), remaining after crediting the sum of the Earnest Money Escrow Deposit and all interest accrued thereupon, and making adjustments pursuant to Section 3.2, by wire transfer of immediately available funds, to the accounts of Seller and those of such other parties as may be designated by Seller, as necessary to cause to be delivered at Closing an executed, unconditional final release and relinquishment by Baker of any and all claims against the Assets to be conveyed to Buyer. The full amount so paid shall be credited against the Purchase Price.

2.3 Allocation of Purchase Price. Prior to the Closing Date, the parties agree to allocate the Purchase Price in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986. In the event that the parties are unable to reach such an agreement prior to the Closing Date, they will select a qualified, independent and nationally recognized appraiser of broadcast properties and that firm's decision shall be binding upon the parties and the fees and

expenses shall be borne equally by Buyer and Seller. The parties also agree to use such Purchase Price allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

SECTION 3 ADJUSTMENTS

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

3.2. **Adjustment Items.** The following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, and monies shall be paid at Closing in accordance with Sections 3.3 and 3.4 herein below.

3.2.1. Rentals or other charges, payable or paid in respect of leasehold interests or tenancies, or leased transmitter sites, studios, offices or other Real Property or equipment under any lease or tenancy of Real Property, and any and all equipment leases described in Schedule 1.1.2.

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

3.2.3. Transferable license, permit, and registration fees, and like items.

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

3.2.5. License agreements with ASCAP, BMI and SESAC.

3.2.6. Unpaid obligations of Seller with respect to any lease, contract, or agreement which Buyer assumes,. The amount of any security deposits, if any, along with any interest accrued thereupon, shall be paid by Buyer to Seller as an Adjustment at Closing, and Buyer shall thereafter have the sole right and interest in and to any such deposits and interest.

3.2.7. Other similar items applicable to the Assets and/or attributable to the operations and/or the business of the Station, it being the intention of the parties that all operations and the business of the Station prior to the Adjustment Time shall be for the account of Seller, and all operations and business of the Station after the Adjustment Time shall be for the account of Buyer.

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

3.2.9. Except for Carter Bentley, who Buyer agrees to employ after Closing in accordance with Section 8.6 hereof, Buyer shall have no obligation to employ any employees of Seller, except those to whom Buyer offers employment following the Closing and who accept such offer. On execution of this Agreement, Seller shall deliver to Buyer a detailed list of all employees of the Station, their salaries, benefits and any other job-related matters for Buyer's review. As of 11:59 p.m. the day prior to the Closing, Seller shall terminate all of the employees of the Station.

3.3 Adjustments After Closing Date. If the amount of any items to be adjusted cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within thirty (30) days after the Closing Date and payment therefor shall be made to the party entitled thereto within thirty (30) days after notice of such determination thereof has

been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid initially from the amount in dispute prior to being delivered to prevailing party and if such amount in dispute does not satisfy the obligation to accountant, thereafter one-half by Seller and one-half by Buyer. The existence of any such dispute, or the inability of Seller and Buyer to resolve any adjustment shall not entitle Buyer to refuse to close, or a reduction of the Purchase Price, or to delay the return of the Accounts Receivable to Seller or any payment due Seller with respect to the Accounts Receivable pursuant to Section 11.

SECTION 4 APPLICATION TO AND CONSENT BY COMMISSION

4.1. **Commission Consent.** Consummation of the transactions contemplated herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the Commission or its staff shall have given its consent in writing, without any condition materially adverse to Buyer or Seller, to the assignment of the Commission Authorizations from Seller to Buyer, on or before the Closing Date. Buyer hereby expressly hereby agrees to consummate the transactions contemplated herein on or before the Closing Date, provided that the Commission staff has by then granted consent to assignment of the Commission Authorizations, notwithstanding that such grant may not then be a Final Order. For purposes of this Agreement, a "Final Order" means an action by the Commission as to which (i) no request for stay by the Commission is pending, no such stay is in effect, and the deadline for

filing a request for any such stay has passed; (ii) no appeal, petition for rehearing or reconsideration, or application for review is pending before the Commission and the deadline for filing any such appeal, petition or application has passed; (iii) the Commission has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (iv) no appeal to a court, or request for stay by a court, of the Commission's action is pending or in effect, and the deadline for filing any such appeal or request has passed.

4.2 Application For Commission Consent.

(a) Seller and Buyer acknowledge that they have, as of the date of this Agreement, prepared and caused to be filed their respective portions of an application seeking the Commission's approval of assignment of the Commission Authorizations from Seller to Buyer. (the "Assignment Application") Each party further agrees expeditiously to prepare amendments or supplements to the Assignment Application whenever such amendments and supplements are reasonably required by the Commission or its rules.

(b) Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. All filing fees and grant fees imposed by the Commission shall be paid one-half (1/2) each by Seller and Buyer.

(c) Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in

this Agreement. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section shall limit any party's right to terminate this Agreement pursuant to Section 17 of this Agreement).

4.2. **Notice of Application.** Seller shall, at its expense, give due notice of the filing of the Assignment Application by broadcasting on the Station, or by such other means as may be required by the rules and regulations of the Commission.

4.3. **Delay in Approval of Application.** Either party at its option may terminate this Agreement by written notice to the other party, and without liability to the other party, at any time after December 12, 2001 (the "Upset Date") if the Commission staff has not granted the Assignment Application on or before that time. In the event of such termination, each party shall bear its own expenses, and the Escrow Agent shall return to Buyer the Earnest Money Escrow Deposit (including all interest earned thereon).

