

## ASSET PURCHASE AGREEMENT

This AGREEMENT (the "Agreement") is dated as of this 28th day of April, 2005 by and between Chase Radio Properties, L.L.C., a Texas limited liability company ("Seller"), and Contra Costa County Radio, Inc., a California corporation ("Buyer").

### RECITALS:

- A. Seller owns and operates commercial radio station KABL-FM, 92.1 MHz, Walnut Creek, California, Facility Id. # 36032 (the "Station"), and holds the licenses and authorizations issued by the FCC to operate that Station;
- B. Buyer desires to acquire substantially all the assets of the Station and Seller is willing to convey such assets to Buyer;
- C. The acquisition of the Station is subject to prior approval of the FCC; and
- D. Under the terms of an Escrow Agreement of even date herewith, Buyer shall, on the execution date of this Agreement deposit with Media Venture Partners-Elliot Evers (the "Escrow Agent"), the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00), as Buyer's earnest money (the "Escrow Deposit").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Seller and Buyer hereby agree as follows:

## ARTICLE I

### TERMINOLOGY

- 1.1 **Act.** The Communications Act of 1934, as amended.
- 1.2 **Business Day.** Any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the city of Walnut Creek, California, are regularly open for business.
- 1.3 **Closing.** The closing with respect to the transactions contemplated by this Agreement.
- 1.4 **Closing Date.** The date determined as the Closing Date as provided in Section 8.1.
- 1.5 **Documents.** This Agreement and all Exhibits and Schedules hereto, and each other agreements, certificate, or instrument delivered pursuant to or in connection with this Agreement, including amendments thereto that are expressly permitted under the terms of this Agreement.

1.6 **Escrow Deposit.** The amount of Three Hundred Fifty Thousand Dollars (\$350,000.00).

1.7 **Escrow Agent.** Media Venture Partners, Inc., Elliot Evers.

1.8 **Escrow Agreement.** The Escrow Agreement in the form attached as Exhibit A, which Seller, Buyer and Escrow Agent have entered into concurrently with the execution of this Agreement relating to the deposit, holding, investment and disbursement of the Escrow Deposit. The Escrow Deposit will be released to Buyer if Buyer does not close as further provided herein. Otherwise, the Escrow Deposit will be applied to purchase price at Closing.

1.9 **FCC.** Federal Communications Commission.

1.10 **FCC Licenses.** The licenses, permits and authorizations of the FCC for the operation of the Station as listed on Schedule 3.8.

1.11 **FCC Order.** An order or decision of the FCC granting its consent to the assignment of the Station.

1.12 **Final Action.** An action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended; with respect to which no timely petition for reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending and as to which the time for filing any such petition or appeal (administrative or judicial) or for the taking of any sua sponte action of the FCC has expired.

1.13 **Lien.** Any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, lien, lease or charge of any kind, except for liens for taxes or assessments not yet due and payable, subject to adjustment hereunder, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property, including any written or oral 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 assets or property under the Uniform Commercial Code or comparable law of any jurisdiction.

1.14 **Material Adverse Condition.** A condition which would materially restrict, limit, increase the cost or burden of or otherwise materially adversely affect or materially impair the right of the Buyer to the ownership, use, control, enjoyment or operation of the Station or the proceeds therefrom; provided, however, that any condition which requires that the Station be operated in accordance with a condition similar to those contained in the present FCC Licenses, including permits, issued for operation of the Station shall not be deemed a Material Adverse Condition, and termination of the Station's Network Affiliation Agreement shall not constitute a material adverse condition.

1.15 **Permitted Lien.** Any statutory lien, which has been disclosed by Seller to Buyer, which secures a payment not yet due that arises, and is customarily discharged,

in the ordinary course of the Seller's business; any easement, right-of-way, encroachment or similar imperfection in the Seller's title to its assets or properties that, individually and in the aggregate, are not material in character or amount and do not materially impair the value or materially interfere with the use of any asset or property of the Seller material to the operation of its business as it has been and is now conducted.

1.16 **Purchase Price**. The consideration to be paid by Buyer to Seller for purchase of the Sale Assets in an amount equal to Seven Million Dollars (\$7,000,000.00). The parties acknowledge that the Purchase Price includes compensation to Seller for the cost to buy out the Station's representation agreement with Katz.

1.17 **Rules and Regulations**. The rules of the FCC as set forth in Volume 47 of the Code of Federal Regulations, as well as such other written policies of the Commission, whether contained in the Code of Federal Regulations, or not, that apply to the Station and the transactions herein.

1.18 **Sale Assets**. All of the tangible and intangible assets to be transferred by Seller to Buyer as set forth in Section 2.1.

1.19 **Station Agreements**. The agreements, contracts and leases listed in **Schedule 2.1(c)**.

1.20 **Survival Period**. The term of twelve (12) months following the Closing Date during which all representations, warranties, covenants and agreements of the parties under this Agreement shall survive.

1.21 **Tangible Personal Property**. The personal property listed in **Schedule 2.1(a)**.

## ARTICLE II

### **PURCHASE AND SALE**

2.1 **Sale Assets**. On the Closing Date, Seller will sell, transfer, assign and convey to Buyer, and Buyer will purchase from Seller, free and clear of all Liens (except Permitted Liens and other Liens expressly accepted by Buyer in writing), all of Seller's right title and interest, legal and equitable in and to the following tangible and intangible assets used and useful in the operation of the Station (the "Sale Assets"):

(a) **Tangible Personal Property**. The equipment, parts, supplies, furniture and fixtures listed on **Schedule 2.1(a)**, together with such modifications, replacements, improvements and additional items, and subject to such deletions therefrom, made or acquired between the date hereof and the Closing Date in accordance with the terms and provisions of this Agreement.

(b) **Licenses and Permits**. The FCC Licenses listed on **Schedule 2.1(b)** hereto, and all other assignable or transferable governmental permits, licenses and authorizations (and any renewals, extensions, amendments or modifications thereof) now

held by Seller or hereafter obtained by Seller between the date hereof and the Closing Date in accordance with the terms and provisions of this Agreement and the Rules and Regulations of the FCC, but excluding the call letters KABL or KABL-FM.

(c) Station Agreements. The contracts, leases and agreements listed in **Schedule 2.1(c)** to which Seller is a party and any agreements entered into by Seller between the date hereof and the Closing Date that Buyer specifically agrees in writing to assume.

(d) Records. True and complete copies of all of the records, files, logs, reports of engineers and other consultants of independent contractors, in the possession or control of Seller as of the date hereof, pertaining to or used in the operation of the Station (other than corporate records and Seller financial records not unique to the Station), including without limitation, the public inspection file of the Station.

2.2 [Intentionally omitted.]

