

**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of April 21, 2008, by and between **GAP BROADCASTING TWIN FALLS, LLC**, a Delaware limited liability company ("GAP"), **GAP BROADCASTING TWIN FALLS LICENSE, LLC**, a Delaware limited liability company ("License" and together with GAP, "Buyer"), and **INTERMART BROADCASTING TWIN FALLS, INC.**, a Florida corporation ("Intermart," or "Seller").

**RECITALS**

**WHEREAS**, Intermart is the permittee of FM broadcast station KSNQ(FM), Twin Falls, Idaho (FCC Facility ID No. 87843) (the "Station") pursuant to construction permit, FCC File No. BPH-19970731MX (the "Permit"), issued by the Federal Communications Commission (the "FCC");

**WHEREAS**, Buyer, as assignee of Citicasters Co., and Seller are party to the (a) Right of First Refusal and Put Agreement, dated August 20, 1999, as amended from time to time (the "Put Agreement"), and; (b) Local Programming and Marketing Agreement, dated December 31, 2003, as amended from time to time (the "LMA");

**WHEREAS**, Seller has exercised its put rights under the Put Agreement and desires to sell, and Buyer desires to purchase, the Station and substantially all assets and properties, real and personal, tangible and intangible, used, held for use, or useful in the operation of the Station (collectively, the "Station Assets") on the terms and subject to the conditions set forth herein; and

**WHEREAS**, in order to induce Buyer to enter into this Agreement, Seller is willing to enter into this Agreement and make certain representations and warranties to, and covenants and agreements with Buyer, and in order to induce Seller to enter into this Agreement, Buyer is willing to enter into this Agreement and make certain representations and warranties to, and covenants and agreements with, Seller.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE 1**  
**PURCHASE AND SALE OF ASSETS**

**1.1 Assignment and Acquisition of Assets.** On the terms and subject to the conditions hereof on the Closing Date (as hereinafter defined), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and assume from Seller, all of the right, title and interest of Seller in and to the Station Assets, including without limitation the Permit and any other authorizations issued to Seller by the FCC used and useful exclusively in the operation of the Station (collectively the "FCC Licenses") and all of the assets used and useful exclusively in the operation of the Station owned by Seller (collectively with the FCC Licenses, the "Assets").

**1.2 No Liens.** The Assets shall be transferred to Buyer free and clear of all charges, conditions, community property interests, options, hypothecations, attachments, conditional sales, title retentions, rights of first refusal, debts, security interests, mortgages, trusts, claims, pledges or other liens, liabilities, encumbrances or rights of third parties whatsoever ("Liens").

**1.3 Excluded Items.**

1.3.1 Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the transaction involving the assignment of the Assets shall not include any assets or licenses owned or held by the Seller relating to stations or enterprises other than the Station, Seller's company seal, minute books, charter documents, ownership 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 or relating to the Assets (collectively, the "Excluded Assets");

1.3.2 Buyer shall assume the obligations of Seller arising during, or attributable to, any period of time on or after the Closing under the contracts and agreements related to the Assets and entered into in the ordinary course of business (the "Assumed Obligations"). Except for the Assumed Obligations and except as provided in the LMA, Buyer does not assume and shall not be responsible for, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed or become responsible for, any other liabilities or obligations of Seller (the "Retained Obligations"), including, without limitation, any liability or obligation arising out of or relating to (a) any employee benefit plan of Seller, (b) any employees of Seller not employed by Buyer, (c) any litigation, proceeding, enforcement action, claim or investigation to the extent relating to the business or operations of the Station prior to Closing, whether or not pending, threatened or asserted before, on or after the Closing Date, except for any claims related to or arising out of Buyer's operations of the Station and obligations under the LMA, (d) any claims asserted against the Station or any of the Assets to the extent relating to any event (whether act or omission) prior to the Closing Date, except for any claims related to or arising out of Buyer's operations of the Station and obligations under the LMA, or (e) any of the Excluded Assets. Seller retains all Retained Obligations.

**ARTICLE 2**  
**CONSIDERATION**

**2.1 Purchase Price and Delivery of Consideration.** In consideration for the sale of the Assets to Buyer, at Closing Buyer shall pay Seller, by wire transfer of immediately available funds, the sum of Eighty-Three Thousand and Eight Hundred Dollars (\$83,800.00) (the "Cash Purchase Price"), and Buyer shall cancel that certain promissory note issued August 20, 1999, as amended and restated from time to time, issued by Seller to Buyer (as assignee of Citicasters Co.) (the "Note"), the current aggregate amount outstanding in respect thereof is Nine Hundred and Forty One Thousand Four Hundred and Sixty Five 62/100 Dollars (\$941,465.62). The Cash Purchase Price, together with the value of Note to be cancelled, are referred to herein collectively as the "Purchase Price."