SECTION 5 LIABILITIES

5.1. **Liabilities.** Subject to and except for the claims asserted by Baker in the Barnacle Litigation, the Assets shall otherwise be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics' and materialmen's liens), pledges, conditional sales agreements, charges, mortgages, security interests, encumbrances and restrictions of any type or amount (collectively, "Liens") created or suffered by Seller prior to the Closing Date, whether existing now or in the future. Buyer acknowledges that Baker in the Barnacle Litigation has asserted a claim to the Assets, and that the parties hereto have agreed that it shall be a condition precedent to each of their obligations under this Agreement that Baker in the Baker Litigation have either consented and agreed to the

execution and consummation of the transactions contemplated herein, and/or released its claim to the Assets, in accordance with Section 2 hereof. Accordingly, the parties agree that Seller's obligations under this Section 5.1 are subject to satisfaction of that condition, and that failure of such condition shall not be regarded as a default by Seller under this Section.

5.2. **Buyer's Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of the Seller accruing under the Studio Lease and the Agreements listed in Schedule 1.1.4 and under all advertising contracts for the sale or barter of time on the Station which are non-cancelable, or cancelable on not less than thirty (30) days prior written notice, and such other advertising agreements which Buyer agrees to assume, but only to the extent that such duties accrue after the Closing Date based on the operation of the Station by Buyer following the Closing Date, provided that Seller shall have no obligation to reimburse Buyer for, or adjust the Purchase Price on account of, any refunds or "make goods" for spot advertising contracted prior to Closing, but scheduled to run after Closing, whether such spots are run or cancelled by Buyer. Further, Buyer agrees that it will assume at Closing and discharge following the Closing all duties, expenses and costs associated with operating the Station, including, without limitation, regulatory compliance duties, payment of regulatory fees, utility expenses, telephone and telecommunications-related expenses, equipment, real property, and facilities leases, employment-related expenses, and taxes, accruing, or arising from events occurring, after the Closing. All of the foregoing are referred to as "Assumed Obligations." Except as provided in the preceding sentences, Buyer is not agreeing to, and shall not, assume any liability, obligation, undertaking, expense or agreement of Seller other than Assumed Obligations, of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such

liability, obligation, undertaking, expense or agreement. All of such liabilities and obligations shall be referred to herein as the "Retained Liabilities."

5.3 **Seller's Liability.** Seller shall remain liable for, and covenants to pay, satisfy, or discharge, all liabilities, payments, obligations, and duties under the Agreements and any leases or other instruments transferred or assigned to Buyer hereunder, accruing prior to or by reason of events occurring prior to the Closing Date. Seller agrees to be and remain responsible for all unpaid performing rights society license fees, studio lease payments, utility charges, programming fees, regulatory fees, utility expenses, telephone and telecommunications-related expenses, equipment, real property, and facilities leases, employment-related expenses, and taxes and all other payables, incurred in connection with Station operations prior to Closing, without regard to the \$25,000 threshold on Seller's indemnity obligations in Section 13 hereof. If any such payables shall remain due at Closing, Seller shall make arrangements reasonably acceptable to Buyer to satisfy such payables.

SECTION 6 REPRESENTATIONS AND WARRANTIES OF THE SELLER

As used in this Section, "Seller's Knowledge," "Knowledge of the Seller," and similar terms shall mean the actual knowledge of Seller's President, Pegram Harrison without any independent examination of any instruments or documents, or inquiry or verification, other than to inquire of the Station's General Manager, Carter Bentley as to the matters represented or warranted. As qualified below, Seller represents and warrants as follows:

6.1. Organization and Standing.

6.1.1. Seller is now and on the Closing Date will be a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina.

Subject to and except for the claims asserted by the Baker in the Barnacle Litigation, Seller has the full power to own the Assets and to carry on the business of the Station as it now is being conducted.

6.1.2. Subject to and except for the claims asserted by the Baker in the Barnacle Litigation, Seller has the full power and authority to enter into this Agreement and all of Seller's Closing Documents. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Seller's Closing Documents (on the Closing Date) are or will be authorized by all necessary action of the Seller.

6.2. **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms. Subject to and except for the claims asserted by the Baker in the Barnacle Litigation, the execution, delivery, and performance of this Agreement or any of the Closing Documents does not violate any provision of the Seller's organizational documents, or, to Seller's Knowledge contract provision or other commitment to which Seller or the Station is a party or under which it or its property is bound, or any judgment or order, and will not result in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets.

6.2.1. Intentionally Left Blank

6.2.2. **Patents, Trademarks, Copyrights.** The Intangible Property includes all call signs, used to promote or identify the Station. Seller has no Knowledge of any infringement or unlawful or unauthorized use of those promotional rights, including without limitation the use of any call sign, slogan or logo by any broadcast Station or cable system in the Port Royal, South

Carolina area which may be confusingly similar to the call signs currently used by the Station. Seller has full and exclusive right, title to or interest in and to all the call letters "WJZX-FM." together with all goodwill associated therewith, to the Knowledge of Seller, free from infringements, interferences, litigation and disputes of any kind or nature whatsoever.