2.3 **No Assumption of Liabilities**

Except as expressly agreed to in writing, Buyer shall not assume or in any manner be liable for any duties, responsibilities, obligations, undertakings or liabilities of Seller of any kind or nature, whether express or implied, known or unknown, contingent or absolute, including, without limitation, any liabilities to or in connection with the transactions contemplated hereunder or otherwise. Buyer does not assume any obligations or liabilities of any kind, whether express or implied, between Seller and any of Seller's Employees. Nor shall Buyer have any obligation to employ any of Seller's Employees, including without limitation, any liability or obligation in respect of wages, salaries, bonuses, severance pay, accrued vacation or sick pay, or other benefits.

2.4 **Escrow Deposit**

(a) The Escrow Agent shall hold the Escrow Deposit under the terms of the Escrow Agreement in trust for the benefit of the parties hereto.

(b) If Closing does not occur, the Escrow Deposit shall be delivered to Seller or returned to Buyer in accordance with Section 10.2, and if Closing does occur, the Escrow Deposit shall be applied to payment of the Purchase Price at Closing as provided in Section 2.5 (and all interest accrued thereon shall be disbursed to Buyer at Closing).

2.5 **Payment of Purchase Price**. The Purchase Price shall be paid by Buyer on the Closing Date by wire transfer of immediately available funds to an account designated by Seller at least two (2) business days before the Closing Date, *provided, that*, the Escrow Deposit shall, subject to execution and delivery by Seller of the Closing documents described in Section 8.2, become the property of Seller and shall, pursuant to the Escrow Agreement, be disbursed to Seller by wire transfer of immediately available funds, and applied as a portion of the Purchase Price paid to Seller.

2.6 **Adjustments to Purchase Price.** Except to the extent that Buyer expressly assumes in writing or otherwise pays Seller for certain Seller obligations and except as provided in the LMA (defined below) (if any), the operation of the Station and the operating expenses attributable thereto until 11:59 p.m. on the date preceding the Closing Date (the "Adjustment Time") shall be for the account of Seller and thereafter for the account of Buyer, and expenses and recurring pre-paid and deferred items such as taxes, utility charges, regulatory fees, and other customarily prorated items shall be prorated between Seller and Buyer as of the Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly. Deposits and other similar non-recurring pre-paid expenses shall either be refunded to Seller or assigned to Buyer with an adjustment to the benefit of Seller. To the extent that any of the foregoing prorations and adjustments cannot be determined as of the Closing Date, Buyer and Seller shall conduct a final accounting and make any further payments, as required on a date mutually agreed upon, within ninety (90) days after the Closing.

2.7 **Allocation of the Purchase Price.** Prior to Closing, Buyer and Seller shall agree to an allocation of the Purchase Price. Buyer and Seller shall use such allocation for all reporting purposes in connection with federal, state, and local income and, to the extent permitted under applicable law, franchise taxes. Buyer and Seller agree to report such allocation to the Internal Revenue Service in the form required by Treasury Regulation 1.1060-1T.

2.8 **Accounts Receivable.** Buyer shall have no obligation to and shall not be permitted to collect the Station's accounts receivable arising prior to Closing or the commencement date of the LMA (if any).

2.9 **LMA.** If Closing does not occur by October 1, 2005, the parties will enter into a customary Local Programming and Marketing Agreement (the "LMA") with respect to the Station, that contains usual and customary terms and conditions for such agreements and provides for a term concurrent with this Agreement and reimbursement of Seller's operating expenses consistent with the itemization attached as **Schedule 2.9**.

### ARTICLE III

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

Seller hereby represents and warrants to Buyer as follows:

3.1 **Organization and Good Standing.** Seller is duly organized and validly existing under the laws of the State of Texas, and is authorized to do business and is in good standing in the State of California. Seller has all requisite power to own, convey, operate and lease its properties and carry on the business of the Station as it is now being conducted and as the same will be conducted until the Closing.

3.2 **Authorization and Binding Effect of Documents.** The execution and delivery of, and the performance of its obligations under this Agreement and each of the

other Documents by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized and approved by all necessary action on the part of the Seller. This Agreement and each of the other Documents have been, or at or prior to the Closing will be, duly executed by Seller. This Agreement constitutes (and each of the other Documents, when so executed and delivered, will constitute) legal and valid obligations of Seller enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting the enforcement of creditors' rights or remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law.)

3.3 **Absence of Conflicts.** Assuming all the consents described in Section 3.4 are obtained, the execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby:

(a) Do not in any material respect (with or without the giving of notice or the passage of time or both) violate or result in the creation of any Lien other than a Permitted Lien on any of the Sale Assets under any provision of law, rule or regulation or any order, judgment, injunction, decree or ruling applicable to Seller.

(b) Do not (with or without the giving of notice or the passage of time or both) conflict with or result in a breach or termination of, or constitute a default or give rise to a right of termination or acceleration, where such conflict breach, termination, default or right would have a material adverse effect on the Sale Assets or the operation of the Station, under charter documents of Seller or pursuant to any lease, agreement, commitment or other instruments which Seller is a party to, or bound by, or by which any of the Sale Assets may be bound, or result in the creation of any Lien, other than a Permitted Lien, upon any of the Sale Assets.

3.4 **Governmental Consents and Consents of Third Parties.** Except for the consent of the FCC and the consents listed on **Schedule 3.10(c)**, the execution and delivery and the performance of its obligations under this Agreement and each of the other Documents by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, do not require the consent, waiver, approval, permit, license, clearance, or authorization of, or any declaration of filing agreement, arrangement or commitment of a nature which Seller is a party to or bound by or by which the Sale Assets are bound by or subject to, the failure of which to obtain would have a material adverse effect on the Sale Assets or the operation of the Station.

3.5 [Intentionally omitted.]

3.6 **Tangible Personal Property.** Except for supplies and other incidental items which in the aggregate are not of material value, the list of Tangible Personal Property set forth on **Schedule 2.1(a)**, is a complete and correct list of all the material items of Tangible Personal Property used to a material extent in the operation of the Station in the manner in which it is now operated. Except as set forth on **Schedule 3.6:**

(a) Seller has good, marketable and valid title to all of the Tangible Personal Property free and clear of Liens except Permitted Liens identified in **Schedule 3.6(a)**, and including the right to transfer same.

(b) The Tangible Personal Property is in good condition subject to ordinary wear and tear, and is otherwise in such condition and repair so that the Station can operate according to its FCC Licenses, and without limiting the generality of the foregoing, the transmitter included within the Sale Assets is free of any material defects and in good operating condition and repair.

(c) The Tangible Personal Property complies in all material respects with all applicable rules and regulations of the FCC and the terms of the FCC licenses.

