# PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

BURKEN, LLC

"BUYER"

AND

KVOM, INC.

AND

RIVER VALLEY RADIO GROUP, LLC

"SELLER"

Dated as of December 13, 2000

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## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** is made as of the 13th day of December, 2000, by and between River Valley Radio Group, LLC, an Arkansas limited liability company and KVOM, Inc., an Arkansas corporation (collectively the "Seller") and Burken, LLC, a Delaware limited liability company ("Buyer").

## RECITALS:

**A.** Seller is engaged in the business of radio broadcasting and presently owns the assets of and operates commercial radio broadcast Stations: KWKK-FM, Russellville, Arkansas; KCJC-FM, and KCAB-AM, Dardanelle/Russellville, Arkansas; FKRRD-FM, Atkins, Arkansas; KVOM-FM and KVOM-AM, Morrilton, Arkansas; and KXIO-FM Clarksville, Arkansas (the "Stations").

**B.** Seller is willing to sell and lease to Buyer and Buyer is willing to purchase and lease from Seller, substantially all of the assets, business, properties and rights of Seller related to the conduct of the Stations on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE,** in consideration of the Recitals and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

## ARTICLE I

## DEFINITIONS

**1. Definitions**. Except as specified otherwise, when used in this Agreement, the following terms shall have the meanings specified:

**"Accounts Receivable"** shall mean all accounts receivable of Seller related to the Stations immediately prior to the Closing as determined in accordance with a modified cash basis;

**"Accounts Payable"** shall mean all accounts payable of Seller related to the Stations immediately prior to the Closing as determined in accordance with a modified cash basis;

**"Agreement"** shall mean this Purchase and Sale Agreement, together with the Schedules and the Exhibits attached hereto, as the same shall be amended from time to time in accordance with the terms hereof;

**"Assumed Liabilities"** shall mean (a) the liabilities of Seller, if any, listed on Schedule 1.1; (b) the obligation of Seller under the Contracts listed on Schedule 1.2, the Contracts not required pursuant to Section 4.7 to be listed on Schedule 1.2 and Contracts entered into after the date hereof and prior to the Closing Date in accordance with this Agreement, and the Leases, in each case arising from and accruing with respect to the operation of the Stations after the Closing

Date, except those Contracts and Leases, if any, included in the Retained Assets; and (c) the liabilities, obligations and claims resulting from the operation of the Stations prior to the Closing Date to the extent such liabilities, obligations and claims are subject of a purchase price adjustment pursuant to Section 2.4 in favor of Buyer;

**"Assumption Agreement"** shall mean an instrument in the form of Exhibit "A" attached hereto by which the Assumed Liabilities shall be assumed by Buyer;

**"Benefit Arrangements"** shall mean a benefit program or practice providing for bonuses, incentive compensation, vacation pay, severance pay, insurance, restricted stock, stock options, employee discounts, company cars, tuition reimbursement or any other perquisite or benefit (including, without limitation, any fringe benefit under Section 132 of the Code) to employees, officers or independent contractors that is not a Plan;

**"Bill of Sale and Assignment"** shall mean an instrument in the form of Exhibit "B" attached hereto, by which Seller shall convey to Buyer title to the Accounts Receivable, the Customer Lists, the Equipment, the Intangible Property, the Licenses, the Miscellaneous Assets, the Motor Vehicles, the Records and the Trade Secrets;

**"Buyer"** shall mean Burken, LLC, a Delaware limited liability company;

**"Buyer's Closing Certificate"** shall mean the certificate of Buyer in the form of Exhibit "C" attached hereto;

**"Buyer's Opinion of Counsel"** shall mean the opinion of counsel of Buyer in the form of Exhibit "D" attached hereto;

**"Buyer's Performance Certificate"** shall mean the certificate of Buyer in the form of Exhibit "E" attached hereto;

**"Cash"** shall mean all moneys of Seller relating to the Stations, whether in the form of cash, cash equivalents, marketable securities, short-term investments or deposits in bank or other financial institution accounts of any kind;

**"Closing"** shall mean the conference to be held at 10.00 a.m., Russellville, Arkansas time on the Closing Date at the offices of Eddy and Kelly, 805 W. 2nd Ct., Russellville, Arkansas 72801, or at such other time and place as may be designated by counsel to Buyer's lenders or as the parties may mutually agree to in writing, at which time the transactions contemplated by this Agreement shall be consummated;