6.2.3. **Tangible Personal Property.** Schedule 1.1.3 attached hereto accurately lists all the material Tangible Personal Property owned, leased, or otherwise held by the Station and/or Seller which is intended to be conveyed hereunder, except as disclosed in Schedule 1.1.3. Subject to and except for the claims by the Baker asserted in the Barnacle Litigation, Seller is the owner of and at Closing, will have good, clear, marketable, and indefeasible title to all of the Tangible Personal Property listed in Schedule 1.1.3, free and clear of all liens, charges, encumbrances, restrictions, debts, demands, or claims of any kind or nature whatsoever.

6.2.4. **Condition of Property.** Except as specifically indicated on Schedule 1.1.3 and elsewhere in this Section, the Tangible Personal Property listed in Schedule 1.1.3 is in good operating condition, and has been maintained and repaired in good operating condition, and to Seller's Knowledge, is free from defects in materials and workmanship in all material respects. The Station's EAS system is currently under repair. Seller warrants that the EAS system will be in good operating condition at Closing. Except for the Excluded Assets, the Assets include all assets necessary for the conduct of the business of the Station as it is currently conducted by Seller.

6.3. **Agreements.**

6.3.1. Schedule 1.1.4 accurately lists all agreements and other contracts (or, when the same are oral, a complete and correct description thereof) with respect to the Station, to be conveyed hereby (except for contracts for the sale of advertising time for cash or barter).

6.3.2. The Agreements listed in Schedule 1.1.4 are in full force and effect and valid, binding, and enforceable in accordance with their terms, and except and to the extent as therein stated, and subject to Seller's and Buyer's obligations under Section 1.1.4 hereof, to the Knowledge of Seller, are assignable by Seller to Buyer on the same terms and conditions as Seller now enjoys, and to the best of Seller's Knowledge, Seller has performed in all material respects all the obligations imposed upon Seller under any such Agreements or other obligations that are to be performed as of the making of this warranty.

6.3.3. The Studio Lease described in Section 1.1.2 accurately describes all of the Seller's right and interest in the premises described therein, and to which the Seller and/or the Station is a party or under which Seller and/or the Station is bound for the rental of real property. Except as disclosed in Schedule 1.1.2, there is no default by or claim of default against Seller or, to Seller's knowledge, against any other party to such Studio Lease, or any event or circumstance that with the passage of time or the giving of notice or both would result in a default by Seller or, to Seller's knowledge, any other party, or any notice of termination existing with respect to any of such Studio Lease.

6.4. **Authorizations.**

6.4.1. Seller is the authorized legal holder of all licenses, permits, and authorizations necessary to operate the business of the Station lawfully and as it is now being conducted, including, without limitation, all Commission Authorizations listed in Schedule 1.1.1, none of which is subject to any restrictions or conditions which would limit in any respect the full operation of the Station as now operated. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended. To Seller's Knowledge, (except for the operation of

the EAS system, which is currently under repair, but will be restored to operating condition as soon as possible) Seller is operating the Station in all material respects in accordance with the Commission Authorizations, the underlying construction permits and all rules, regulations and policies of the Commission. To Seller's Knowledge, there is no action pending, or threatened, before the Commission or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations, or except for the Barnacle Litigation, any action which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation, except as required to transfer same to Buyer.

6.4.2. All material reports, applications and other documents required to be filed by Seller with the Commission or any other administrative body with respect to the Station or its operations have been or will be filed and all such reports, applications and documents are true and correct in all material respects. To the Knowledge of Seller, there are no matters that might result in the suspension or revocation of any Commission Authorizations pertaining to the Station.

6.5. **Litigation**

6.5.1. **Litigation; Compliance With Law.** To the Knowledge of Seller, the Station is in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including compliance with the Communications Act and all rules and regulations issued thereunder (except for the operation of the EAS system, which is currently under repair, but will be restored to operating condition as soon as possible). To Seller's Knowledge, except for the Barnacle Litigation, as set forth in Schedule 6.7.1, and the dispute with the landlord of the Studio Lease described in Schedule 1.1.2 hereof, and other than

proceedings affecting the broadcasting industry in general, there is no complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending, or threatened, against the Station, Seller, or any of the Assets being sold or transferred to Buyer, including, without limitation, any proceeding which will: (a) adversely affect the Assets or the Commission Authorizations to be assigned hereunder, or the operation of the Station, or the ability of Buyer to own and operate the Station, or the use, ownership, or operation of any of the Assets by Buyer, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of the Commission Authorizations, or the issuance or imposition of any administrative sanction that might adversely affect the Assets or the Commission Authorizations, or the operation of the Station or the ability of Buyer to own and operate the Station or the use, ownership, or operation of any of the Assets by Buyer. Seller will give Buyer prompt notice of its discovery of the institution or the threat of any such litigation, investigation, or proceeding. To Seller's Knowledge, Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Station.

6.6. Employees and Labor Relations .

6.6.1. Seller: (a) is not a party to any collective bargaining agreement covering or relating to any of Station' employees and has not recognized, and to Seller's Knowledge, is not required to recognize, and has received no demand for recognition by any contract with any of the employees of the Station or to any other employment contract, labor agreement, or union agreement, written or oral; (b) other than as disclosed in the Schedules, has not promulgated any

policy or entered into any agreement relating to the payment of pensions, profit sharing, or bonuses to any of its employees whose employment, if terminated or suspended, for which Buyer will be liable; and (c) to Seller's Knowledge, has not committed any unfair labor practices.

6.6.2. To the Knowledge of Seller, Seller has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those relating to rates, hours, equal employment opportunity, collective bargaining, and the withholding and payment of taxes and contributions and has withheld all amounts required by law or agreement to be withheld from the wages or salaries of the Station' employees and is not liable to the employees or any government body for arrears of wages or for any tax or penalty for failure to comply with the foregoing.