3.7 **Taxes.** Seller has, in respect of the Station's business filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns which are required to be filed by it under applicable law and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable. No disputes exist with respect to any tax returns or reports.

3.8 **FCC Licenses.** Seller is the holder of the FCC Licenses listed on **Schedule 2.1(b)**, and the FCC Licenses are valid, and in full force and effect and constitute all of the licenses, permits, and authorizations issued by the FCC to Seller, for or in connection with the current operation of the Station. Seller has no knowledge of any condition imposed by the FCC as part of any FCC License which is neither set forth on the face thereof as issued by the FCC nor contained in the Rules and Regulations applicable generally to stations of the type, nature, class or location of the Station. Except as disclosed on **Schedule 2.1(b)** hereto, the Station is being operated in all material respects at full authorized power, in accordance with the terms and conditions of the FCC Licenses applicable to it and in accordance with the Rules and Regulations. No proceedings are pending or, to the knowledge of the Seller, are threatened which may result in the revocation, adverse modification, non-renewal or suspension of any of the FCC Licenses, the denial of any pending applications (other than by FCC review in the ordinary course), the issuance of any cease and desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC with respect to the Station or its operation, other than proceedings affecting the radio broadcasting industry in general. Seller has complied in all material respects with all requirements to file reports, applications and other documents with the FCC with respect to the Station, and all such reports, applications and documents are complete and correct in all material respects. Except as set forth on **Schedule 2.1(b)**, Seller has no knowledge of any matters (i) which could reasonably be expected to result in the suspension or revocation of or the refusal to renew any of the FCC Licenses without any fines or forfeitures by the FCC, or (ii) against Seller which could reasonably be expected to result in the FCC's refusal to grant approval of the assignment to Buyer of the FCC Licenses or the imposition of any Material Adverse Condition in connection with approval of such assignment. There are not any unsatisfied or otherwise outstanding citations issued by the FCC with respect to

the Station or its operation. The tower supporting the Station's antenna is not and is not required to be registered with the FCC.

3.9 [Intentionally omitted.]

3.10 **Station Agreements.**

(a) **Schedule 2.1(c)**. sets forth an accurate and complete list of the agreements, leases, contracts, arrangements or commitments being assigned to Buyer at Closing. Complete and correct copies of all such agreements, contracts, arrangements or commitments that are in writing, including all amendments, modifications and supplements thereto, have been delivered to Buyer.

(b) Except as reflected in **Schedule 2.1(c)**, with respect to the Station Agreements being assumed by Buyer, (i) all Station Agreements are legal, valid and enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in any proceeding at law or in equity); (ii) neither Seller nor, to the knowledge of Seller, any party thereto, is in material breach of, or in material default under any material Station Agreements or has received any claims of default or breach; (iii) there has not occurred any event which, after the giving of notice or the lapse of time or both, would constitute a material default under, or result in the material breach of, any Station Agreements which are, individually or in the aggregate, material to the operation of the Station; and (iv) Seller holds the right to enforce and receive the benefits under all of the material Station Agreements, free and clear of all Liens (other than Permitted Liens identified in **Schedule 3.6(a)**), but subject to the terms and provision of each such agreement.

(c) **Schedule 3.10(c)** indicates, for each Station Agreement listed thereon which is being assumed by Buyer, whether consent or approval by any party thereto is required thereunder for consummation of the transactions contemplated hereby. Buyer acknowledges that a renewal of the lease pertaining to the Station's transmitter site has been obtained at a monthly rental rate higher than Seller has paid over the past lease term.

3.11 **Litigation.** There are no claims, investigations or administrative, arbitration, or other proceedings (collectively referred to herein as "Litigation") pending or, to the actual knowledge of Seller, threatened against Seller which would, individually or in the aggregate if adversely determined, have material adverse effect on the Sale Assets or the current operation of the Station, or which would give any third party the right to enjoin the transactions contemplated by this Agreement. There are no existing or, to the actual knowledge of Seller, pending orders, judgments or decrees of any court or governmental agency affecting the Seller, the Station or any of the Sale Assets. Notwithstanding the disclosure of Litigation of Seller to Buyer, Buyer shall not assume any liability, damages, cost or expenses of Seller relating to or arising out of any Litigation.

3.12 **Labor Matters; Employment Benefit Plans.** Seller employs two (2) persons at the Station. Buyer shall assume no obligations whatsoever with respect to the employees of Seller under any employment agreement or otherwise, and Buyer has no obligation to hire any such employees. As of the Closing Date, Seller shall have paid all withholding taxes and health insurance premiums and any other costs or fees due on account of its employees. Buyer shall have no liability under any Seller employment benefit plan. Seller is in compliance with all federal and state laws dealing with wages, hours and labor relations.

3.13 **Compliance with Law.** The operation of the Station complies in all material respects with the applicable rules and regulations of the FCC, FAA, and any other federal, state or local authority having jurisdiction over the Station and Sale Assets.

3.14 **Absence of Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting the Seller or any of the Sales Assets, are pending or, to the best knowledge of Seller, threatened, and Seller has made no assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

3.15 **Broker's or Finder's Fees.** A Broker's Fee will be paid by Seller to Jorgenson Broadcast Brokerage, Inc. ("JBB") at Closing. Other than JBB, no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

3.16 **Insurance.** There is now in full force and effect with reputable insurance companies' fire and extended coverage insurance or other arrangements with respect to all material tangible Sale Assets and public liability insurance, all in commercially reasonable amounts.

3.17 **Zoning, Other Licenses and Permits.** Seller has all licenses and permits, including building permits (as the case may be), necessary to operate the Station at the locations from which it is operating and to conduct all related business in the ordinary course in the manner in which it is currently operated, and such licenses and permits are in full force and effect. No material violations are outstanding with respect to such licenses and permits, and there is pending no proceeding to revoke or limit any of them. Seller is in compliance in all material respects with all applicable laws and regulations of the Station's business and the Station Assets it owns.

3.18 **Public Files, etc.** Seller has placed all material documentation required under FCC Rule 73.3526 in the Station's public inspection file at the appropriate times. All such documentation is true, complete and correct in all material respects. Seller is unaware of any requirement that Seller disclose to the FCC in any renewal application or other submission to the FCC, any matter that may impair, impede or delay renewal of the FCC Licenses in any material respect.

3.19 **Compliance with ANSI Radiation Standards.** To Seller's knowledge, the operation of the Station is in compliance with ANSI Standards C95.1-1982 (and any subsequently adopted standards applicable to such operation) to the extent required to be met under applicable rules and regulations; and no unresolved claims actually known to Seller has been made to the contrary.