**2.2 Deposit.** On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to Ten Thousand Dollars (\$10,000.00) (the "Deposit") with Lauren A. Colby (for the purpose of this paragraph, the "Escrow Agent") pursuant to the Escrow Agreement (the "Escrow Agreement") of date even herewith among Buyer, Seller and Escrow Agent, to be deposited into an IOLTA lawyer's trust account (which will not pay interest to either party) maintained in the ordinary course of the Escrow Agent's practice. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price. If this Agreement is terminated by Seller pursuant to Section 16.1.3, the Deposit shall be disbursed to Seller. If this Agreement is terminated for any other reason, the Deposit shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement.

**2.3 Allocation.** Within 120 days of Closing, Buyer shall allocate the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"). Each of Buyer and Seller shall file a tax return reflecting this allocation as and when required under the Code.

### **ARTICLE 3** **CLOSING**

**3.1 Closing.** The consummation of the sale and purchase of the Assets provided for in this Agreement (the "Closing") shall take place on or before the tenth business day after the date of the last to occur of the date the FCC Consent becomes effective, or on such other day after such FCC Consent as Buyer and Seller may mutually agree and the satisfaction or waiver of the conditions set forth in Article 10 and Article 11. The date on which the Closing is to occur is referred to herein as the "Closing Date."

**3.2 Continuation of LMA until Closing.** For the period between the date hereof and the Closing, Buyer will continue to provide programming for, and be entitled to receive the revenues from the sale of advertising time on, the Station in accordance with the LMA. Upon consummation of the transactions contemplated by this Agreement at the Closing, the parties hereto acknowledge and agree that the LMA, the Put Agreement, the Note, that certain Loan Agreement dated August 20, 1999, between Seller and Buyer (as assignee of Citicasters Co.), as amended from time to time (the "Loan Agreement" and together with the LMA, the Put Agreement, and the Note, the "Loan Documents"), and any exhibits to the Loan Documents and all other agreements between the parties hereto ancillary thereto, shall be immediately terminated and shall be of no further force and effect thereafter. Upon termination of the Loan Documents, Buyer shall execute and deliver such instruments as may be reasonably requested by Seller to release Buyer's security interests under the Loan Documents, and shall further promptly return any pledged stock certificates of Seller in its possession to Seller or its designee.

**ARTICLE 4**  
**GOVERNMENTAL CONSENTS**

**4.1 FCC Application.** Within five (5) business days after the date hereof, Buyer and Seller shall file an application with the FCC (the "**FCC Application**") requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the "**FCC Consent**". Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. The filing fee for the FCC Application shall be paid one-half by Buyer and one-half by Seller.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in Article 15.

**5.1 Organization and Standing.** GAP and License are limited liability companies duly formed, validly existing and in good standing under the laws of Delaware.

**5.2 Authorization and Binding Obligation.** Buyer has all necessary power and authority required for a limited liability company to enter into and perform this Agreement and the transactions contemplated hereby, to hold the Assets and to carry on the business of the Station upon the consummation of the transactions contemplated by this Agreement. Buyer's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on its part and, assuming the due authorization, execution and delivery of this Agreement by Seller, this Agreement will constitute the valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as limited by laws affecting creditors' rights or equitable principles generally.

**5.3 Qualification.** To the best of Buyer's knowledge, there are no facts which, under the Communications Act of 1934, as amended to date, or the existing rules and public policies of the FCC, would disqualify Buyer as an assignee of the FCC Licenses (said Communications Act and FCC rules and policies are collectively referred to herein as the "**Communications Laws**").

**5.4 Absence of Conflicting Agreements or Required Consents.** Except as set forth in Article 4 with respect to governmental consents, the execution, delivery and performance of this Agreement by Buyer: (a) do not conflict with the provisions of the limited liability company agreement of GAP or License; (b) do not require the consent of any third party which has not already been obtained by Buyer; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Buyer is bound; and (d) 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.