6.7. **Taxes and Other Matters .**

6.7.1. **Payment of Taxes.** To Seller's Knowledge, all returns and reports concerning franchise taxes, unemployment insurance, withholding and payroll taxes, sales taxes, personal property taxes, license taxes, social security taxes, and all other reports required to have been filed by the Seller relating to the Assets, the Station, and/or its operation pursuant to any law or regulation have been duly filed, and all taxes, interest, assessments, and penalties which are due to any taxing authority, federal, state, or local, with respect to any tax period ending on or prior to the making of this warranty have been duly paid.

6.7.2 **Insolvency Proceedings.** No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Purchased Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken

any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings.

6.7.3 No Untrue Statements or Omission. No representation or warranty made by Seller in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Seller, or on its behalf, to Buyer and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any Knowingly untrue statement or Knowingly omit to state a material fact necessary to make the statements contained therein not misleading. Subject to any qualifications made herein, all representations and warranties of Seller set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

6.8 Station Tower Lease Agreement. At the Closing, Seller shall provide for execution by Buyer a lease for the use of the Station Tower (“Station Tower Lease Agreement), in a form attached hereto as Schedule 6.8.

6.9 Barnacle Litigation. Schedule 6.9 sets forth a true and accurate description of the parties, issues and procedural posture of the Barnacle Litigation as of the date hereof. Seller shall notify Buyer of any material developments or changes in the matters disclosed in Schedule 6.9.

SECTION 7 WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER

As used in this Section, “Buyer’s Knowledge,” “Knowledge of the Buyer,” and similar terms shall mean the actual knowledge of Buyer’s President, G. Dean Pearce, as to the matters represented and warranted, without any independent examination of any instruments or documents, or inquiry or verification.

Buyer covenants, represents, and warrants as follows:

7.1. **Organization and Standing.** Buyer is a corporation duly organized validly existing and in good standing under the laws of the State of Mississippi, and as of the closing date, will be duly qualified to do business and be in good standing in the State of South Carolina.

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

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

7.4. **Litigation.** Except for administrative rule makings or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint, before the Commission, other governmental body, or court of any nature, including, without limitation, a grievance, arbitration or insolvency or bankruptcy proceeding, pending or, to the best of Buyer's knowledge, threatened against or affecting Buyer which would adversely affect Buyer's authority or ability to carry out this agreement.

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

7.6. **Buyer's Qualifications.** There is no fact that would, under present law (including the Communications Act of 1934, as amended) and the present rules and regulations of the Commission, disqualify Buyer from being the assignee of the Station or that would delay the Commission's approval of the Assignment Application. Should Buyer become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such disqualification. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification.

7.7. **No Untrue Statements or Omission.** No representation as warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any Knowingly untrue statement or

Knowingly omit to state a material fact necessary to make the statement contained therein not misleading. Subject to any qualifications made herein, all representations and warranties of the Buyer set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date, as if made on that Date.

7.8. **Reliance.** Neither Buyer nor any person acting as Buyer's representative or on Buyer's behalf has relied on any representation or statement of Seller or any other person except as expressly set forth in this Agreement. Buyer acknowledges that it has been given full opportunity to examine, to its satisfaction, the Contracts listed or described in Schedule 1.1.4.

7.9. **Financing:** Buyer is, jointly with a "qualified intermediary," as defined by Internal Revenue Code, Section 1031, and rules and regulations promulgated thereunder, the holder of an interest-bearing custodial account with the Bank of Tuscaloosa, wherein there is presently on deposit, and shall remain on deposit through the Closing Date, an amount in excess of the Purchase Price. Such account shall be the sole source of funding for the Purchase Price at Closing. Buyer will not draw, or cause to be drawn by or on behalf of itself or the "qualified intermediary," funds from the account which would leave an amount on deposit in that account insufficient to pay the Purchase Price and to consummate fully the transactions contemplated hereby. Buyer will supply Seller with such documents and instruments as Seller may reasonably request to verify Buyer's compliance with this representation and warranty, including certifications from the depository institution.

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

8.1. **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Station and their operation, and during such period, Seller shall:

8.1.1. Operate the Station in good faith and in a manner consistent with the normal operation of the Station, as it is being operated on the date hereof, and in material accordance with the rules and regulations of the Commission and the Commission Authorizations.

8.1.2 Make reasonable efforts to endeavor to protect the service area of the Station, as currently authorized by the Commission, from interference from other stations, existing or proposed, of which Seller has actual knowledge, to the extent such service area is subject to protection and such interference is prohibited by the Commission's rules and regulations, and promptly give Buyer notice of any proposed interference.

8.1.3 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 after the date hereof, and on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller will furnish a written summary thereof).

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

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

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

8.2.2. By any act or omission, surrender, modify adversely, forfeit, or fail to renew under regular terms the Commission Authorizations or give the Commission grounds to institute any proceeding for the revocation, suspension or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations.

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

8.2.4. Create or suffer or permit the creation of any mortgage, conditional sales agreement, security interest, lien, hypothecation, pledge, encumbrance, restriction, liability, charge, claim or imperfection of title on any of the Assets or with respect thereto.

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

8.3. **Access to Information**

8.3.1. **Access to the Assets.** Between the date hereof and the Closing Date, Seller will give to Buyer and its authorized representatives and agents, including engineers,

accountants, lawyers, and other representatives, reasonable access during reasonable business hours to the Assets. Seller shall furnish to Buyer such information and materials concerning the Station' affairs as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Station.