3.20 **Accuracy of Representations.** No representation of Seller in this Agreement contains any untrue statement of material fact, or fails to state a material fact necessary to make the statements contained herein not misleading as of the date of such representation or warranty.

## ARTICLE IV

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

Buyer represents and warrants to Seller as follows:

4.1 **Organization and Good Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Buyer has all requisite corporate power to own, operate and lease its properties and carry on its business as it is now being conducted and as the same will be conducted following the Closing.

4.2 **Authorization and Binding Effect of Documents.** Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents, and consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized and approved by all necessary corporate action on the part of the Buyer. This Agreement and each of the other Documents to be executed by Buyer have been, or at prior to the Closing, will be, duly executed by Buyer. The Documents, when executed and delivered by the parties hereto, will constitute the valid and legally binding agreement of Buyer, enforceable against Buyer in accordance with their terms, except as may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally, and except as may be limited by general principles of equity (regardless of whether such enforceability is sought in a proceeding in equity or at law.).

4.3 **Absence of Conflicts.** Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents:

(a) Do not in any material respect (with or without the giving of notice or the passage of time or both) violate or result in the creation of any claim, lien, charge or encumbrance on any of the assets or properties of Buyer under any provision of law, rule or regulation or any order, judgment, injunction, decree or ruling applicable to Buyer in any manner which would have a material adverse effect on the Buyer's ability to consummate the transactions contemplated hereby.;

(b) Do not (with or without the giving of notice or the passage of time or both) conflict with or result in a breach or termination of, or constitute a default or give rise to a right of termination or acceleration under, the articles of incorporation or bylaws of Buyer or pursuant to any agreement, commitment or other instrument which Buyer is a party to, or bound by, or by which any of its assets or properties may be bound.

4.4 **Governmental Consents and Consents of Third Parties.** Except for the required consent of the FCC, Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents and the consummation by Buyer of the transaction contemplated hereby and thereby, do not require consent, waiver, approval, permit, license, clearance, or the consent of any person under any agreement, arrangement, or commitment of any nature which Buyer is a party to or bound by, the failure of which to obtain would have a material adverse effect on the assets, business, operation or financial condition or results of operations of Buyer.

4.5 **Qualifications.**

(a) Buyer has no knowledge after due inquiry of any facts concerning Buyer or any person with an attributable interest in Buyer (as such term is defined under the Rules and Regulations) which, under present law (including the Act) and the Rules and Regulations, would (i) disqualify Buyer from being the holder of the FCC Licenses, the owner of the Sale Assets or the operator of the Station upon consummation of the transactions contemplated by this Agreement, or (ii) raise a substantial and material question of fact (within the meaning of Section 309(e) of the Act) respecting Buyer's qualifications.

(b) Without limiting the foregoing Subsection 4.5 (a), Buyer shall make the affirmative certifications provided in Section III of FCC Form 314 at the time of filing of such form with the FCC as contemplated by Section 5.2.

(c) Buyer is and will be on the Closing Date financially qualified to enter into and carry out the transactions provided for in this Agreement.

4.6 **Broker's or Finder's Fees.** A Broker's Fee will be paid by Buyer to Media Venture Partners ("MVP") at Closing. Other than MVP, no agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of Buyer or any affiliate of Buyer is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with the transactions contemplated by this Agreement.

4.7 **Accuracy of Representations.** No representation or warranty of Buyer in this Agreement contains any untrue statement of material fact, or fails to state a material fact necessary to make the statements contained herein not misleading as of the date of such representation or warranty.

**ARTICLE V****TRANSACTIONS PRIOR TO THE CLOSING DATE**

5.1 **Conduct of the Station's Business Prior to the Closing Date.** Seller covenants and agrees with Buyer that between the date hereof and the Closing Date, unless the Buyer otherwise agrees in writing (which agreement shall not be unreasonably withheld), that Seller shall:

- (a) Operate the Station in substantially the same manner in which it has usually been operated;
- (b) Maintain insurance or other arrangements upon all of the tangible Sale Assets in such amounts and of such kind comparable to that in effect on the date hereof with respect to such Sale Assets and with respect to the operation of the Station, with insurers of substantially the same or better financial condition;
- (c) Operate the Station and otherwise conduct its business in accordance in all material respects with the terms or conditions of its FCC Licenses, the Rules and Regulations, the Act (subject to the operations and applications set forth on **Schedule 2.1(b)** hereto) and use reasonable efforts to conduct its business in accordance in all material respects with all other rules and regulations, statutes, ordinances and orders of all governmental authorities having jurisdiction over any aspect of the operation of the Station, except where the failure to so operate the Station would not have a material adverse effect on the Sale Assets or the operation of the Station or on the ability of Seller to consummate the transactions contemplated hereby;
- (d) Maintain the books and records of the Station in Seller's customary manner on a basis consistent with prior years;
- (e) Comply in all material respects with all Station Agreements now or hereafter existing which are material, individually or in the aggregate, to the operation of Station;
- (f) Promptly notify Buyer of any material default by, or claim of default against, any party under any Station Agreements which are material, individually or in the aggregate, to the operation of the Station, and any event or condition which, with notice or lapse of time or both, would constitute a material default under such Station Agreements;
- (g) Not mortgage, pledge or subject to any Lien (except in the ordinary course of business) any of the Sale Assets;
- (h) Not sell, lease or otherwise dispose of, nor agree to sell, lease or otherwise dispose of, any of the Sale Assets, except for dispositions in the ordinary course of business;

(i) Not acquire or lease any goods or services or enter into, amend or terminate any license, lease of real or personal property or any other Station Agreement, other than in the ordinary course of business; and

(j) Notify Buyer of any material litigation, pending or threatened against Station or Seller or any material damage to or destruction of any assets included or to be included in the Sale Assets.

Notwithstanding the foregoing, but subject to the terms of the LMA as provided in the next sentence, Seller may at any time change the Station's call letters (subject to FCC consent) and change the Station's format. Should the parties enter into the LMA provided for in Section 2.9, Seller will cooperate with Buyer in selecting new call letters acceptable to both parties and Buyer will be free to select any programming format that is consistent with the terms and conditions of the LMA, subject to Seller's approval as licensee of the Station.

