

**EXHIBIT 10**

George S. Flinn, Jr. ("Seller") and Millcreek Broadcasting, L.L.C. ("Millcreek") entered into an Option Agreement dated as of September 26, 2003, with regard to the construction permit for KPEB(FM), Huntsville, Utah. The same day, Millcreek executed a Promissory Note in favor of Seller.

Seller and Millcreek entered into an Asset Purchase Agreement dated as of November 18, 2003, by which Seller agreed to assign the KPEB(FM) permit to Millcreek. On January 21, 2003, the parties entered an Agreement concerning certain matters related to this proposed transaction and the Promissory Note (the "Payment Agreement").

Millcreek assigned its rights and obligations under the Asset Purchase Agreement and the Payment Agreement to Simmons Media Group, LLC and Simmons-SLC, LS, LLC pursuant to an Assignment Agreement dated as of February 27, 2004. The same day, Seller executed a Consent to Assignment.

Included with this Exhibit are executed copies of each of the foregoing documents other than the Promissory Note, which has not been satisfied. None of these agreements included schedules or exhibits.

## **OPTION AGREEMENT**

This Option Agreement ("Agreement") is made and entered into as of this 26<sup>th</sup> day of September, 2003, by and between GEORGE S. FLINN, JR. ("Flinn") and MILLCREEK BROADCASTING, L.L.C. (f/k/a DEER VALLEY BROADCASTING, L.L.C.), an Illinois limited liability company ("Millcreek").

### **WITNESSETH:**

WHEREAS, Flinn holds a construction permit (KPEB; Facility ID #88483), issued by the Federal Communications Commission (the "Commission" or "FCC"), to construct and operate a new commercial FM broadcast station on Channel 27.6C3 in Huntsville, Utah (the "Permit"); and

WHEREAS, Millcreek is desirous of acquiring the Permit and Flinn is desirous of granting to Millcreek, for the consideration set forth herein, an option to purchase the Permit in accordance with the rights and obligations set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, representations, warranties and agreements hereafter set forth, and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Grant of Option to Millcreek.** In consideration for (a) the payment by Millcreek to Flinn in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) on or before September 30, 2003, (b) the tendering of a Promissory Note in favor of Flinn (i.e., with a maturation date of January 15, 2004) in the amount of One Million, One Hundred and Seventy Five Thousand Dollars (\$1,175,000.00) on or before September 26, 2003 and (c) other good and valuable consideration, Flinn hereby grants to Millcreek the exclusive and irrevocable right and option (the "Option") to purchase the Permit for the purchase price of Three Hundred Thousand Dollars (\$300,000.00). In order to exercise its right to purchase the Permit, Millcreek must execute the attached Asset Purchase Agreement and tender it to Flinn for counter-signature consistent with notice provisions contained herein (i.e., prior to the expiration of the Option Period). The term of this Option Agreement shall commence on September 26, 2003 and expire on December 26, 2003 (the "Option Period").

2. **Actions Upon Exercise of Option.** Upon exercise of the Option by Millcreek, the parties shall promptly, within five (5) business days thereafter, prepare and file with the FCC the required application seeking consent to the assignment of the

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**WITNESSETH:**

WHEREAS, Flinn holds a construction permit (KPEB; Facility ID #88483), issued by the Federal Communications Commission (the "Commission" or "FCC"), to construct and operate a new commercial FM broadcast station on Channel 276C3 in Huntsville, Utah (the "Permit"); and

WHEREAS, Millcreek is desirous of acquiring the Permit and Flinn is desirous of granting to Millcreek, for the consideration set forth herein, an option to purchase the Permit in accordance with the rights and obligations set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, representations, warranties and agreements hereafter set forth, and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Grant of Option to Millcreek.** In consideration for (a) the payment by Millcreek to Flinn in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) on or before September 30, 2003, (b) the tendering of a Promissory Note in favor of Flinn (i.e., with a maturation date of January 15, 2004) in the amount of One Million, One Hundred and Seventy Five Thousand Dollars (\$1,175,000.00) on or before September 26, 2003 and (c) other good and valuable consideration, Flinn hereby grants to Millcreek the exclusive and irrevocable right and option (the "Option") to purchase the Permit for the purchase price of Three Hundred Thousand Dollars (\$300,000.00). In order to exercise its right to purchase the Permit, Millcreek must execute the attached Asset Purchase Agreement and tender it to Flinn for counter-signature consistent with notice provisions contained herein (i.e., prior to the expiration of the Option Period). The term of this Option Agreement shall commence on September 26, 2003 and expire on December 26, 2003 (the "Option Period").

2. **Actions Upon Exercise of Option.** Upon exercise of the Option by Millcreek, the parties shall promptly, within five (5) business days thereafter, prepare and file with the FCC the required application seeking consent to the assignment of the

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Permit to Millcreek. The parties agree to use commercially reasonable efforts to give effect to the terms of this Option Agreement and the transactions contemplated hereby, and to execute such further documents and to take such actions as may be reasonably necessary to give effect to the purposes of this Option Agreement. The parties further agree that they shall prosecute the assignment application with all reasonable diligence and otherwise use their commercially reasonable efforts to obtain the grant of the application as expeditiously as practicable.