8.4. **Restrictions on Buyer.** 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 programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity with the requirements of law and this Agreement.

8.5. **Buyer's Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will take no action, or fail to take any action, that would disqualify it from becoming the licensee of the Station or delay the grant of the Assignment Application by the Commission, and also agrees that it will not draw, or cause to be drawn by or on behalf of itself or the "qualified intermediary," funds from a Section 1031 "custodial account" now on deposit with the Bank of Tuscaloosa, which would leave an amount on deposit in that account insufficient to pay the Purchase Price and to consummate the transactions contemplated hereby. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

8.6. **Carter Bentley.** Buyer shall employ Carter Bentley at an annual base compensation of Thirty Thousand Dollars (\$30,000.00), for at least six (6) months following the Closing Date, and pay to Mr. Bentley, at Closing, a bonus of Ten Thousand Dollars (\$10,000.00).

SECTION 9
CONDITIONS FOR CLOSING

9.1. **Closing.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at a location and on a date set by the parties, provided that unless the parties agree to an earlier date, such date shall be not later than December 12, 2001 (the “Closing Date”).

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

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

9.2.2. Each of the Seller's representations and warranties contained in this Agreement (subject to any qualifications thereof) or in any schedule, certificate, or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time.

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

9.2.4. Seller shall be the holder of the Commission Authorizations listed in Schedule 1.11, and the Commission staff shall have granted consent to assignment of the Commission Authorizations to Buyer, notwithstanding that such grant may not then be a Final Order.

9.2.5. All outstanding mortgages, liens, security agreements, and other charges and encumbrances on the Assets, shall have been discharged and satisfied, or arrangements made to discharge same at Closing.

9.2.6. Seller shall have delivered to Buyer an inventory of the Tangible Personal Property to be conveyed, current as of the Closing Date. There shall be no material changes between Schedule 1.1.2 and the inventory of Tangible Personal Property as of the Closing Date other than changes that have been agreed to and accepted by Buyer, in its reasonable discretion.

9.2.7. Seller shall have secured the consent of Baker in the Barnacle Litigation to execution and consummation of the transactions contemplated herein, and such Baker's agreement not to interfere or attempt to interfere therewith before any tribunal, as provided in Section 2.2, hereof, and/or Seller shall have delivered to Escrow Agent and Buyer a form of instrument (which is either effective when made, or conditioned upon payment of a sum of money to a designated party at Closing of the transactions contemplated herein) by which the Baker in the Barnacle Litigation agrees to relinquish and release any claim on the part of the Baker to the Assets to be conveyed, as provided in Section 2.2 hereof. Provided, however, that in no event shall such Baker's failure or refusal to consent or agree or breach of any such consent or agreement, or Baker's failure or refusal to deliver such release upon Seller's tender of performance of the agreed consideration for such release, or Baker's breach of any agreement to deliver such release upon Seller's tender of the consideration for such release, be deemed a

default by Seller hereunder, or trigger any other remedy on Buyer's part other than a refund of the Earnest Money Escrow Deposit with interest accrued thereupon, which shall be Buyer's sole and exclusive remedy.

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

9.3.1 Buyer shall have delivered to Seller the Buyer's Closing Documents (as described in Section 10.2 below), including, without limitation, the executed Station Tower Lease Agreement..

9.3.2 Each of Buyer's representations and warranties contained in this Agreement (subject to any qualifications thereof) or in any certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true in all material respects at and as of Closing Date, as though each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.3.3 Buyer shall perform all of the obligations set forth in Section 2.2 of this Agreement with respect to the payment of the Purchase Price.

9.3.4 Buyer shall have agreed in form reasonably acceptable to Seller to assume all obligations under the agreements assigned to Buyer arising on or after the Closing Date.

9.3.5. Seller shall have secured the consent of Baker in the Barnacle Litigation to execution and consummation of the transactions contemplated herein, and Baker's agreement not to interfere or attempt to interfere therewith before any tribunal, as provided in Section 2.2, hereof, or, Seller shall have delivered to Escrow Agent and Buyer a form of instrument (which is either effective when made, or conditioned upon payment of a sum of money to a designated party at Closing of the transactions contemplated herein) by which the Baker in the Barnacle Litigation agrees to relinquish and release any claim on the part of the Baker to the Assets to be conveyed, as provided in Section 2.2 hereof.

9.4 Failure of Conditions Precedent to Obligations of Buyer. In case of the failure of any of the conditions precedent described in Section 9.2 hereof, and if Seller has failed to cure same by the Upset Date. Buyer shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent constitutes a material default by Seller, Buyer shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 17 hereof. Buyer shall not be deemed to have waived any failure by Seller to fulfill any of the conditions precedent described in Section 9.1 if Buyer does not have actual knowledge of such failure at the time of Closing. Subject to the limitations and restrictions on Seller's indemnity obligations set forth in Section 13 hereof, Buyer's waiver of any of the conditions precedent described in Section 9.2 hereof shall not preclude Buyer from seeking redress from Seller for Seller's failure to have complied with such conditions precedent.