**5.5 Litigation.** There is no claim, litigation, proceeding or investigation pending or, to the best of Buyer's knowledge, threatened against Buyer, that could have a material adverse effect on Buyer's ability to perform its obligations pursuant to this Agreement. Buyer is not in violation of any law, regulation, or ordinance or any other requirement of any governmental body or court which could have a material adverse effect on Buyer's ability to perform its obligations pursuant to this Agreement.

**5.6 Commissions or Finder's Fees.** Neither Buyer nor any person or entity acting on behalf of Buyer 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.

## **ARTICLE 6**

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

Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in Article 15:

**6.1 Organization and Standing.** Seller is a corporation duly organized, validly existing and in good standing under the laws of Florida, and has the power and authority to hold the Assets.

**6.2 Authorization and Binding Obligation.** Seller has all necessary power and authority required for a corporation to enter into and perform this Agreement and the transactions contemplated hereby. Seller's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on its part and, assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement will constitute the valid and binding obligation of Seller, enforceable against it 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 governmental consents, the execution, delivery and performance of this Agreement by Seller: (a) do not conflict with the provisions of the articles of organization of the articles of incorporation or by-laws (or other organization documents) of Seller; (b) do not require the consent of any third party which has not already been obtained by Seller; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Seller is bound; and (d) 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 Seller is now subject.

**6.4 FCC Licenses.** Seller is the authorized legal holder of the FCC Licenses, which, except as disclosed in Schedule 6.4, are in full force and effect, in good standing and unimpaired

by any act of Seller or its members, directors, officers, employees or agents. The FCC Licenses are not subject to any material adverse restrictions or conditions except those set forth on such authorization or which apply generally to radio station authorizations of its type. To the best knowledge of Seller, there are no facts which, under the Communications Laws, would disqualify Seller as assignor of the FCC Licenses.

**6.5 Personal Property.** Schedule 6.5 contains a list of material items of all of Seller's equipment, transmitters, antennas, cables, towers, vehicles, furniture, fixtures, spare parts and other tangible personal property of every kind and description that are used or held for use in the operation of the Station, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business, and together with such modifications, replacements, improvements and additional items made or acquired between the date hereof and Closing (the "Tangible Personal Property") included in the Station Assets. Except as set forth on Schedule 6.5, Seller has good and marketable title to the Tangible Personal Property free and clear of Liens except for Assumed Obligations, Liens for taxes not yet due and payable, Liens that will be released at or prior to Closing, and, with respect to the real property, such other easements, rights of way, building and use restrictions and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station (collectively, "Permitted Liens"). Except as set forth on Schedule 6.5, all material items of Tangible Personal Property are in good operating condition, ordinary wear and tear excepted.

**6.6 Contracts.** Schedule 6.6 contains a list of all contracts that are used in the operation of the Station, including all agreements for the sale of advertising time on the Station entered into in the ordinary course of business, and all other contracts, agreements and leases (real property and other) entered into in the ordinary course of the Station's business, together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Article 8 (each a "Station Contract" and collectively the "Station Contracts"). The Station Contracts requiring the consent of a third party to assignment are identified with an asterisk on Schedule 6.6. Each of the Station Contracts is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material breach or default thereunder, and to Seller's knowledge, no other party to any of the Station Contracts is in breach or default thereunder in any material respect.

**6.7 Intangible Property.** Schedule 6.7 contains a description of all of Seller's rights in and to the Stations' call letters and Seller's rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, transferable software, any transferable telephone and fax numbers, programs and programming material, jingles, slogans, logos, and other intangible property which are used or held for use in the operation of the Stations, together with the goodwill associated with the foregoing and registrations in any jurisdiction of (and applications in any jurisdiction to register) any of the foregoing, including any extension, modification or renewal of any such registration or application (the "Intangible Property") included in the Station Assets. Except as set forth on Schedule 6.7, (a) to Seller's knowledge, Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect, (b) no material Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened

legal proceedings claiming infringement or unauthorized use, and (c) Seller has not received any written notice that its use of any material Intangible Property is unauthorized or infringes upon the rights of any other person. Except as set forth on Schedule 6.7, to Seller's knowledge, Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

**6.8 Litigation.** Except as set forth on Schedule 6.8, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that will subject Buyer to any losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, or which will affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or other governmental or regulatory authority which would have a material adverse effect on the condition or operations of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

**6.9 Employees.** Except as set forth on Schedule 6.9, (a) Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, (b) there is no unfair labor practice charge or complaint against Seller in respect of the Station's business pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business, and (c) Seller is not party to any collective bargaining, union or similar agreement with respect to the employees of Seller at the Station, and to Seller's knowledge, no union represents or claims to represent or is attempting to organize such employees.