3. **Representations, Warranties and Covenants of Flinn.** Flinn hereby represents, warrants and covenants to Millcreek as follows:

(a) **Authorization; Binding Obligations; Consent.** Flinn has the necessary legal capacity, power and authority to enter into this Agreement. The execution, delivery and performance of this Option Agreement and the other documents and instruments to be executed and delivered by Flinn pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all necessary action of Flinn. No other or further act or proceeding on the part of the Flinn is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Flinn pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Option Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Flinn pursuant hereto will constitute, legal, valid and binding agreements of Flinn, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally, and by general equitable principles.

(b) **No Contravention.** The execution, delivery and performance of this Option Agreement and any other documents and instruments to be executed in connection herewith and the consummation of the transaction contemplated by this Option Agreement by Flinn do not and will not, after the giving of notice or lapse of time or otherwise, (i) result in the breach of, constitute a default under, conflict with or result in the termination or alteration of, the provision of any agreement or other instrument to which Flinn is a party or by which the property of Flinn is bound or affected, or (ii) violate or conflict with any material laws, regulations, orders, writs, decrees or judgments, including the Communications Act of 1934, as amended as amended (the "Act"), and all the rules, regulations and policies of the FCC (collectively with the Act, the "Communications Act"), applicable to Flinn or to the Permit.

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(a) **Authorization; Binding Obligations; Consent.** Flinn has the necessary legal capacity, power and authority to enter into this Agreement. The execution, delivery and performance of this Option Agreement and the other documents and instruments to be executed and delivered by Flinn pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all necessary action of Flinn. No other or further act or proceeding on the part of the Flinn is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Flinn pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Option Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Flinn pursuant hereto will constitute, legal, valid and binding agreements of Flinn, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally, and by general equitable principles.

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(c) **FCC Authorization.** Flinn lawfully holds the Permit. There is no pending, or to the Flinn's knowledge, threatened action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify the Permit (other than to amend FCC rules of general applicability), and there is not now issued, outstanding, pending, or to Flinn's knowledge threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Flinn or the Permit. Flinn holds the Permit in accordance with the Communications Act, and knows of no fact that could result in revocation or suspension. To Flinn's knowledge, there are no facts relating to Flinn's qualifications that, under the Communications Act would disqualify Flinn from assigning the Permit or from consummating the transactions contemplated herein.

(d) **Qualifications.** Flinn is recognized by the FCC as the true and lawful holder of the Permit. Flinn makes no further representations or warranties with respect to the Permit.

(e) **Absence of Other Ownership.** Flinn has good and marketable title to the Permit free and clear of all encumbrances of any kind whatsoever. The Permit is not subject to any restriction with respect to the transferability thereof. Flinn has complete and unrestricted power and right to sell, assign, convey and deliver the Permit to Millcreek as contemplated hereby.

4. **Representations, Warranties and Covenants of Millcreek.** Millcreek hereby represents, warrants and covenants to Flinn as follows:

(a) **Organization and Standing; Power and Authority.** Millcreek is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois and is qualified to do business in the State of Utah. Millcreek has the power and authority to hold the Permit and to enter into and perform the terms of this Option Agreement and of the documents and instruments called for herein, and to consummate the transaction contemplated hereby.

(b) **Authorization; Binding Obligations; Consent.** The execution, delivery and performance by Millcreek of this Option Agreement and of the documents and instruments called for herein, and the consummation of the transaction contemplated hereby, have been duly and validly authorized by Millcreek. This Option Agreement constitutes a valid and binding agreement and an obligation of Millcreek, enforceable in accordance with its terms. Other than the approval of the FCC, the execution, delivery and performance by Millcreek of

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this Option Agreement and any agreements and instruments called for hereunder will not require the approval and authorization of any person, entity or governmental authority.

(c) **No Contravention.** The execution, delivery and performance of this Option Agreement and any other documents and instruments to be executed in connection herewith and the consummation of the transaction contemplated by this Option Agreement by Millcreek do not and will not, after the giving of notice or lapse of time or otherwise, (i) conflict with or violate any provision of the charter documents of Millcreek, (ii) result in the breach of, constitute a default under, conflict with or result in the termination or alteration of, the provision of any agreement or other instrument to which Millcreek is a party or by which the property of Millcreek is bound or affected, or (iii) violate or conflict with any material laws, regulations, orders, writs, decrees or judgments, including the Communications Act, applicable to Millcreek or the Permit.

(d) **Qualifications.** To Millcreek's knowledge, there are no facts that would, under the Communications Act, disqualify Millcreek as an assignee of the Permit. Should the Federal Communications Commission hold that Millcreek is unable to acquire the Permit due to Millcreek's ownership of other stations in the market which the Permit serves, Millcreek shall take all steps necessary to address the Commission's concerns such that Millcreek is legally permitted by the Commission to acquire the permit. There are no proceedings, complaints, notices of forfeiture, claims, investigations pending or, to the knowledge of Millcreek, threatened against any or in respect of any of the broadcast stations licensed to Millcreek or its Affiliates that would materially impair the qualifications of Millcreek to become a licensee of the Permit.

5. **"As Is" Assignment of FCC Authorization.** Other than as specifically set forth in Paragraph 3(c) hereinabove, the Permit is being assigned by Seller to Buyer "as is". Notwithstanding anything to the contrary contained herein, Seller makes no representations or warranties regarding the Permit or the feasibility of constructing the proposed station (a) in a timely manner or (b) at the transmitter site specified in the Permit. Buyer acknowledges that the expiration date of the Construction Permit is March 28, 2004 and that Buyer intends to seek specification of a new transmitter site for the Permit. While Seller will cooperate in the filing of any proposed transmitter site change application, Buyer assumes all risk that the modification application will not be granted by the FCC and/or that the Permit will expire.