**"Closing Date"** shall mean (a) the date designated by the Buyers by at least Buyers ten (10) days' prior written notice to Seller which is no later than fifteen (15) business days after the last to occur of the date on which (i) FCC Consent has become a Final Order, provided, however, that Buyer in its sole discretion and upon ten (10) days' prior written notice may waive the requirement that the FCC Consent has become a Final Order; or (ii) the conditions set forth in Sections 7.16 and 8.8 have been satisfied, or (b) such other date as Buyer and Seller may agree

upon in writing. With regard to the foregoing, in no event shall the Closing Date extend beyond October 31, 2001, unless otherwise mutually agreed to by the parties in writing. The Closing shall be deemed effective as of 12:01 a.m. on the first day subsequent to the Closing Date;

**"Code"** shall mean the Internal Revenue Code of 1986, as amended;

**"Communications Act"** means the Communications Act of 1934, as amended, together with the rules, regulations and policies of the FCC;

**"Contract Assignment"** shall mean the Assignment and Assumption of Contracts, in the form of Exhibit "F" attached hereto, by which Seller shall assign the Contracts to Buyer and Buyer shall assume the then remaining rights and obligations of Seller under the Contracts;

**"Contracts"** shall mean those agreements (other than those included in the Retained Assets and other than the Leases) under which Seller conducts the business of the Stations, whether written, oral or implied, including all contractual obligations incurred by Seller for the Program Rights, including without limitation those agreements listed on Schedule 1.2;

**"Copyrights"** shall mean all copyrights and copyright applications related to the Stations, including without limitation those items described on Schedule 1.3;

**"Current Assets"** shall mean the current assets of Seller related to the Stations required to be reflected on the balance sheet of Seller in accordance with a modified cash basis, consistently applied, other than (a) Retained Assets; (b) the current portion of Program Rights; and (B) any current assets related to Tradeout Agreements;

**"Current Liabilities"** shall mean the current liabilities of Seller related to the Stations required to be reflected on the balance sheet of Seller in accordance with a modified cash basis, consistently applied, other than (a) Retained Liabilities and (b) current liabilities related to Program Rights or Tradeout Agreements;

**"Customer Lists"** shall mean all lists, documents, written information and computer tapes and programs and other computer readable media used by or in Seller's possession concerning past, present and potential purchasers of advertising or services from the Stations;

**"Due Diligence Review"** shall mean the Buyer's due diligence review of the Real Property pursuant to the terms as set forth in Section 11.2;

**"Earnest Money"** shall mean the sum of Two Hundred Thousand ($200,000) to be allocated by the following: (i) One Hundred Thousand ($100,000) in cash, to be deposited by Buyer with the Escrow Agent concurrently with the execution hereof to be held by Escrow Agent in accordance with the terms and provisions of this Agreement and the Escrow Agreement; and (ii) One Hundred Thousand ($100,000) in the form of a promissory note or notes;

**"Environmental Laws"** shall mean the rules and regulations of the FCC, the Environmental Protection Agency and any other federal, state or local government authority

pertaining to human exposure to RF radiation and all applicable rules and regulations of federal, state and local laws, including statutes, regulations, ordinances, codes, rules, as amended, relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Materials or toxic substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect;

**"Equipment"** shall mean all machinery, equipment, furniture, fixtures, furnishings, toolings, parts, and tapes and other items of tangible personal property owned or leased by Seller which are used or useable in the operation of the Stations, including without limitation to those items listed on Schedule 1.4;

**"Escrow Agent"** shall mean Eddy and Kelly, 805 W. 2nd Ct., Russellville, Arkansas 72801;

**"Escrow Agreement"** shall mean the Escrow Agreement in the form of Exhibit "G" attached hereto between Escrow Agent, Buyer and Seller to be entered into contemporaneously with the execution of this Agreement;

**"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended;

**"Event of Loss"** shall mean any loss, taking, condemnation, damage or destruction of or to any of the Purchased Assets or the Stations;

**"FCC"** means the Federal Communications Commission;

**"FCC Consent"** shall mean action by the FCC granting its consent to the assignment of the Licenses from Seller to Buyer;

**"Final Order"** shall mean an FCC Consent, with respect to which no action, request for stay, petition for rehearing or reconsideration, appeal or review by the FCC on its own motion is pending and as to which the time for filing or initiation of any such request, petition, appeal or review has expired;

**"Financial Statements"** shall mean the financial statements of Seller described in Section 4.11(a);

**"Financing Lease"** shall mean any Lease which is properly characterized as a capitalized lease obligation in accordance with a modified cash basis;