**6.10 Insurance.** Seller maintains insurance policies or other arrangements with respect to the Station and the Station Assets consistent with its practices for other stations, and will maintain such policies or arrangements until as of 11:59 p.m. on the day before the Closing Date. Seller has not received notice from any issuer of any such policies of its intention to cancel, terminate or refuse to renew any such insurance policy.

**6.11 Station Assets.** The Station Assets include all assets that are owned or leased by Seller and used or held for use in the operation of the Station in all material respects as currently operated, except for the Excluded Assets.

**6.12 Commissions or Finder's Fees.** Neither Seller nor any person or entity acting on behalf of Seller 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.

**6.13 Instruments of Conveyance; Good Title.** The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Assets to Buyer, will transfer all of Seller's right, title and interest in and to the Assets to Buyer.

**6.14 Undisclosed Liabilities.** No liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, relating to Seller, the FCC Licenses, or the Station exists which could, after the Closing, result in any form of transferee liability against Buyer or subject the Assets to any Liens or otherwise affect the full, free and unencumbered use of the Assets by Buyer.

**6.15 Compliance with Law.** Except as set forth on Schedule 6.15, (a) Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC and Federal Aviation Administration rules and regulations, applicable to the operation of the Stations or to any of the Station Assets, and all decrees and orders of any court or other governmental or regulatory authority which are applicable to the operation of the Stations or to any of the Station Assets, and (b) to Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Stations except those affecting the industry generally.

The representations and warranties of Seller shall be unaffected by an investigation heretofore or hereafter made by Buyer.

## **ARTICLE 7** **COVENANTS OF BUYER**

**7.1 Closing.** Subject to Article 10, on the Closing Date, Buyer shall purchase the Assets from Seller as provided in Article 1.

**7.2 Notification.** Buyer shall provide Seller prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in Article 5 of which it becomes aware after the date hereof; and (b) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Buyer which challenges the transactions contemplated hereby.

**7.3 No Inconsistent Action.** Buyer shall not take any action which: (a) is materially inconsistent with or which breaches its obligations under this Agreement; or (b) would cause any representation or warranty of Buyer contained herein to be or become false or invalid.

## **ARTICLE 8** **COVENANTS OF SELLER**

**8.1 Closing.** Subject to Article 11, on the Closing Date, Seller shall sell to Buyer the Assets as provided in Article 1.

**8.2 Notification.** Seller shall provide Buyer prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in Article 6 of which it becomes aware; and (b) any litigation arbitration or administrative proceeding pending or, to its knowledge, threatened against Seller which challenges the transactions contemplated hereby.

**8.3 No Inconsistent Action.** Seller shall not take any action which: (a) is materially inconsistent with or which breaches its obligations under this Agreement; or (b) would cause any representation or warranty of Seller contained herein to be or become false or invalid.

**8.4 Operations Before the Closing.** Between the date hereof and Closing, except as permitted by the prior written consent of Buyer, which shall not be unreasonably withheld, Seller shall, subject to the LMA (as applicable), operate the Station in the ordinary course of business consistent with past practice and in all material respects in accordance with the Communications Laws and with all other applicable laws, regulations, rules and orders. In addition, between the date hereof and Closing, Seller agrees to cooperate with Buyer by providing written consent and taking any other commercially reasonable actions necessary for Buyer to submit to the FCC an application for construction permit for modification of the Station or its facilities or, upon Buyer's request, by submitting such an application (at Buyer's expense) in Seller's own name.

**8.5 Exclusivity.** Seller agrees that, commencing on the date hereof through the Closing or earlier termination of this Agreement, Buyer shall have the exclusive right to consummate the transactions contemplated herein, and during such exclusive period, Seller agrees, that neither Seller nor any member, officer, employee or other representative or agent of Seller: (a) will initiate, solicit or encourage, directly or indirectly, any inquiries, or the making or implementation of any proposal or offer with respect to an acquisition or any purchase of the Assets (any such inquiry, proposal or offer being hereinafter referred to as an "Acquisition Proposal") and any such transaction being hereinafter referred to as an "Acquisition"); (b) will engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any person relating to an Acquisition Proposal, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal; or (c) will continue any existing activities, discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal or Acquisition and will take the necessary steps to inform the individuals or entities referred to above of the obligations undertaken by them in this Section 8.5.