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6. **Specific Performance.** In the event of breach by a party of its obligations under this Option Agreement, the other party shall have the right to seek injunctive relief and/or specific performance. Such rights are cumulative and not alternatives to either party's right to seek damages at law. Each party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition to the propriety of injunctive relief or specific performance as a remedy.

7. **Cessation of Discussions.** Flinn agrees that, during the Option Period, neither he nor his employees, consultants, advisors or affiliates (collectively, "Representatives") will engage in, initiate, continue or permit to occur any contact or discussion of any kind whatsoever with any third party for the direct or indirect purchase or sale of the Permit to any third party. Flinn represents and warrants that as of the execution date of this Agreement, he and his Representatives will have discontinued all contact of any kind whatsoever with any third party relating to the transaction contemplated herein.

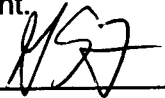
8. **Indemnification.**

(a) Flinn shall indemnify, defend and hold Millcreek harmless against all claims, liabilities, obligations, demands and legal actions and will reimburse Millcreek for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the breach by Flinn of any of his representations, warranties or covenants set forth herein.

(b) Millcreek shall indemnify, defend and hold Flinn harmless against all liabilities, obligations, claims, demands and legal actions and will reimburse Flinn for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the breach by Millcreek of any of its representations, warranties or covenants set forth herein.

9. **Confidentiality.** Each party agrees that any and all information, disclosures, knowledge or facts regarding the other party or their respective businesses or properties to which either party may be exposed as a result of the negotiation, preparation or performance of this Agreement shall be confidential and shall not be divulged, disclosed or communicated to any other person, firm, corporation or entity, except for said party's attorneys, investors, lenders and accountants, and their respective attorneys, on a need-to-know basis for the purpose of consummating the transactions contemplated hereby and thereby.

10. **Cooperation.** The parties agree to cooperate in the filing of any proposed engineering amendment with respect to the Permit. Millcreek shall bear any and all expenses arising in connection with the filing of any such amendment.

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6. **Specific Performance.** In the event of breach by a party of its obligations under this Option Agreement, the other party shall have the right to seek injunctive relief and/or specific performance. Such rights are cumulative and not alternatives to either party's right to seek damages at law. Each party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition to the propriety of injunctive relief or specific performance as a remedy.

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(b) Millcreek shall indemnify, defend and hold Flinn harmless against all liabilities, obligations, claims, demands and legal actions and will reimburse Flinn for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the breach by Millcreek of any of its representations, warranties or covenants set forth herein.

9. **Confidentiality.** Each party agrees that any and all information, disclosures, knowledge or facts regarding the other party or their respective businesses or properties to which either party may be exposed as a result of the negotiation, preparation or performance of this Agreement shall be confidential and shall not be divulged, disclosed or communicated to any other person, firm, corporation or entity, except for said party's attorneys, investors, lenders and accountants, and their respective attorneys, on a need-to-know basis for the purpose of consummating the transactions contemplated hereby and thereby.

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11. **Miscellaneous.**

(a) **Notices.** Any notice, request, demand or consent required or permitted to be given under this Option Agreement shall be in writing (including facsimile transmissions and similar writings) and shall be effective when transmitted and confirmation of receipt is obtained for facsimile transmissions and similar writings, when delivered personally, one (1) business day after sent by recognized overnight courier and five (5) days after sent by mail, first-class postage pre-paid, registered mail, return receipt requested, in each case to the following address or facsimile number as applicable:

If to Flinn:                                George S. Flinn, Jr.  
   188 South Bellevue, Suite 222  
   Memphis, TN 38104  
   Facsimile Number: (901) 726-8973  
   Telephone Number: (901) 726-8970

With copy (which shall not constitute notice) to:

Stephen C. Simpson  
Attorney at Law  
1090 Vermont Avenue, N.W. Suite 800  
Washington, DC 20005

If to Millcreek:                            Millcreek Broadcasting, L.L.C.  
   c/o Marathon Media, L.P.  
   980 North Michigan Avenue, Suite 1880  
   Chicago, IL 60610  
   Attn: Christopher Devine  
   Facsimile Number: (312) 587-9520  
   Telephone Number: (312) 204-9900

With copy (which shall not constitute notice) to:

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Suite 240  
Washington, DC 20036

or at such other address as either party shall specify by written notice to the other.

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**11. Miscellaneous.**

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If to Flinn: George S. Flinn, Jr.  
188 South Bellevue, Suite 222  
Memphis, TN 38104  
Facsimile Number: (901) 726-8973  
Telephone Number: (901) 726-8970

With copy (which shall not constitute notice) to:

Stephen C. Simpson  
Attorney at Law  
1090 Vermont Avenue, N.W. Suite 800  
Washington, DC 20005

If to Millcreek: Millcreek Broadcasting, L.L.C.  
c/o Marathon Media, L.P.  
980 North Michigan Avenue, Suite 1880  
Chicago, IL 60610  
Attn: Christopher Devine  
Facsimile Number: (312) 587-9520  
Telephone Number: (312) 204-9900

With copy (which shall not constitute notice) to:

Lee J. Peltzman, Esq.  
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(b) **Heading; Entire Agreement.** The section and subsection headings do not constitute any part of this Option Agreement and are inserted herein for convenience of reference only. This Option Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements, understandings, representations and warranties, and courses of conduct in dealings between the parties on the subject matter hereof. This Option Agreement may not be amended, modified or changed orally, but only in a writing signed by the party against which enforcement of any amendment, modification, change, waiver, extension or discharge is sought.