## 5.2 Governmental Consents.

(a) Within five (5) business days from the date of this Agreement, and in no event later than May 2, 2005, Seller and Buyer shall file with the FCC an application (the "FCC Application") seeking an FCC Order consenting to the consummation of the transactions proposed herein. Buyer and Seller shall diligently prosecute the FCC Application and shall use their best efforts to obtain FCC consent to the transactions contemplated by this Agreement as expeditiously as possible. Buyer shall not knowingly take, and Seller covenants that Seller shall not knowingly take, any action that party knows or has reason to know would materially and adversely affect or materially delay issuance of an FCC Order or materially and adversely affect or materially delay the FCC Order becoming a Final Action without a Material Adverse Condition (and the condition described in Section 5.2(b) shall not constitute a Material Adverse Condition), unless such action is requested or required by the FCC, its staff or the Rules and Regulations. Should Buyer or Seller become aware of any facts which could reasonably be expected to materially and adversely affect or materially delay issuance of the FCC Order without a Material Adverse Condition (including but not limited to, in the case of Buyer, any facts which would reasonably be expected to disqualify Buyer from controlling the Station), such party shall promptly notify the other party thereof in writing and both parties shall cooperate to take all steps necessary or desirable to resolve the matter expeditiously and to obtain the FCC's approval of matters pending before it.

(b) Buyer acknowledges that an application for renewal of the FCC Licenses is due August 1, 2005, and that (i) under FCC policies, Closing may not occur during the period after such date and until the FCC grants renewal of the FCC Licenses, (ii) if the FCC Application is granted before August 1, 2005, it may contain a "renewal condition" requiring the parties to close before that date or defer the Closing until the FCC Licenses have been renewed; and (iii) if the FCC Application is not granted before August 1, 2005, then either the FCC will not grant the FCC Application while the license renewal application is pending, or may grant the FCC Application with the renewal condition noted above.

5.3 **Other Consents.** Seller shall use commercially reasonable efforts to obtain the consent or waivers to the transactions contemplated by this Agreement required under any assumed Station Agreements.

5.4 **Tax Returns and Payments.** To the extent the failure to file any return, estimate, or report or pay any taxes would result in a Lien on the Sale Assets:

(a) All tax returns, estimates, and reports required to be filed by Seller prior to the Closing Date or relating to periods prior to the Closing Date will be timely filed with the appropriate governmental agencies unless valid extensions therefore shall have been obtained.

(b) All taxes pertaining to ownership of the Sale Assets or operation of the Station prior to the Closing Date will be timely paid; provided that Seller shall not be required to pay any such tax so long as the validity thereof shall be contested in good faith by appropriate proceedings and Seller shall have set aside adequate reserves with respect to any such tax.

5.5 **Access Prior to the Closing Date.** For a period of forty five (45) days after execution of this Agreement, Buyer and its representatives may make such reasonable investigation of the assets and business of the Station as it may desire; and Seller shall give to the Buyer, its engineers, counsel, accountants and other representatives reasonable access during normal business hours throughout the period prior to the Closing to the Sale Assets, provided that (i) Buyer shall give Seller reasonable advance notice of each date on which Buyer or any such other person or entity desires such access, (ii) each person (other than an officer of Buyer) shall, if requested by Seller, be accompanied by an officer or their representative of Buyer approved by Seller, which approval shall not be unreasonably withheld, (iii) the investigations at the offices of Seller shall be reasonable in number and frequency, and (iv) all investigations shall be conducted in such manner as not to physically damage any property or constitute a disruption of the operation of the Station or Seller. Seller shall furnish to Buyer during such period all documents and copies of documents and information concerning the Sale Assets as Buyer may reasonable request.

5.6 **Confidentiality: Press Release.** All information, data and materials furnished or to be furnished to either party with respect to the other party in connection with this transaction or pursuant to this Agreement are confidential. Each party agrees that prior to Closing (a) it shall not disclose or otherwise make available, at any time, any such information, data or material to any person who does not have a confidential relationship with such party, (b) it shall protect such information, data and material with a high degree of care to prevent the disclosure thereof; and (c) if, for any reason, this transaction is not consummated, all information, data or material concerning the other party obtained by such party, and all copies thereof, will be returned to the other party. After Closing, neither party will disclose or otherwise make available to any person any of such information, data or material concerning the other party, except as may be necessary or appropriate in connection with the operation of the Station by Buyer. Each party shall use its reasonable efforts to prevent the violation of any of the foregoing

confidentiality provisions by its respective representatives. Notwithstanding the foregoing, nothing contained herein shall prohibit Buyer or Seller from:

(i) Using such information, data and materials in connection with any action or proceeding brought or any claim asserted by Buyer or Seller in respect of any breach by the other of any representation, warranty or covenant made in or pursuant to this Agreement; or

(ii) supplying or filing such information, data or materials to or with the FCC or any other valid governmental or court authority to the extent reasonably necessary to obtain any consent, waiver, amendment, modification, approval, authorization, permit or license which may be necessary to effectuate this Agreement, and to consummate the transaction contemplated herein.

In the event that either party determines in good faith that a press release or other public announcement is desirable under any circumstances, the parties shall consult with each other to determine the appropriate timing, form and content of such release or announcement and thereafter may make such release or announcement subject to the reasonable approval of the other party.

5.7 **Commercially Reasonable Efforts**. Subject to terms and conditions of this Agreement, and except as otherwise specifically provided, each of the parties hereto will use its commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to satisfy any condition to the parties' obligations hereunder in its power to satisfy and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement.

5.8 **FCC Reports**. Seller shall file, on a current basis until the Closing Date, all application, reports and documents required to be filed with the FCC with respect to the Station.

5.9 **Conveyance Free and Clear of Liens**. At or prior to the Closing, Seller shall obtain executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, for any security interests granted in the Sale Assets and properties as security for payment of loans and other obligations or judgments and of any other Liens (other than Permitted Liens) on the Sale Assets. At the Closing, Seller shall transfer and convey to Buyer all of the Sale Assets free and clear of all Liens (other than Permitted Liens).

## ARTICLE VI

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE**

Buyer's obligation to close the transaction contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Buyer in writing.

6.1 **Accuracy of Representations and Warranties: Closing Certificate.**

(a) The representations and warranties of Seller contained in this Agreement or in any other Document shall be complete and correct in all material respects on the date hereof and at the Closing Date with same effect as though made at such time except for changes that are not materially adverse to the Station or the Sale Assets taken as a whole.

(b) Seller shall have delivered to Buyer on the Closing Date a Certificate that (i) the condition specified in Subsection 6.1(a) is satisfied as of the Closing Date, and (ii) except as set forth in such certificate (none of which exceptions shall be materially adverse to the Station, the Sale Assets or Seller's ability to consummate the transaction contemplated hereby), the condition specified in Section 6.2 is satisfied as of the Closing Date.

6.2 **Performance of Agreements.** Seller shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement and each of the other Documents to be performed or complied with by it prior to or upon the Closing Date.

6.3 **FCC and Other Consents.**

(a) The FCC Order shall have become a Final Action or Buyer shall have exercised its option to waive finality.