#### **8.6 Consents.**

8.6.1 The parties shall use commercially reasonable efforts to obtain (a) any third party consents necessary for the assignment of any Station Contract (which shall not require any payment to any such third party), and (b) execution of reasonable estoppel certificates by lessors under any real property leases requiring consent to assignment (if any), but no such consents or estoppel certificates are conditions to Closing except for the Required Consents. Receipt of consent to assign to Buyer the Stations' main tower leases designated with a diamond on Schedule 6.6 (if any) is a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

8.6.2 To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's

obligations arising under the Station Contract from and after Closing in accordance with its terms.

## **ARTICLE 9**

### **JOINT COVENANTS**

Buyer and Seller hereby covenant and agree that between the date hereof and the Closing Date it shall act in accordance with the following:

#### **9.1 Confidentiality.**

9.1.1 Subject to the requirements of applicable law, prior to the Closing Buyer and Seller shall each, and after the Closing the Seller shall, keep confidential all information obtained by it with respect to the other party hereto in connection with this Agreement and the negotiations preceding this Agreement ("Confidential Information"); provided that the parties hereto may furnish such Confidential Information to its employees, agents and representatives who need to know such Confidential Information (including its financial and legal advisers, its banks and other lenders) (collectively, "Representatives"). Each party hereto shall, and shall cause each of such party's Representatives to, use the Confidential Information solely in connection with the transactions contemplated by this Agreement. If the transactions contemplated hereby are not consummated for any reason, each party shall return to such other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other party in connection with this Agreement and the transactions contemplated hereby.

9.1.2 Notwithstanding anything contained in Section 9.1.1, no party shall be required to keep confidential or return any Confidential Information which: (a) is known or available through other lawful sources, not bound by a confidentiality agreement with the disclosing party; (b) is or becomes publicly known through no fault of the receiving party or its agents; (c) is required to be disclosed pursuant to an order or request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of the disclosure); or (d) is developed by the receiving party independently of the disclosure by the disclosing party.

**9.2 Announcements.** Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

**9.3 Cooperation.** Subject to express limitations contained elsewhere herein, Buyer and Seller agree to cooperate fully with one another in taking any reasonable actions (including without limitation, reasonable actions to obtain the required consent of any governmental instrumentality or any third party) necessary or helpful to accomplish the transactions contemplated by this Agreement, including but not limited to the satisfaction of any condition to closing set forth herein; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to Article 16.

**9.4 Control of FCC Licenses.** Subject to the LMA, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Seller or assume any control of the FCC Licenses or the Station prior to the Closing. Such operations, including complete control and supervision of the FCC Licenses and the Station shall be the sole responsibility of Seller.

**9.5 FCC Compliance.** If after Closing the FCC Consent is reversed or otherwise set aside, and there is a final order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Station Assets shall be rescinded. In such event, Buyer shall re-convey to Seller the Station Assets free and clear of Liens other than Permitted Liens, and Seller shall repay to Buyer the Purchase Price and reassume the Station Contracts. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and execution by Seller of instruments of assumption of the Station Contracts) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

## **ARTICLE 10**

### **CONDITIONS TO CLOSING BY BUYER**

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:

#### **10.1 Representation, Warranties and Covenants.**

10.1.1 All representations and warranties of Seller made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

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

10.1.3 Buyer shall have received a certificate, dated as of the Closing Date, executed by an officer of Seller, to the effect that: (a) the representations and warranties of Seller contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that Seller has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

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

**10.3 Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 14.1.

## **ARTICLE 11**

### **CONDITIONS OF CLOSING BY SELLER**

The obligations of Seller 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.**

11.1.1 All representations and warranties of Buyer made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

11.1.2 All the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

11.1.3 Seller shall have received a certificate, dated as of the Closing Date, executed by an officer of Buyer, to the effect that: (a) the representations and warranties of Buyer contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that Buyer has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

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

**11.3 Closing Documents and Payment.** Buyer shall have delivered or caused to be delivered to Seller, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 14.2, and Buyer shall have paid Seller the Purchase Price, as contemplated by Article 2.