9.5 Failure of Conditions Precedent to Obligations of Seller. In case of the failure of any of the conditions precedent described in Section 9.3 hereof, and if Buyer, has failed to cure the same, by the earlier of thirty (30) days after notice from Seller or the Upset Date. Seller shall have the right to terminate this Agreement without liability. In addition, if the

failure of such condition precedent results from a material default by Buyer, Seller shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 17 hereof. Seller shall not be deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 9.3 if Seller does not have actual knowledge of such failure at the time of Closing. Seller's waiver of any of the conditions described in Section 9.3 hereof shall not preclude Seller from seeking redress from Buyer for Buyer's failure to have complied with such conditions precedent.

SECTION 10 OBLIGATIONS AT CLOSING

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

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

10.1.2. An executed assignment and assumption agreement in form and substance reasonably satisfactory to counsel for Buyer assigning to Buyer the Agreements to be assigned hereunder.

10.1.3. An executed assignment and transfer in form and substance reasonably satisfactory to counsel for Buyer assigning and transferring to Buyer all of the Commission Authorizations and the Intangibles.

10.1.4. A certified copy of the resolutions of Seller's chief executive officer authorizing the execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions provided for herein, together with an incumbency certificate.

10.1.5. A certificate executed by Seller's chief executive officer stating that; (subject to any qualifications contained herein) (a) all of the representations and warranties of Seller set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Seller on or prior to the Closing Date have been performed in all material respects.

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

10.1.7. An assignment of the Accounts Receivable for collection only pursuant to Section 11 hereof.

10.1.8. Instructions executed on behalf of Seller directing the Escrow Agent to apply the Earnest Money Escrow Deposit (and all interest earned thereon) toward payment of the Purchase Price.

10.1.9. The executed Station Tower Lease Agreement, in a form attached hereto as Exhibit 6.8.

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

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

10.2.1. The Purchase Price as provided in Section 2.2.

10.2.2. A certificate executed by Buyer's chief executive officer stating that; (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this

Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects.

10.2.3. An assignment and assumption agreement executed by Buyer, in form and substance reasonably satisfactory to Seller.

10.2.4. A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein, executed by the officers and all directors and attested to by the Secretary of Buyer.

10.2.5. Instructions executed on behalf of Buyer directing the Escrow Agreement to apply the Earnest Money Escrow Deposit (and all interest earned thereon) toward payment of the Purchase Price.

10.2.6. An executed Station Tower Lease Agreement, in a form attached hereto as Exhibit 6.8.

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

SECTION 11 ACCOUNTS RECEIVABLE

Seller shall assign to Buyer at Closing all of the Accounts Receivable for purposes of collection only. Buyer shall use such efforts as are reasonable and in the ordinary course of business to collect the Accounts Receivable for a period of ninety (90) days following the Closing Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. So long as the Accounts Receivable are in Buyer's possession, unless authorized by Buyer

neither Seller nor its agents shall make any solicitation of them for collection purposes nor institute litigation for the collection of any amounts due thereunder. All payments received by Buyer during the Collection Period from any person obligated with respect to any of the Accounts Receivable shall be applied first to Seller's account and only after full satisfaction thereof to Buyer's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any Account Receivable, then Buyer may return that Account Receivable to Seller after which Seller shall be solely responsible for the collection thereof. Buyer acknowledges that there may be salespersons' and agency commissions due with respect to the Accounts Receivable, including a 50% commission to John Stumpfig on sales made by him and collected, and agrees to pay such items on Seller's account. Except for the payment of all salesperson's, agency, and representative commissions due with respect to the Accounts Receivable, Buyer shall not incur or cause to be incurred any collateral or outside fees, costs or charges in connection with its efforts at collection of the Accounts Receivable without first having obtained the authorization in writing of Seller. Buyer shall remit all amounts collected on Seller's behalf (less salespersons' and agency commissions) no less often than the fifth (5th) day after the close of each month during which any amounts due to Seller are collected. Within five (5) business days following the expiration of the Collection Period, Buyer shall furnish Seller with a list of the Accounts Receivable collected during the Collection Period accompanied by a payment equal to the amount of such collections minus commissions. Any of the Accounts Receivable that are not collected during the Collection Period shall be reassigned to Seller after which Buyer shall have no further obligation to Seller with respect to the Accounts Receivable; provided, however, that all funds subsequently received by Buyer (without time limitation) that can be specifically identified, whether by accompanying

invoice or otherwise, as a payment on any Account Receivable shall be promptly paid over or forwarded to Seller. Buyer shall not have the right to compromise, settle, or adjust the amounts of any of the Accounts Receivable without Seller's prior written consent, or to withhold any proceeds of the Accounts Receivable or to retain any uncollected Accounts Receivable after the expiration of the Collection Period for any reason whatsoever. Subject to Buyer's obligation to remit commissions due on Accounts Receivable actually collected by Buyer, Seller shall remain responsible for the payment of all salesperson's, agency, and representative commissions due with respect to the Accounts Receivable and shall defend and hold Buyer harmless against any claims for such commissions.

SECTION 12 BROKERAGE

Seller and Buyer each represent and warrant to the other that it knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions, other than Sailors & Associates, whose fees shall be paid by Seller. Buyer and Seller hereby agree to indemnify each other from and against any claim of any such obligation or liability by any person, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

SECTION 13 INDEMNIFICATIONS

13.1 Breach of Seller's Agreements, Representations, and Warranties. Subject to the restrictions and limitations of this Section and Section 17.4, Seller shall reimburse Buyer and any member, officer, director, agent, employee and affiliate thereof for, and indemnify and hold

harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including, without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Buyer by reason of:

(a) any breach of any warranty, representation, or agreement of Seller contained under this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby, provided, however, that each of the representations, warranties and agreements made by the Seller in this Agreement shall survive only until the date that is six (6) months from the Closing Date. Thereafter each such representation and warranty of Seller shall expire and be of no further force and effect, and no claim by Buyer for indemnification based on any breach of any such representation or warranty thereafter may be asserted or enforced against Seller.