**"Hazardous Materials"** shall mean any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws. "Hazardous Materials" includes but is not limited to polychlorinated biphenyls (PCB's) asbestos, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including, without limitation, crude oil or any fraction thereof);

**"Intangible Property"** shall mean: (a) the Copyrights; (b) the Trademarks; (c) the Trade Secrets; (d) all of the rights of the Seller in and to the call letters "KWKK-FM", "KCJC-FM", "KCAB-AM", "KRRD-FM", "KVOM-FM" "KVOM-AM" and KXIO-FM; (e) all programming concepts developed by Seller or its employees, whether presently being broadcast or not; (f) all computer software which Seller owns, licenses or otherwise has the legal right to use; (g) all other ideas, designs, processes or other characteristics relating to any internet or intranet and to any website, including but not limited to domain name ownership; and (h) all goodwill associated therewith;

**"Interim Financial Statements"** shall mean the financial statements of Seller described in Section 4.11(b);

**"Knowledge of Seller"** or "to the Seller's Knowledge" shall mean the actual knowledge of Rich Moellers, Harold Nichol, Dick Bailey, Fran Harp, Linda Cate, W. N. Cate, William Cate, Jr. or the general managers of the Stations, or knowledge which any of such Persons should have possessed upon a reasonable investigation of the business affairs of the Stations;

**"Lease Assignment"** shall mean the Assignment and Assumption of Leases in the form of Exhibit "I" attached hereto, by which Seller shall assign to Buyer the Leases or in the case of Leases of Real Property, in such other form as is reasonably acceptable to the Title Company;

**"Lease Estoppel Letters"** shall mean letters from Persons who have leased Real Property to Seller related to the Stations in the form of Exhibit "J" attached hereto or in such other form as is acceptable to Buyer's lenders;

**"Leases"** shall mean those leases of Real Property and Equipment related to the Stations as listed on Schedule 1.5;

**"Licenses"** shall mean all licenses, permits and authorizations issued by the FCC to Seller for the operation of the Stations and all auxiliary facilities licensed by the FCC for operation in connection with the Stations, as listed on Schedule 1.6;

**"Lien"** shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any of the Purchased Assets or the Stations, including any agreement to give or grant any of the foregoing, any

conditional sale or other title retention agreement and the filing of or agreement to give any financing statement with respect to any of the Purchased Assets or the Stations under the Uniform Commercial Code of the State of Arkansas or comparable law of any jurisdiction;

**"Miscellaneous Assets"** shall mean all tangible and intangible assets used or useable in the operation of the Stations and not otherwise specifically referred to in this Agreement, including any warranties related to any of the Purchased Assets, excepting therefrom only the Retained Assets;

**"Motor Vehicles"** shall mean all motor vehicles owned by Seller related to the operation of the Stations including without limitation those listed on Schedule 1.7;

**"Motor Vehicle Title Certificates"** shall mean the official evidences of title to the Motor Vehicles;

**"Noncompetition Agreement"** shall mean the Noncompetition Agreement between Seller and each of Fran Harp, Linda Cate, W. N. Cate, William Cate, Jr., and Buyer in the form of Exhibit "K" attached hereto;

**"Security Agreement"** shall mean the security agreement as contemplated in the Purchase Money Note, which security agreement shall be subordinate to any senior lender;

**"Station Lease"** shall have the meaning set forth in Section 8.5;

**"Permitted Liens"** shall mean the following Liens: (a) Liens existing on the Closing Date to remain on the Stations Assets after the Closing as listed on Schedule 1.8; (b) Liens for taxes, assessments or other governmental charges or levies not yet due; (c) statutory Liens of landlords, carriers, warehousemen, mechanics, materialmen and other Liens imposed by law created in the ordinary course of business of Company consistent with past practices for amounts not yet due; (d) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business of Company consistent with past practices in connection with worker's compensation, unemployment insurance or other types of social security; (e) with respect to interests in real property, minor defects of title, easements, rights-of-way, restrictions and other similar charges or encumbrances not materially detracting from the value of such real property or interfering with the ordinary conduct of the Stations; and (f) Liens created by or through Buyer or any of its affiliates;

**"Person"** shall mean any natural person, general or limited partnership, corporation, limited liability company or other entity;

**"Personal Guarantees"** shall mean the personal guarantees by Stephen I. Burr and Bryan Kent Hawkins to the Purchase Money Note and in such form as attached hereto as Exhibit L;

**"Phase I Report"** shall have the meaning set forth in Section 6.2;