## **ARTICLE 12**

### **JOINT CONDITION TO CLOSE**

**12.1 FCC Consent.** The obligations of Seller and Buyer hereunder are subject to obtaining, on or prior to the Closing Date, the FCC Consent. The parties acknowledge that it shall not be a condition of Closing by either party that the FCC Consent has become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated

authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

**ARTICLE 13**  
**TRANSFER TAXES; FEES AND EXPENSES**

**13.1 Expenses.** Except as set forth in Section 13.2 and 13.3 or otherwise expressly set forth in this Agreement, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement including, but not limited to the costs and expenses incurred pursuant to Article 4 and the fees and disbursements of counsel and other advisors.

**13.2 Transfer Taxes and Similar Charges.** All costs of transferring the Assets in accordance with this Agreement, including recordation, transfer and documentary taxes and fees, and any excise, sales or use taxes, shall be paid one-half by Buyer and one-half by Seller.

**13.3 Governmental Filing or Grant Fees.** Any filing or grant fees imposed by any governmental authority the consent of which or the filing with which is required for the consummation of the transactions contemplated hereby shall be paid one-half by Buyer and one-half by Seller.

**ARTICLE 14**  
**DOCUMENTS TO BE DELIVERED AT CLOSING**

**14.1 Seller's Documents.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

14.1.1 A certificate executed by Seller's secretary or assistant secretary evidencing authorization by the Seller's Board of Directors of the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

14.1.2 A certificate of the Seller dated the Closing Date, in the form described in Section 10.1.3;

14.1.3 Good standing certificates issued by the Secretary of State of Seller's jurisdiction of incorporation;

14.1.4 An assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

14.1.5 An assignment and assumption of contracts assigning the Station contracts from Seller to Buyer;

14.1.6 An assignment and assumption of leases assigning all real property leases (if any) from Seller to Buyer;

14.1.7 An assignment of marks assigning the Station's registered marks (if any) from Seller to Buyer;

14.1.8 Domain name transfers assigning the Station's domain names (if any) from Seller to Buyer following customary procedures of the domain name administrator;

14.1.9 Endorsed vehicle titles conveying the Station's vehicles (if any) from Seller to Buyer;

14.1.10A bill of sale conveying all the other Assets from Seller to Buyer;

14.1.11An affidavit of non-foreign status of Seller that complies with Section 1445 of the Internal Revenue Code of 1986, as amended;

14.1.12Any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Assets from Seller to Buyer, free and clear of Liens; and

14.1.13Such additional information, materials, agreements, documents and instruments as Buyer and its counsel may reasonably request in order to consummate the Closing.

**14.2 Buyer's Documents.** At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

14.2.1 Certified resolutions of the managers of Buyer approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby;

14.2.2 A certificate of Buyer, dated the Closing Date, in the form described in Section 11.1.3;

14.2.3 The Purchase Price in immediately available funds;

14.2.4 Good standing certificates issued by the Secretary of State of Buyer's jurisdiction of formation;

14.2.5 An assignment and assumption of contracts assuming the Station's contracts;

14.2.6 An assignment and assumption of leases assuming the Station's real property leases (if any);

14.2.7 Domain name transfers assuming the Station's domain names (if any) following customary procedures of the domain name administrator;

14.2.8 Such additional information, materials, agreement, documents and instruments as Seller and its counsel may reasonably request in order to consummate the Closing.

## **ARTICLE 15** **SURVIVAL**

**15.1 Survival of Representation, Etc.** It is the express intention and agreement of the parties to this Agreement that all covenants and agreements (together, "Agreements") and all representations and warranties (together, "Warranties") made by Buyer and Seller in this Agreement shall survive the Closing (regardless of any knowledge, investigation, audit or inspection at any time made by or on behalf of Buyer or Seller; provided Seller and Buyer comply with the applicable notification obligations set forth in the last paragraph of Article 5 and Article 6, respectively) for twelve (12) months following the Closing.

### **15.2 Indemnification.**

15.2.1 Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys fees and expenses ("Damages") incurred by Buyer arising out of or related to any breach of the Agreements or Warranties given or made by Seller in this Agreement.

15.2.2 Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or related to any breach of the Agreements and Warranties given or made by Buyer in this Agreement.