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

(c) any transaction entered into by Seller or arising in connection with the Station or the operation of the business thereof or any of the Assets prior to the Closing;

(d) any Retained Liabilities of Seller; or

(e) any and all actions, suits, or proceedings, incident to any of the foregoing subsections (b) through (d).

(f) Provided, however, except as to certain operating expenses and payables enumerated in Section 5.3 hereof, in no event shall Seller be liable to the Buyer or any other indemnified party under this Section, unless the aggregate damages or harm therefrom shall exceed \$25,000 (TWENTY-FIVE THOUSAND DOLLARS), and then only to the extent the damages or harm exceeds \$25,000. In no event shall the aggregate liability of Seller under this Section exceed \$1,250,000. (ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS). NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR PRINCIPLES OF LAW OR EQUITY, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY MONETARY RECOVERY IN THE NATURE OF CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, REGARDLESS OF THE THEORY OF LIABILITY OR NATURE OF REMEDIES SOUGHT, AND REGARDLESS OF WHETHER SELLER KNEW OR HAD REASON TO KNOW OF ANY CONDITION, EVENT OR CIRCUMSTANCE WHICH WOULD OTHERWISE GIVE RISE TO SUCH MONETARY RECOVERY.

13.2. Breach of Buyer's Agreements, Representations and Warranties. Subject to the restrictions and limitations on Buyer's liability for failure to consummate the transactions contemplated herein set forth in Section 17.3 hereof, Buyer shall reimburse Seller and any member, officer, director, agent, employee and affiliate thereof for, and indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including, without limitation, payments, fines, penalties, interest, taxes, assessments, reasonable attorneys' fees and accounting fees of any kind or nature), contingent or otherwise, arising out of or sustained by Seller by reason of:

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

(b) the operation of the Station subsequent to Closing (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed subsequent to the Closing under the Agreements),

(c) any transaction entered into by Buyer or arising in connection with the Station or the operation of the Station subsequent to the Closing,

(d) any and all liabilities or obligations of Seller specifically assumed by Buyer pursuant to this Agreement, or

(e) any and all actions, suits, or proceedings incident to any of the foregoing.

13.3 **Notice of Claim.** Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 13.1 or 13.2 hereof ("Notice of Claim"), which amount is believed to be required to discharge the obligations of the indemnifying party resulting therefrom. Within ten (10) days after having been given the Notice of Claim, the indemnifying party may deliver to the other party (i) a written notice of objection to the payment of such claim ("Notice of Objection"), which Notice of Objection shall set forth the basis for such objection; or (ii) a written notice that the indemnifying party intends to defend against such claim in good faith ("Notice of Intention to Defend"). If such a Notice of Intention to Defend is delivered, the indemnifying party shall have the right to hold in abeyance its claim for indemnification if and so long as such defense is conducted by the indemnifying party at the latter's expense in a manner effective to protect the indemnified party against such claim. If no

Notice of Objection or Notice of Intention to Defend is given within the prescribed ten (10) day period, the indemnifying party shall promptly pay to the indemnified party the amount set forth in the Notice of Claim. If the parties are unable to resolve any Notice of Claim and corresponding Notice of Objection, either party may take whatever action it deems reasonable, including without limitation, the filing of a claim, petition, or other pleading in a court of competent jurisdiction.

13.4. **Sole Remedy.** Except as provided to the contrary in this Agreement, the right to indemnification pursuant to Section 13 shall be the sole and exclusive remedy of each party in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement.

SECTION 14 RISK OF LOSS

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or cause, reasonable wear and tear excepted, prior to the Closing Date, is assumed and shall be borne by the Seller at all times before the Closing Date. If any such loss or damage occurs, Seller shall give prompt written notice of the loss or damage to Buyer and shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at its own cost and expense,. In the event that Seller does not fully replace or restore any such lost or damaged Asset or Assets by the time the Closing otherwise would be held, Buyer may, at its option, upon written notice to Seller, either (i) terminate this Agreement, or (ii) elect to close without restoration, in which event Seller will deliver all insurance proceeds (if any) paid or payable by reason of the loss or damage to Buyer. If Buyer terminates this Agreement under this Section, that shall not be deemed a default by Seller, and each party shall bear its own expenses. In such

event, the Escrow Agent shall deliver to Buyer the Earnest Money Escrow Deposit and all interest earned thereon, and the parties shall have no further obligations to one another. Buyer's option to terminate this Agreement under this Section 14 shall arise only if such damage to the Station is so substantial that it prevents the Station from operating in its normal and customary manner for a period of ten (10) consecutive days.