(c) **Waiver.** No waiver of a breach of, or a default under, any provision of this Option Agreement shall be deemed a waiver of such provision or of any subsequent breach or default of the same or similar nature or of any other provision or condition of this Option Agreement.

(d) **Counterparts.** This Option Agreement may be executed in counterparts, each of which shall be deemed an original, but which, taken together, shall constitute one agreement.

(e) **Severability.** In the event that any of the provisions contained in this Option Agreement are held to be invalid, illegal or enforceable, such holding shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

(f) **Broker/Finder.** Millcreek and Flinn each represents and warrants to the other that they have not engaged any broker or finder who would have a claim for a fee upon consummation of the sale of the Permit to Millcreek.

(g) **Governing Law.** This Option Agreement, and the rights and obligations of Flinn and Millcreek hereunder, shall be governed by, construed and enforced in accordance with the laws of the State of Utah applicable to contracts made and to be performed therein without regard to any conflict of law principles, and the obligations of the parties hereto are subject to all federal, state and local laws and regulations now in force and to the rules and policies of the Commission and other government entities or authorities presently or hereafter to be constituted.

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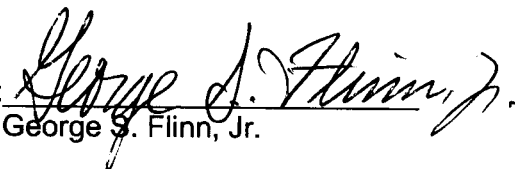
(h) **Assignment; Successors and Assigns.** Except as otherwise expressly provided herein, this Option Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. Neither party may assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other, and any such attempted assignment or delegation without such consent shall be void.

(i) **Notice of Proceedings.** Flinn or Millcreek, as the case may be, will promptly, and in any event within five (5) business days, notify the other in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Option Agreement or the transactions contemplated hereunder, or upon receiving any notice from any governmental department, court, agency or commission of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of this Option Agreement or such transactions contemplated hereby, or to nullify or render ineffective this Option Agreement.

(j) **No Partnership or Joint Venture Created.** Nothing in this Agreement shall be construed to make Flinn and Millcreek partners or joint venturers or to afford any rights to any third party other than as may be expressly provided herein.

IN WITNESS WHEREOF, each party has caused this Option Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first written above.

**GEORGE S. FLINN, JR.**

By:   
George S. Flinn, Jr.

**MILLCREEK BROADCASTING, L.L.C.**

By: \_\_\_\_\_  
Christopher Devine, Co-Manager



(h) **Assignment; Successors and Assigns.** Except as otherwise expressly provided herein, this Option Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. Neither party may assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other, and any such attempted assignment or delegation without such consent shall be void.

(i) **Notice of Proceedings.** Flinn or Millcreek, as the case may be, will promptly, and in any event within five (5) business days, notify the other in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Option Agreement or the transactions contemplated hereunder, or upon receiving any notice from any governmental department, court, agency or commission of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of this Option Agreement or such transactions contemplated hereby, or to nullify or render ineffective this Option Agreement.

(j) **No Partnership or Joint Venture Created.** Nothing in this Agreement shall be construed to make Flinn and Millcreek partners or joint venturers or to afford any rights to any third party other than as may be expressly provided herein.

IN WITNESS WHEREOF, each party has caused this Option Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first written above.

**GEORGE S. FLINN, JR.**

By: \_\_\_\_\_  
George S. Flinn, Jr.

**MILLCREEK BROADCASTING, L.L.C.**

By:  \_\_\_\_\_  
Christopher Devine, Co-Manager

### **ASSET PURCHASE AGREEMENT**

THIS AGREEMENT is made and entered into as of this 18th day of November, 2003, by and between George S. Flinn, Jr., (hereinafter referred to as "Seller") and Millcreek Broadcasting, L.L.C. (f/k/a Deer Valley Broadcasting, L.L.C.) (hereinafter referred to as "Buyer").

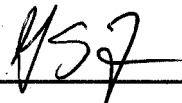

#### **Witnesseth:**

WHEREAS, Seller holds a construction permit issued by the Federal Communications Commission (the "Commission" or the "FCC") for the operation of radio station KPEB (FM), Huntsville, Utah (Facility ID #88483) (the "Station" or the "Construction Permit"); and

WHEREAS, the Seller desires to assign and Buyer desires to accept assignment of the KPEB (FM), Huntsville, Utah Construction Permit, as hereinafter set forth; and

WHEREAS, said Construction Permit may not be assigned without the prior authorization of the Federal Communications Commission.

NOW THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties and covenants herein contained, the parties, intending to be legally bound, subject to the prior consent of the Commission and subject to the terms and conditions set forth herein, mutually agree as follows:

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## **Section 1**

1.1 **Definitions.** As used herein, the following terms have the following meanings:

1.1.1 **Asset or Assets** means the Construction Permit.

1.1.2 **Assignment Application** means the application to the Commission requesting its written consent to the assignment of the Construction Permit from Seller to Buyer.

1.1.3 **Closing** means the performance of all acts, fulfillment of all conditions, and execution of all documents and instruments as may be necessary to effectively transfer the Construction Permit from Seller to Buyer on the Closing Date.