## **ARTICLE 16** **TERMINATION RIGHTS**

**16.1 Termination.** This Agreement may be terminated at any time prior to Closing as follows:

16.1.1 Upon the mutual written agreement of Buyer and Seller, this Agreement may be terminated on such terms and conditions as so agreed; or

16.1.2 By written notice of Buyer to Seller if Seller breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements herein contained and such breach or default is not cured within thirty (30) days of the date of notice of breach or default served by Buyer; or

16.1.3 By written notice of Seller to Buyer if Buyer breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements herein contained and such breach or default is not cured within thirty (30) days of the date of notice of breach or default served by Seller; or

16.1.4 By written notice of Seller to Buyer, or by written notice of Buyer to Seller, if the FCC by staff action or action by the full FCC denies by Final Order the FCC Application or designates for hearing the FCC Application; or

16.1.5 By written notice of either party to the other party if any court of competent jurisdiction shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; or

16.1.6 By five (5) days prior written notice of Seller to Buyer, or by Buyer to Seller, if the FCC Consent is not granted within one year of the date of filing of the FCC Application; provided, however, that the party giving such notice must not be in material default under any provision of this Agreement.

Notwithstanding the foregoing, no party hereto may effect a termination hereof if such party is in material default or breach of this Agreement.

**16.2 Liability.** The termination of this Agreement under Section 16.1 shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

**16.3 Monetary Damages, Specific Performance and Other Remedies.** The parties recognize that if Seller refuses to perform under the provisions of this Agreement or Seller otherwise breaches such that the Closing has not occurred, monetary damages alone will not be adequate to compensate Buyer for its injury. Buyer (provided it is not at such time in material breach hereof) shall therefore be entitled to obtain specific performance of the terms of this Agreement in addition to any other remedies, including but not limited to monetary damages, that may be available to it. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law. In the event of a default by Seller which results in the filing of a lawsuit for damages, specific performance, or other remedy, Buyer shall be entitled to reimbursement by Seller of reasonable legal fees and expenses incurred by Buyer.

## **ARTICLE 17**

### **MISCELLANEOUS PROVISIONS**

**17.1 Certain Interpretive Matters and Definitions.** Unless the context otherwise requires: (a) all references to Sections, Articles, Schedules or Exhibits are to Sections, Articles, Schedules or Exhibits of or to this Agreement; (b) each term defined in this Agreement has the meaning assigned to it; (c) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with generally accepted accounting principles as in effect on the date hereof; (d) "or" is disjunctive but not necessarily exclusive; (e) words in the singular include the plural and vice versa; and (f) all references to "\$" or dollar amounts will be to lawful currency of the United States of America.

**17.2 Further Assurances.** After the Closing, Seller shall from time to time, at the request of and without further cost or expense to Buyer, execute and deliver such other instruments of conveyance and transfer and take such other actions as may reasonably be requested in order more effectively to consummate the transactions contemplated hereby to vest

in Buyer good and marketable title to the Assets being transferred hereunder, free, clear and unencumbered of all Liens, and Buyer shall from time to time, at the request of and without further cost or expense to Seller, execute and deliver such other instruments and take such other actions as may reasonably be requested in order more effectively to relieve Seller of any obligations being assumed by Buyer hereunder.

**17.3 Assignability; No Third Party Rights.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld, except:

17.3.1 Buyer may, without such consent, assign its rights and obligations under this Agreement to a person or entity under common control with Buyer, *i.e.*, an entity to which Buyer could assign or transfer an FCC radio station authorization using FCC Form 316; and

17.3.2 Buyer may, with the written consent of Seller, such consent not to be unreasonably withheld, assign its rights and obligations under this Agreement to a person or entity not under common control with Buyer, which, to the knowledge of Seller, at the time of such assignment, is qualified under FCC rules and regulations to be the holder of the FCC Licenses, and is financially capable of fulfilling Buyer's obligations under this Agreement; and

17.3.3 Provided, however, no assignment pursuant to Section 17.3, whether before or after the Closing, shall release the assigning party from its liabilities hereunder; and

17.3.4 The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their permitted assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

**17.4 Modification and Waiver; Remedies Cumulative.** No modification or amendment of any provision of this Agreement shall be effective unless in writing and signed by all parties. No failure or delay on the part of Seller or Buyer in exercising any right or power under this Agreement shall operate as a waiver of such right or power, nor shall any single or partial exercise of any such right or power or the exercise of any other right or power. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a party may otherwise have.

**17.5 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.

**17.6 Bulk Sales Laws.** Seller agrees to indemnify and hold Buyer harmless, in the manner and to the extent provided in Article 15, from all claims made against Buyer by creditors with respect to non-compliance with any bulk sales law in connection with the transactions contemplated hereby.