(b) Conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied prior to assignment of the FCC Licenses to Buyer shall have been satisfied by Seller.

(c) All other material authorizations, consents, approvals and clearances of federal, state or local governmental agencies required to permit the consummation by Buyer of the transactions contemplated by this Agreement shall have been obtained; all material statutory and regulatory requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would have a material adverse effect on the current operations of the Station.

6.4 **Adverse Proceedings.** Buyer shall not be subject to any ruling, decree, order or injunction restraining, imposing material limitations on or prohibiting (i) the consummation of the transactions contemplated hereby or (ii) its participation in the operation, management, ownership or control of the Station; and no litigation, proceeding or other action seeking to obtain any such ruling, decree, order or injunction shall be pending or shall have been threatened in writing and have a reasonable likelihood of success. No governmental authority having jurisdiction shall have notified any party to this Agreement that consummation of the transaction contemplated hereby would constitute a violation of the laws of the United States or of any state or political subdivision or that it intends to commence proceedings to restrain such consummation or

to force divestiture, unless such governmental authority shall have withdrawn such notice. No governmental authority having jurisdiction shall have commenced any such proceeding.

6.5 **Other Consents.** Seller shall have obtained in writing and provided to Buyer on or before the Closing Date, without any condition materially adverse to Buyer, the Station, or the Station Assets, the consents or waivers to the transactions contemplated by this Agreement required under those material Station Agreements identified on **Schedule 3.10(c)** as Required Consents.

6.6 **Delivery of 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 pursuant to Section 8.2.

6.7 **No Cessation of Broadcasting.**

(a) In the period within one month before the Closing, the Station shall not have for a period of more than seven (7) consecutive days or fifteen (15) days in the aggregate (i) ceased broadcasting on its authorized frequency, (ii) lost substantially all of its normal broadcasting capability or (iii) been broadcasting at a power level of 50% or less of its FCC authorized level. Seller shall promptly notify Buyer of the occurrence of any one or more of the foregoing events or conditions, and the non-fulfillment of the condition precedent set forth in this Subsection caused by the occurrence of the events specified in Seller's notice shall be deemed waived by Buyer unless, within fifteen (15) days after Buyer's receipt of Seller's written notice, Buyer notifies Seller in writing to the contrary.

(b) In addition, during the five (5) days immediately preceding the Closing Date, the Station shall have been operating continuously with substantially all of its normal broadcasting capability except for cessation or reductions for insignificant periods of time resulting from occurrences (such as lightning strikes) over which Seller has no control. Seller or Buyer shall have the right to delay Closing for a period not to exceed thirty (30) days if Seller or Buyer reasonably determines that any action to restore substantially all of the Station's normal broadcasting capability can be completed during such delay period.

6.8 **Complaints.** Buyer shall have received from Seller's counsel a written confirmation dated as of the Closing Date, in a form reasonably satisfactory to Buyer's counsel, that after due inquiry by Seller the FCC has confirmed that there are no material pending complaints against the Station. Such FCC confirmation shall be dated no earlier than ten (10) days prior to the Closing Date.

**ARTICLE VII****CONDITIONS PRECEDENT OF THE OBLIGATION OF SELLER TO CLOSE**

The obligation of Seller to close the transaction contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Seller in writing:

**7.1 Accuracy of Representations and Warranties**

(a) The representations and warranties of Buyer contained in this Agreement shall be complete and correct in all material respects on the date hereof and at the Closing Date with the same effect as though made at such time except for changes that are not materially adverse to Seller.

(b) Buyer shall have delivered to Seller on the Closing Date a certificate that (i) the condition specified in Subsection 7.1(a) is satisfied as of the Closing Date, and (ii) except as set forth in such certificate (none of which exceptions shall be materially adverse to Buyer's ability to consummate the transaction contemplated hereby), the conditions specified in Section 7.2 are satisfied as of the Closing Date.

7.2 **Performance of Agreements.** Buyer shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement and each of the other Documents to be performed or complied with by it prior to or upon the Closing Date.

**7.3 FCC and Other Consents.**

(a) The FCC Order shall have been issued by the FCC.

(b) Conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied prior to transfer of the FCC Licenses to Buyer shall have been satisfied by Buyer.

(c) All other material authorizations, consents, approvals and clearances of all Federal, state and local governmental agencies required to permit the consummation by Seller of the transactions contemplated by this Agreement shall have been obtained; all statutory and regulatory requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would have any material adverse effect on Seller.

7.4 **Adverse Proceedings.** Seller shall not be subject to any ruling, decree, order or injunction restraining, imposing material limitations on or prohibiting the consummation of the transactions contemplated hereby; and no litigation, proceeding or other action seeking to obtain any such ruling, decrees, order or injunction shall be

pending or shall have been threatened in writing and have a reasonable likelihood of success. No governmental authority having jurisdiction shall have notified any party to this Agreement that consummation of the transactions contemplated hereby would constitute a violation of the laws of the United States or of any state or political subdivision or that it intends to commence proceedings to restrain such consummation or to force divestiture, unless such governmental authority shall have withdrawn such notice. No governmental authority having jurisdiction shall have commenced any such proceeding.

7.5 **Delivery of Closing Documents and Purchase Price.** Buyer shall have delivered or caused to be delivered to Seller on the Closing Date each of the Documents required to be delivered pursuant to Section 8.3 and Seller shall have received payment of the Purchase price with the form of payment set forth in Section 2.5.

## ARTICLE VIII

### CLOSING

8.1 **Time and Place.** The consummation of the transactions contemplated in this Agreement (the “Closing”) shall (a) shall take place at the time and location mutually acceptable to Buyer and Seller no later than the fifth (5<sup>th</sup>) business day following the date upon which the FCC Order becomes a Final Action, or Buyer, at its option, waives finality; or (b) at such later date that all terms and conditions set forth in Articles VI and VII have been satisfied, or such other date as may be mutually agreed to by the parties (the “Closing Date”).

8.2 **Documents to be Delivered to Buyer by Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(a) certified resolutions of the Managing Member of Seller approving the execution and delivery of this Agreement and each of the other documents and authorizing the consummation of the transactions contemplated hereby and thereby.

(b) the Certificate required by Section 6.1(b).

(c) a Bill of Sale and other instruments of transfer and conveyance transferring to Buyer the Tangible Personal Property.

(d) executed Releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Sale Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens).

(e) an instrument or instruments assigning to Buyer all right, title and interest of Seller in and to any Station Agreements being assumed by Buyer.

(f) an instrument assigning to Buyer all right, title and interest of Seller in the FCC Licenses, and any remaining Sale Assets not otherwise conveyed.

(g) instructions to the Escrow Agent to disburse the Escrow Deposit in accordance with Section 2.4(b).