1.1.4 **Closing Date** means the tenth (10th) day after the date upon which the approval of the Commission required for the consummation of the transactions contemplated herein shall have become a Final Order.

1.1.5 **Closing Place** means the offices of George S. Flinn, Jr., 188 South Bellevue, Suite 222, Memphis, Tennessee 38104 or such other place as may be mutually agreed upon by the Parties.

1.1.6 **Commission** means the Federal Communications Commission.

1.1.7 **Final Order** means an order or other action by the Commission or the Commission's staff acting pursuant to delegated authority, granting its consent to the Assignment Application and the assignment of the Construction

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Permit from Seller to Buyer and as to which order or other action: (a) the time for filing a request for FCC reconsideration or judicial review or for the full Commission's review of staff action or other appeal, protest, request for stay, or petition for rehearing, reconsideration, or review shall have expired with no such filings having been made or Commission or Court review undertaken or pending, and (b) no litigation is pending that would block or bar the transactions contemplated hereby.

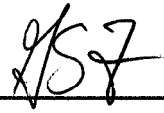

1.2 Other Terms. All terms defined in the other Sections of this Agreement shall have the meaning ascribed to them in those Sections, or in the absence of a definition in the Agreement, a commercially reasonable interpretation shall attach.

## **Section 2**

### **Assets to be Sold**

2.1 Included Assets. 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 Construction Permit.

2.2 Excluded Assets. All assets of Seller other than the Construction Permit.

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### **Section 3**

#### **Purchase Price**

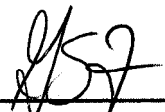

3.1 **Purchase Price**. The total purchase price to be paid at Closing, for the Asset and other consideration delineated herein, shall be Three Hundred Thousand Dollars (\$300,000.00) (the "Purchase Price"). All the sums at Closing shall be payable by certified check, cashier's check or wire transfer of immediately available federal funds.

### **Section 4**

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

4.1 **Commission Consent**. Consummation of the transaction provided for herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition precedent that the Commission shall have given its consent in writing to the assignment of the Construction Permit to the Buyer.

4.2 **Application for Commission Consent**. Seller and Buyer agree to proceed expeditiously and with due diligence, to use their best efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder. Within five (5) business days after the execution of this Agreement, Seller and Buyer shall file with the Commission the Assignment Application and all

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information, data, statements, exhibits and other materials necessary and proper in connection with such Assignment Application, including a copy of this Agreement.

## **Section 5**

### **Representations and Warranties of Seller**

The Permit is being assigned by Seller to Buyer "as is". Notwithstanding anything to the contrary contained herein, Seller makes no representations or warranties regarding the Permit or the feasibility of constructing the proposed station (a) in a timely manner or (b) at the transmitter site specified in the Permit. Buyer acknowledges that the expiration date of the Construction Permit is March 28, 2004.

## **Section 6**

### **Conditions for Closing**

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

6.1.1 The Commission shall have granted its consent to the Assignment Application and to the assignment of the Construction Permit from Seller to Buyer.

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6.1.2 Seller shall be the holder of the Commission Authorizations and Other Authorizations.

6.1.3 Seller shall have taken all action necessary to authorize and to consummate this transaction.

6.2 Conditions Precedent to Obligation 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, notwithstanding that such condition is not fulfilled) on the Closing Date:



6.2.1 The Commission shall have granted its consent to the Assignment Application and to the assignment of the Construction Permit from Seller to Buyer.

6.2.2 Buyer shall have taken all action necessary to authorize and to consummate this transaction.

## **Section 7**

### **Closing Documents**

7.1 Seller's Performance at Closing. On the Closing Date at the Closing Place, Seller shall execute and deliver or cause to be delivered to Buyer a document evidencing the assignment to Buyer of the Construction Permit, free and clear of all liens and encumbrances.

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7.2 Buyer's Performance at Closing. On the Closing Date at the Closing Place, Buyer shall deliver to Seller a certified or bank cashier's check or other immediately available federal funds for the Purchase Price set forth in Section 3.1.

## **Section 8**



### **Multiple Ownership Compliance**

8.1 Should the Federal Communications Commission hold that Millcreek is unable to acquire the Permit due to Millcreek's ownership of other stations in the market which the Permit serves, Millcreek shall take all steps necessary to address the Commission's concerns such that Millcreek is legally permitted by the Commission to acquire the Permit.

## **Section 9**

### **Notices**

9.1 Any notice required by or relating to this Agreement shall be deemed given when mailed by registered or certified mail, postage prepaid, or other "signature-acknowledged" form of mail or personal delivery to the appropriate party at the following address (or to such other address as a party shall designate by written notice to the other party).

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**If to Seller:**

George S. Flinn, Jr.  
188 South Bellevue  
Suite 222  
Memphis, TN 38104

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

Stephen C. Simpson  
Attorney at Law  
1090 Vermont Avenue, N.W.  
Suite 800  
Washington, DC 20005

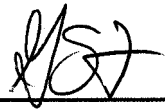

**If to Buyer:**

Christopher Devine, Co-Manager  
Millcreek Broadcasting, L.L.C.  
c/o Marathon Media, L.P.  
980 North Michigan Avenue  
Suite 1880  
Chicago, Illinois 60610

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

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Suite 240  
Washington, DC 20036

Either party may change its address for notice purposes by providing written notice in accordance with this Section.