**17.7 Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Delaware without giving effect to the choice of law provisions thereof. Any action, suit or proceeding brought by any party to this Agreement relating to or arising out of this Agreement or any other agreement, instrument, certificate or other document delivered pursuant hereto (or the enforcement hereof or thereof) must be brought and prosecuted as to all parties in, and each of the parties hereby consents to service of process, personal jurisdiction and venue in, the state and Federal courts of general jurisdiction located in Delaware.

**17.8 Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch) and shall be addressed to the following addresses, or to such other address as any party may request, in the case of Seller, by notifying Buyer, and in the case of Buyer, by notifying Seller:

To Buyer:

GAP Broadcasting Twin Falls, LLC  
GAP Broadcasting Twin Falls License, LLC  
8480 East Orchard Road  
Suite 1300  
Greenwood Village, CO 80111  
Attention: President, Samuel Weller  
Facsimile: (303) 221-4794

With copies (which shall not constitute notice) to:

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attention: Christopher J. Greeno  
Facsimile: (312) 861-2200

To Seller:

Intermart Broadcasting Twin Falls, Inc.  
c/o Patricia Woods  
3434 SW26th Place  
Cape Coral, FL 33914  
Facsimile: (239) 542-4221

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

Lauren A. Colby, Esq.  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113  
Facsimile No: (301) 695-8734

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

**17.10 Severability.** The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**17.11 Entire Agreement.** This Agreement 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.

\* \* \* \* \*

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

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

**SELLER:**

**INTERMART BROADCASTING TWIN  
FALLS, INC.**

By:   
Name: Patricia Woods  
Title: Vice President

**BUYER:**

**GAP BROADCASTING TWIN FALLS, LLC  
GAP BROADCASTING TWIN FALLS  
LICENSE, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

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

**SELLER:**

**INTERMART BROADCASTING TWIN  
FALLS, INC.**

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

Name: Patricia Woods

Title: Vice President

**BUYER:**

**GAP BROADCASTING TWIN FALLS, LLC  
GAP BROADCASTING TWIN FALLS  
LICENSE, LLC**

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

Name: Neal Schore

Title: Authorized Signatory

## **LIST OF SCHEDULES**

1. Schedule 6.4 - FCC Licenses
2. Schedule 6.5 - Personal Property
3. Schedule 6.6 - Contracts
4. Schedule 6.7 - Intangible Property
5. Schedule 6.8 - Litigation
6. Schedule 6.9 - Employees
7. Schedule 6.15 - Compliance with Law

**Schedule 6.4**  
**FCC Licenses**

FCC AUTHORIZATIONS TO BE ASSIGNED:

- (1) The license (File No. BLH – 20041119ADY) issued by the FCC for the operation of radio station KSNQ with FCC Facility ID No. 87843.
- (2) The license for the Aural Studio Transmitter Link, Call Sign WQCB302, File No. 0002831034, used in connection with the Station.

**Schedule 6.5**  
**Personal Property**

- (1) Telos Omnia Digital Audio Processor
- (2) Sage Endec EAS Unit
- (3) Moseley PCL-6030 STL System
- (4) Bird 3127A Wattcher
- (5) Broadcast Electronics FM-30T Transmitter with install
- (6) Audiometrics 16000B Dist. Amp.

**Schedule 6.6**  
**Contracts**

1) Equipment and Studio Lease, entered into as July 15, 2004, by and between GAP (as assignee of Citicasters Co.), as Lessor, and Seller as Lessee.

2) Multiplex Antenna System Lease Agreement, entered into as of July 15, 2004, by and between GAP (as assignee of Citicasters Co.), as Lessor, and Seller as Lessee.

**Schedule 6.7**  
**Intangible Property**

None.

**Schedule 6.8**  
**Litigation**

The Application File Number BPH-19970731MX of InterMart Broadcasting Twin Falls, Inc. for a Construction Permit for a new FM Broadcast Station to operate at Twin Falls, Idaho was granted by the FCC Media Bureau staff on May 19, 2003. An Informal Objection was filed on April 4, 2000. The Informal Objection was denied by FCC Media Bureau staff letter dated April 4, 2003.

An Application for Review was filed on May 19, 2003 by Astounding Productions, Inc., asking the full Commission to review the FCC Media Bureau staff action. That application for review is still pending before the full Commission.

**Schedule 6.9**  
**Employees**

None.

**Schedule 6.15**  
**Compliance with Law**

None.