(h) the written confirmation from Seller's counsel described in Section 6.8.

(i) such additional information and materials as Buyer shall have reasonably requested, including without limitation, evidence that all material consents and approvals required as a condition to Buyer's obligation to close hereunder have been obtained.

8.3 **Documents to be Delivered to Seller by Buyer.** At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) certified resolutions of the Board of Directors of Buyer approving the execution and deliver of this Agreement and each of the other Documents and authorizing the consummation of the transaction contemplated hereby and thereby.

(b) the Purchase Price as set forth in Section 2.5.

(c) the agreement of Buyer assuming the obligations under any Station Agreements being assumed by Buyer.

(d) the Certificate required under Section 7.1(b).

(e) instructions to the Escrow Agent to disburse the Escrow Deposit as provided in Subsection 2.4(a).

(f) additional information and materials as Seller shall have reasonably requested.

## ARTICLE IX

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES: INDEMNIFICATION**

9.1 **Survival of Representation and Warranties.** The several representations and warranties of Seller and Buyer contained in or made pursuant to this Agreement, shall be deemed to have been made on the date of this Agreement and on the Closing date, shall survive the Closing Date and shall remain operative and in full force and effect for a period of twelve (12) months following the Closing Date or, in the case of a third-party claim, until the applicable statute of limitations with respect to such claim shall have expired.

#### 9.2 **Indemnification.**

(a) Following the Closing Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suites, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including,

without limitation, interest, penalties, court costs and reasonable attorney's fees ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations or warranties that survive the Closing, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement that survive the Closing; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operations of the Station prior to the Closing; *provided, however*, (x) Seller shall not be required to indemnify Buyer under this Section 9.2(a) unless and until written notice of a claim under Section 9.2(c) shall have been received within the relevant survival period specified in Section 9.1, and (y) unless and until the aggregate amount of Damages for which Buyer is entitled to be indemnified under this Section 9.2(a) exceeds \$100,000; *provided further, however*, that in no event shall Seller's total liability to Buyer under this Section 9.2(a) exceed \$500,000.

(b) Following the Closing Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations or warranties that survive the Closing, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in this Agreement that survive the Closing; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station as conducted by Buyer subsequent to the Closing; *provided, however*, (x) Buyer shall not be required to indemnify Seller for a breach by Buyer of its representations and warranties unless and until written notice of a claim under Section 9.2(c) shall have been received within the relevant survival period specified in Section 9.1, and (y) unless and until the aggregate amount of Damages for which Seller is entitled to be indemnified under this Section 9.2(b) exceeds \$100,000; *provided further, however*, that in no event shall Buyer's total liability to Seller under this Section 9.2(b) exceed \$500,000.

(c) If either party hereto (the "Indemnitee") receives notice or otherwise obtains knowledge of any matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnitee under Section 9.2 (a) or (b), then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith. The Indemnifying Party shall have the right, at its option, to assume the complete defense of such matter at its own expense and with its own counsel, provided such counsel is reasonably satisfactory to the Indemnitee. If the Indemnifying Party elects to assume the defense of such matter, that (i) the Indemnitee shall fully cooperate as reasonably requested by the Indemnifying Party in the defense or settlement of such matter, (ii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, and (iii) the Indemnitee shall have the right to participate, at its own expense, in the defense of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

## ARTICLE X

**TERMINATION: LIQUIDATED DAMAGES**

10.1 **Termination.** If the Closing shall not have previously occurred, this Agreement shall terminate upon the earliest of:

(a) the giving of written notice from Seller to Buyer or from Buyer to Seller, if:

(i) Seller gives such termination notice and is not at such time in material default hereunder, or Buyer gives such termination notice and Buyer is not at such time in material default hereunder; and

(ii) either:

(A) any of the representations or warranties contained herein of Buyer (if such termination notice is given by Seller), or of Seller (if such termination notice is given by Buyer), are inaccurate in any respect and materially adverse to the party giving such termination notice unless the inaccuracy has been induced by or is the result of actions or omissions of the party giving such termination notice; or

(B) Any material obligation to be performed by Buyer (if such termination notice is given by Seller) or by Seller (if such termination notice is given by Buyer) is not timely performed in any material respect unless the lack of timely performance has been induced by or is the result of actions or omissions of the party giving such termination notice; or

(C) Any material condition (other than those referred to in foregoing Clauses (A) and (B) to the obligation to close the transaction contemplated herein of the party giving such termination notice has not been timely satisfied, unless the failure of said condition to be satisfied was induced by the party giving such termination notice with the intended result of terminating the Agreement pursuant to this Clause (C); and

(iii) except with respect to a failure or refusal by Buyer to pay the Purchase Price when due, which shall confer on Seller an immediate right to terminate this Agreement, any such inaccuracy, failure to perform or non-satisfaction of a condition neither has been cured nor satisfied within thirty (30) days (or such additional time as may be necessary to effect a cure utilizing good faith, diligent efforts) (the "Cure Period") after written notice thereof from the party giving such termination notice nor waived in writing by the party giving such termination notice.

(b) Written notice from Seller to Buyer, or from Buyer to Seller, at any time after January 31, 2006; *provided that* termination shall not occur upon the giving of such termination notice by Seller if Seller is at such time in material default hereunder or upon the giving of such termination notice by Buyer if Buyer is at such time in material default hereunder.

(c) Written notice from Seller to Buyer or from Buyer to Seller at any time following a determination by the FCC that the FCC Application has been dismissed, denied, or designated for hearing.

(d) The written election by Buyer under Article XI.

## 10.2 **Obligation Upon Termination.**

(a) In the event this Agreement is terminated pursuant to Section 10.1(a)(ii)(A) or Section 10.1(a)(ii)(B), the aggregate liability of Buyer for breach hereunder shall be limited as provided in Subsection (c) and (e) below and the aggregate liability for Seller for breach hereunder shall be limited as provided in Subsections (d) and (e) below. In the event this Agreement is terminated for any other reason, neither party shall have any liability hereunder.

(b) Upon termination of this Agreement, Buyer shall be entitled to the return of the Escrow Deposit from the Escrow Agent under the Escrow Agreement (i) if such termination is effected by Buyer's giving of valid written notice to Seller pursuant to Subsection 10.1(a), (b), (c) or (d), or (ii) if such termination is effected by Seller's giving of valid written notice to Buyer pursuant to Subsections 10.1(a)(ii)(C), 10.1(b) or 10.1(c). If Buyer is entitled to the return of the Escrow Deposit, Seller shall cooperate with Buyer in taking such action as is required under the Escrow Agreement in order to effect such return from the Escrow Agent.