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## **Section 10**

### **Miscellaneous**

10.1 **Broker.** Seller and Buyer each represent and warrant to the other that no Broker has had any role in the subject transaction and, as such, no broker's commission is due any individual or firm.

10.2 **Headings.** The headings of the sections of this Agreement are for convenience and 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.

10.3 **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and is intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed or modified in any respect 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.

10.4 **No Waiver.** 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. Any provision, condition or covenant which may be waived only with the mutual consent of both parties to this Agreement shall be evidenced by a written instrument signed by both parties.

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10.5 No Assignment. Neither Buyer nor Seller may assign its rights, duties or obligations hereunder without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Buyer may assign this Agreement to another entity, provided that no such assignment shall relieve Buyer of any of its respective duties or obligations hereunder and herein.



10.6 Other and Further Documents. The parties hereto agree to execute, acknowledge and deliver, before, 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.

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

10.8 Good Faith. All parties hereto shall act with reasonable diligence, and in good faith, in performing and discharging their respective duties and obligations hereunder.

10.9 Governing Law. The parties agree that this Agreement will be interpreted, construed, and enforced under and according to the laws of the State of Utah.

10.10. Specific Performance. In the event of breach by a party of its obligations under this Agreement, the other party shall have the right to seek injunctive relief and/or specific performance. Such rights are cumulative and not alternatives to either party's right to seek damages at law. Each party agrees to waive any defense as to the

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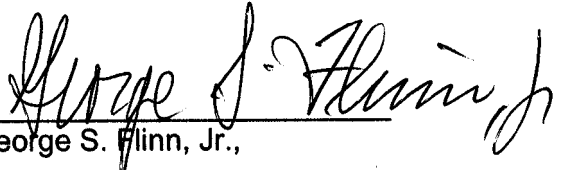
adequacy of the other party's remedies at law and to interpose no opposition to the propriety of injunctive relief or specific performance as a remedy.

10.11 Attorney's Fees. In the event any action is instituted by a party to enforce any of the terms and provisions contained herein, the prevailing party in such action shall be entitled to such reasonable attorney's fees, costs and expenses as may be fixed by the Court.

10.12 Expenses. Except as otherwise provided in this Agreement, each party shall be responsible for the expenses it incurs in connection with this transaction.

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

**GEORGE S. FLINN, JR.**

By:   
George S. Flinn, Jr.,

**MILLCREEK BROADCASTING, L.L.C. (F/K/A  
DEER VALLEY BROADCASTING, L.L.C.)**

By:   
Christopher Devine,  
As its Co-Manager

## **AGREEMENT**

This Agreement is made and entered into as of this 21st day of January, 2004, by and between GEORGE S. FLINN, JR. ("Flinn") and MILLCREEK BROADCASTING, L.L.C. (f/k/a DEER VALLEY BROADCASTING, L.L.C.), an Illinois limited liability company ("Millcreek").

### **WITNESSETH:**

WHEREAS, Millcreek executed a Promissory Note on September 26, 2003 (the "Note") in favor of Flinn which obligated Millcreek to pay Flinn the sum of One Million, One Hundred and Seventy Five Thousand Dollars (\$1,175,000.00) on January 15, 2004 (the "Due Date");

WHEREAS, Millcreek and Flinn agree that Millcreek's obligation to pay Flinn the sum of One Million, One Hundred and Seventy Five Thousand Dollars (\$1,175,000.00) matured on the Due Date but disagree as to post-maturation payment timing issues;

WHEREAS, Millcreek and Flinn are desirous of establishing an undisputed date certain as to when the actual transfer of the funds due under the Note must occur;

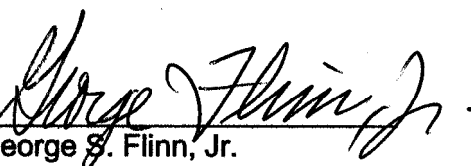
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Millcreek shall pay Flinn the total sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) (the "Payment"), of which \$50,000.00 has already been wired to Flinn on January 15, 2004; of which \$100,000.00 will be wired to Flinn on or before January 23, 2004; and, of which the remaining \$200,000.00 will be wired to Flinn on or before February 3, 2004. The parties agree that should the Federal Communications Commission grant a pending application with respect to KPEB (FM), Huntsville, Utah (BAPH-20031219ATS) (the "Application"), Millcreek (or its designated assignee, even if the substitution of such assignee results in a different FCC application file number) shall be entitled to credit Three Hundred Thousand Dollars (\$300,000.00) of the above-referenced payment against the consideration due at closing of the Asset Purchase Agreement (as defined below).