SECTION 15 FEES AND EXPENSES

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

SECTION 16 BULK SALES LAW

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and, subject to the limitations and restrictions set forth in Section 13 hereof, Seller agrees to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

SECTION 17 DEFAULT AND TERMINATION

17.1. A party shall "default" under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement.

Non-material misrepresentations, breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

17.2. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings. Notwithstanding the foregoing, neither party shall have any right to cure such party's wrongful failure to consummate this transaction, as provided herein, on the Closing Date

17.3. Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, or by reason of the Commission's written refusal or failure to consent to the assignment of the Commission Authorizations due to Buyer's conduct or qualifications, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be entitled to receive as liquidated damages the Earnest Money Escrow Deposit (One Hundred Fifty Thousand Dollars (\$150,000.00)), along with all interest or other proceeds from the investment accrued on such Earnest Money Escrow Deposit, through the date of disbursement. Such liquidated damages shall be in lieu of any other remedies at law or in equity to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this

Agreement. Buyer and Seller each acknowledge and agree that the liquidated damage amount is reasonable in light of the anticipated harm which would be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder.

17.4 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement if this Agreement is not consummated according to its terms by reason of Seller's default, and is not specifically enforced. Therefore, in the event of a default by Seller, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event that Buyer elects specific performance, specific performance shall be in lieu of any other remedies at law or in equity to which Seller might otherwise be entitled due to Buyer's default or wrongful failure to consummate the transaction contemplated by this Agreement, and shall be Buyer's sole and exclusive remedy. In the event Buyer elects to terminate this Agreement as a result of Seller's default instead of seeking specific performance, Buyer shall be entitled to the return of the Earnest Money Escrow Deposit and all interest and other proceeds of investment thereof. If such actual compensatory damages exceed the amount of the Earnest Money Escrow Deposit and interest, then Buyer shall be entitled to recover from Seller Buyer's actual compensatory damages occasioned by Seller's default, subject to the restrictions and limitations of Section 13 hereof. The remedies provided in this Section 17.4 shall be Buyer's sole and exclusive remedies. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR PRINCIPLES OF LAW OR EQUITY, IN NO EVENT SHALL SELLER BE LIABLE TO

BUYER FOR ANY MONETARY RECOVERY IN THE NATURE OF CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, REGARDLESS OF THE THEORY OF LIABILITY OR NATURE OF REMEDIES SOUGHT, AND REGARDLESS OF WHETHER SELLER KNEW OR HAD REASON TO KNOW OF ANY CONDITION, EVENT OR CIRCUMSTANCE WHICH WOULD OTHERWISE GIVE RISE TO SUCH MONETARY RECOVERY. Neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any post-closing covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing to the extent provided hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors and assigns.

SECTION 18 NOTICES

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

If to Seller:

Pegram Harrison, President
Barnacle Broadcasting Co. Ltd.
3 Yonah Drive
Atlanta, GA 30309
Fax: (404) 815-8448

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

James C. Gray, Jr., Esq.
Nelson Mullins Riley & Scarborough, L.L.P.
Keenan Building, Third Floor
1330 Lady Street
Post Office Box 11070 (29211)
Columbia, SC 29201
Fax: (803) 256-7500

and

Benjamin J. Lambiotte, Esq.
Garvey, Schubert & Barer
1000 Potomac Street, N.W.
Fifth Floor
Washington, D.C. 20007
Fax: (202) 965-1729

If to Buyer:

G. Dean Pearce, President
Apex Broadcasting, Inc.
401 Coleman Blvd., Suite A
Mt. Pleasant, SC 29464
Fax: (843) 849-0553

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

Erwin G. Krasnow, Esq.
Verner, Liipfert, Bernhard, McPherson and Hand, Chartered
901 15th Street, N.W., Suite 700
Washington, DC 20005
Fax: (202) 371-6279

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

SECTION 19
MISCELLANEOUS

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

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

19.3 **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the written consent of the other, except that Buyer may assign its rights and delegate its duties under this Agreement to an entity which is controlled by Buyer at any time prior to the Closing Date, provided that the Closing Date is not delayed or postponed as a result of such assignment. In the event of such an assignment by Buyer, the provisions of this Agreement shall inure to the benefit of and be binding upon Buyer's assigns. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

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

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

19.6 **Legal Actions.** If either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorney's fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

19.7. **Governing Law.** The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of South Carolina.

19.8. **Section 1031 Exchange by Buyer.** Buyer intends that the transfer of all or part of the Assets contemplated by this Agreement will be part of an exchange of assets that will qualify, pursuant to Section 1031 of the Internal Revenue Code, and regulations thereunder, as a deferred like-kind exchange by Buyer. In keeping with that intention, it is expressly acknowledged that Buyer, its assignee or transferee, may, at or prior to Closing, assign, subject

to Section 20.3, 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 Buyer’s rights and obligations herein and shall promptly provide written notice of such assignment to Seller. Seller 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 Buyer has given notice of its intention to effect an exchange using a Qualified Intermediary, Seller shall promptly provide Buyer with written acknowledgement of such notice, and the Qualified Intermediary shall pay the purchase price for any Assets identified by Buyer to be included in a like-kind exchange to Seller, and such payment shall satisfy the obligations of Buyer to make payment for those Assets. Notwithstanding the foregoing, Buyer’s assignment to a Qualified Intermediary will not relieve Buyer of any of its duties or obligations herein. Seller shall not have any liability or obligation to Buyer for the failure of the contemplated exchange to qualify as a like-kind exchange under Section 1031 of the Code. In no event shall Seller be liable or responsible for any consequential or incidental damages incurred or suffered by Buyer arising from the failure of the contemplated exchange to qualify as a like-kind exchange under Section 1031 of the Code.

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

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

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

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

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

SELLER:

BARNACLE BROADCASTING CO., LTD.

By: _____

Pegram Harrison
President

BUYER:

APEX BROADCASTING, INC.

By: _____

G. Dean Pearce
President