2. Millcreek agrees to grant to Flinn the right to locate the broadcast antenna and all related equipment necessary to operate KPEB (FM) (Facility ID #88483) on Millcreek's (or its related entity's) tower located on Humpy Peak for a ten year period at an annual rate of \$1.00 per year. Should the Federal Communications Commission grant the assignment covered by the Application and Millcreek (or its lawfully designated assignee) consequently acquire the KPEB (FM) construction permit, Flinn's right to lease the tower space as set forth in this Paragraph 2 shall terminate.
3. In the event that Millcreek fails to timely pay Flinn any portion of the Payment, Flinn shall be entitled (a) to terminate the Asset Purchase Agreement executed by Millcreek and Flinn on November 18, 2003 (the "Asset Purchase Agreement") and (b) to request dismissal of the Application (and Flinn shall thereafter have no obligation to assign the KPEB construction permit to Millcreek).
4. In the event that Millcreek fails to pay Flinn the sum of One Million, One Hundred and Seventy Five Thousand Dollars (\$1,175,000.00) on or before February 3, 2004 (i.e., said sum being that which Millcreek was obligated to pay Flinn on the Due Date and which the parties agree matured on said date), Flinn shall, in addition to the other remedies set forth in this Agreement and the Note, be entitled (a) to terminate the Asset Purchase Agreement and (b) to request dismissal of the Application (and Flinn shall thereafter have no obligation to assign the KPEB construction permit to Millcreek).
5. Flinn's termination of the Asset Purchase Agreement and/or dismissal of the Application pursuant to Paragraph 3 or Paragraph 4 of this Agreement shall not effect in any way Flinn's right to use the Humpy Peak tower and tower site owned or controlled by Millcreek pursuant to Paragraph 2 of the subject Agreement. Millcreek agrees to allow Flinn complete and unfettered access to the tower and tower site in order to allow Flinn to take all necessary steps to construct and commence broadcast operation of KPEB (FM) (Facility ID #88483) on or before March 28, 2004. In the event that Millcreek engages in any legal or practical efforts which have a material effect on Flinn's ability to construct KPEB (FM) on or before March 28, 2004, Millcreek agrees that one of Flinn's claims for damages may include the loss of value between KPEB (FM) as an unbuilt construction permit and KPEB (FM) as a built facility.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first written above.

**GEORGE S. FLINN, JR.**

By:   
George S. Flinn, Jr.

**MILLCREEK BROADCASTING, L.L.C.**

By: \_\_\_\_\_  
Christopher Devine, Co-Manager

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed and delivered in its name and on its behalf, all as of the date and year first written above.

**GEORGE S. FLINN, JR.**

By: \_\_\_\_\_  
George S. Flinn, Jr.

**MILLCREEK BROADCASTING, L.L.C.**

By:  \_\_\_\_\_  
Christopher Devine, Co-Manager



## ASSIGNMENT AGREEMENT

**THIS ASSIGNMENT AGREEMENT** (this “**Agreement**”) is made as of the 27th day of February 2004, by and between Millcreek Broadcasting, L.L.C., an Illinois limited liability company (“**Assignor**”), and Simmons-SLC, LLC and Simmons-SLC, LS, LLC (collectively “**Assignee**”).

**WHEREAS**, Assignor has entered into an Asset Purchase Agreement, dated November 18, 2003 (“**Purchase Agreement**”), with George S. Flinn, Jr. (“**Flinn**”) for the purchase of a construction permit for station KPEB (the “**Station**”); and

**WHEREAS**, Assignor has entered into an Agreement, dated January 21, 2004 (the “**Agreement**”), with Flinn regarding, among other things, the payment of the purchase price under the Purchase Agreement (the Purchase Agreement and the Agreement are collectively referred to herein as the “**Flinn Agreements**”)

**WHEREAS**, pursuant to the Flinn Agreements, Assignor has the right to acquire the Station from Flinn and Flinn has consented to the assignment from Assignor to Assignee; and

**WHEREAS**, the Assignor and Assignee have agreed that Assignee shall acquire the tangible and intangible assets used or use full in the operation of the Station, and on January 29, 2004, Assignee assigned such rights to acquire the Station to Wachovia Bank, N.A. (“**Wachovia**”), its qualified intermediary in a like-kind exchange under section 1031 of the Internal Revenue Code of 1986, as amended; and

**WHEREAS**, pursuant to such assignment of Assignee's rights to Wachovia, Wachovia made a down payment on the Assignee Purchase Price (as defined herein) to Assignor's designee on Assignor's behalf on February 2, 2004, in the amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) (the “**Down Payment**”); and

**WHEREAS**, Assignor desires to assign to Assignee all of Assignor's right and interest in and to the Flinn Agreements, and Assignee desires to accept the foregoing assignment from Assignor, upon the terms and conditions set forth herein; and

**WHEREAS**, capitalized terms not otherwise defined herein shall have the meaning set forth in the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### **1. Sale and Assignment.**

Subject to the conditions set forth in this Agreement, Assignor hereby assigns, transfers, conveys and delivers to Assignee, and Assignee hereby assumes and accepts all of Assignor's right, title and interest in and to the Flinn Agreements.

## **2. Assignee Purchase Price.**

The purchase price is Four Million Four Hundred Thousand Dollars (\$4,400,000) for the Station (the “**Assignee Purchase Price**”) and shall be paid upon Closing of the purchase of the Station as follows: (i) the Down Payment shall be subtracted from the Assignee Purchase Price, and (ii) Assignee shall deliver to Assignor the remaining balance of the purchase price, the sum of Three Million Fifty Thousand Dollars (\$3,050,000), in immediately available funds.

## **3. Representations and Warranties.**

Each of Assignee and Assignor represents and warrants to the other as follows:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.

(b) It has full power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary company action.

(c) It has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally or general equitable principles.

(d) Neither the execution and delivery by it of this Agreement nor the consummation of the transactions contemplated hereby will: (i) conflict with or result in a breach of its organizational documents; (ii) violate any Law or Order of any court or Governmental Authority; or (iii) violate or conflict with or constitute a default under (or give rise to any right of termination, cancellation or acceleration under) any indenture, mortgage, lease, contract or other instrument to which it is a party or by which it is bound or affected.

(e) No person has as a result of any agreement entered into by it any valid claim against any of the parties hereto for a brokerage commission, finder’s fee or other like payment.

## **4. Indemnification of Assignor.**

Assignee agrees to indemnify, defend and hold harmless the Assignor, and each of Assignor’s members, officers, directors, employees, advisors, agents, successors and assigns (“**Assignor’s Representatives**”), from and against any and all actual or alleged claims, actions, charges, complaints, causes of action, rights, demands, debts, accountings

or damages (including attorneys' fees and costs), of any nature whatsoever, past or present, whether in law or in equity, known or unknown, suspected or unsuspected, whether under federal or state statutory or common law actions or causes of action, including but not limited to, any and all direct, out-of-pocket costs, expenses, legal fees, and liabilities incurred by the Assignor or Assignor's Representatives arising out of: (i) Assignee's breach of any term or provision of this Agreement; or (ii) anything arising out of, under, or in connection with the Flinn Agreements. Notwithstanding anything contained in this Agreement to the contrary, Assignee's obligation to indemnify Assignor shall survive the termination of this Agreement.

## **5. Further Assurance.**

Assignor and Assignee shall each use their respective reasonable best efforts to promptly (i) take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement; and (ii) execute and deliver any additional instruments necessary to assign the Flinn Agreements from Assignor to Assignee or to consummate any other transactions contemplated by this Agreement.

## **6. Benefit and Assignment.**

No party hereto shall assign this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party hereto; provided, however, that prior to Closing, Assignee may assign its rights under this Agreement (in whole or in part) to a qualified intermediary (as defined in Treasury regulation section 1.1031(k)-1(g)(4)), an exchange accommodation titleholder (as defined in Revenue Procedure 2000-37), or a similar entity or arrangement. Upon such assignment, Assignee shall give prompt written notice thereof to Assignor, and Assignor shall cooperate with the reasonable requests of Assignee and such qualified intermediary in connection therewith, including, but not limited to, providing to Assignee prompt written acknowledgment of such notice. Any other purported assignment contrary to the terms hereof shall be null, void and of no force and effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder. No Person, other than the parties hereto, is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

## **7. Entire Agreement; Amendment.**

Except as otherwise provided herein, this Agreement and the other instruments and documents referred to herein or delivered pursuant hereto contains the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such matters. No

amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party or parties against whom enforcement of the amendment, modification or discharge is sought.

#### **8. Governing Law; Jurisdiction.**

This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed under and in accordance with the laws of the State of Utah, without giving effect to the conflict of laws principles thereof. The parties hereto hereby waive personal service of any process in connection with any such action, suit or proceeding and agree that the service thereof may be made by certified or registered mail addressed to or by personal delivery to the other party, at such other party's address set forth opposite their respective signatures. In the alternative, in its discretion, any of the parties hereto may effect service upon any other party in any other form or manner permitted by law.

#### **9. Signature in Counterparts.**

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

#### **10. Definitions.**

As used herein, capitalized terms used above without definition shall have the respective meanings assigned hereto in this Section 9:

**“Governmental Authority”** shall mean any court, arbitrator, department, commission, board, bureau, agency, authority, instrumentality or other body, whether federal, state, municipal, foreign or other.

**“Law”** shall mean any statute, law, ordinance, rule or regulation.

**“Order”** shall mean any order, writ, injunction, judgment, plan or decree of any Governmental Authority.

**“Person”** or **“person”** shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, other form of business or legal entity or Governmental Authority.

[NEXT PAGE IS SIGNATURE PAGE]

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

Millcreek Broadcasting, L.L.C.

By B. A. Buzil  
Bruce A. Buzil, Co-Manager

Address for notice:

980 North Michigan Avenue, Suite  
1880  
Chicago, Illinois 60611  
Attention: Bruce Buzil  
Fax: (312) 587-9520

Simmons-SLC, LLC

By Bruce W. Thomas  
Bruce W. Thomas, Co-Manager  
Address for notice:

500 South 700 East, #1C  
Salt Lake City, Utah 84102  
Attention: David Simmons  
Fax: (801) 323-9314

### CONSENT TO ASSIGNMENT

Reference is hereby made to that certain Asset Purchase Agreement dated as of November 18, 2003, attached hereto as Exhibit A (the "Purchase Agreement") by and among George S. Flinn, Jr. (the "Seller") and Millcreek Broadcasting, L.L.C. (the "Buyer").

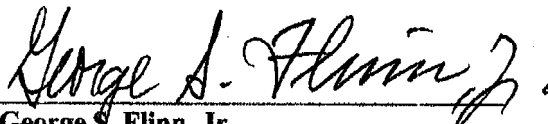
WHEREAS, the Buyer desires to assign the Purchase Agreement (the "Assignment") to Simmons-SLC, LLC and Simmons-SLC, LS, LLC, each a Utah limited liability company (collectively "Simmons"), and each a wholly-owned subsidiary of Simmons Media Group, LLC.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby agrees as follows:

- (1) Seller hereby consents to the Assignment of the Purchase Agreement to Simmons.
- (2) Seller agrees that he is bound by the terms of the Purchase Agreement and that he will take all reasonable actions including, but not limited to, filing all necessary documents with the FCC, in order to effectuate both the Assignment and all of the transactions contemplated by the Purchase Agreement.
- (3) Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Purchase Agreement.

This Consent to Assignment is dated and made effective this 27th day of February 2004.

**SELLER:**

  
George S. Flinn, Jr.