(c) If this Agreement is terminated by Seller's giving of valid written notice to Buyer pursuant to Section 10.1(a)(ii)(A) or Section 10.1(a)(ii)(B), Buyer agrees that Seller shall be entitled to, upon such termination, as liquidated damages and not as penalty, the Escrow Deposit ("Liquidated Damage Amount").

SELLER'S RECEIPT OF THE LIQUIDATED DAMAGE AMOUNT SHALL CONSTITUTE PAYMENT OF LIQUIDATED DAMAGES HEREUNDER AND NOT A PENALTY, AND SHALL BE SELLER'S SOLE REMEDY AT LAW OR IN EQUITY FOR BUYER'S BREACH HEREUNDER IF CLOSING DOES NOT OCCUR. EXCEPT AS PROVIDED IN SECTION 13.4, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THE LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY BUYER'S BREACH OF THIS AGREEMENT, THE DIFFICULTY OBTAINING AN ADEQUATE REMEDY, AND THE VALUE OF THE TRANSACTION TO BE CONSUMMATED HEREUNDER.

(d) Notwithstanding any provision of this Agreement to the contrary, but subject to the provisions of the following sentence, if Seller attempts to terminate this Agreement under circumstances where it is not entitled to do so, or if Seller, by its own action, causes a material breach of warranty or fails to satisfy a material obligation (including without limitation a refusal to consummate the transaction after Buyer has satisfied all conditions to Seller's obligation to close and Buyer has demonstrated its willingness and ability to close on the terms set forth in this Agreement and Buyer is not in default hereunder) with the intent of creating a situation whereby Buyer elects to terminate under Subsection 10.1(a) and Buyer does so elect to terminate, the monetary damages, if any, to which Buyer shall be entitled shall be limited to direct and actual damages. If a circumstance described in the preceding sentence should arise and if Buyer

establishes that the action of Seller described therein was taken intentionally in order to allow Seller to sell or enter into negotiations to sell the Station to another party, the damages to which Buyer shall be entitled shall not be limited to direct and actual damages.

(e) In any dispute between Buyer and Seller as to which party is entitled to all or a portion of the Escrow Deposit the prevailing party shall receive from the non-prevailing party, in addition to that portion of the Escrow Deposit to which it is entitled, an amount equal to prevailing party's reasonable attorneys' fees and expenses.

10.3 **Termination Notice.** Each notice given by a party pursuant to Section 10.1 to terminate this Agreement shall specify the Subsection (and clause or clauses thereof) of Section 10.1 pursuant to which such notice is given.

## **ARTICLE XI**

### **CASUALTY**

Upon the occurrence of any casualty loss, damage or destruction material to the operation of the Station prior to the Closing, Seller shall promptly give Buyer written notice setting forth in detail the extent of such loss, damage or destruction and the cause thereof if known. Seller shall use its reasonable efforts to promptly commence and thereafter to diligently proceed to repair or replace any such lost, damaged or destroyed property. In the event that such repair or replacement is not fully completed prior to the Closing Date, Buyer may elect to postpone the Closing until Seller's repairs have been fully completed or to consummate the transactions contemplated hereby on the Closing Date, in which event Seller shall assign to Buyer the portion of the insurance proceeds (less all reasonable costs and expenses, including without limitation attorney's fees, expenses and court costs incurred by Seller to collect such amounts), if any, not previously expended by Seller to repair or replace the damaged or destroyed property (such assignment of proceeds to take place regardless of whether the parties close on the scheduled or deferred Closing Date) and Buyer shall accept the damaged Sale Assets in their damaged condition. In the event the loss, damage or destruction causes or will cause the Station to be off the air for more than seven (7) consecutive days or fifteen (15) total days, whether or not consecutive, then Buyer may elect either (i) to consummate the transactions contemplated hereby on the Closing Date, in which event Seller shall assign to Buyer the portion of the insurance proceeds (less all reasonable costs and expenses, including without limitation attorney's fees, expenses and court costs, incurred by Seller to collect such amounts), if any, not previously expended by Seller to repair or replace the damaged or destroyed property, and Buyer shall accept the damaged Sale Assets in their damaged condition, or (ii) to terminate this Agreement.

**ARTICLE XII****CONTROL OF STATION**

Buyer shall not control, manage or supervise the operation of the Station or conduct of its business, all of which shall remain the sole responsibility and under the control of Seller, subject to Seller's compliance with this Agreement.

**ARTICLE XIII****MISCELLANEOUS**

13.1 **Further Actions.** From time to time before, at and after the Closing, each party, at its expense and without further consideration, will execute and deliver such documents to the other party as the other party may reasonably request in order more effectively to consummate the transactions contemplated hereby.

13.2 **Access After the Closing Date.** After the Closing and for a period of twelve (12) months, Buyer shall provide Seller, Seller's counsel, accountants and other representatives with reasonable access during normal business hours to the books, records, property, personnel, contracts, commitments and documents of the Station pertaining to transactions occurring prior to the Closing Date when requested by Seller, and Buyer shall retain such books and records for the normal document retention period of Buyer. At the request and expense of Seller, Buyer shall deliver copies of any such books and records to Seller.

13.3 **Payment of Expenses.**

(a) Any fees assessed by the FCC in connection with the filing of the application for consent to assignment of the Station's Licenses contemplated by Section 5.2 shall be shared equally between Seller and Buyer.

(b) All state or local sales or use, stamp or transfer, grant and other similar taxes payable in connection with consummation of the transactions contemplated hereby shall be paid by Buyer.

(c) Except as otherwise expressly provided in this Agreement, each of the parties shall bear its own expenses, including the fees of any attorneys and accountants engaged by such party, in connection with this Agreement and the consummation of the transactions contemplated herein.

13.4 **Specific Performance.** Seller acknowledges that the Station is of a special, unique, and extraordinary character, and that any breach of this Agreement by Seller could not be compensated for by damages. Accordingly, if Seller shall breach its obligations under this Agreement, Buyer shall be entitled, in lieu of any of the other remedies that it may have, to enforcement of this Agreement (subject to obtaining any required approval of the FCC) by decree of specific performance or injunctive relief requiring Seller to fulfill its obligations under this Agreement. In any action to equitably

enforce the provisions of this Agreement, Seller shall waive the defense that there is an adequate remedy at law or equity and agrees that Buyer shall have (i) the right to obtain specific performance of the terms of this Agreement without being required to provide such actual damages, post bond or furnish other security, and (ii), provided it is the prevailing party in such action, the right to obtain its reasonable attorneys' fees and cost of enforcement of this Agreement, but further provided, that if specific performance is granted to Buyer, then Seller shall be additionally liable to Buyer only for the fees referred to in (ii) above.

13.5 **Notices.** All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by courier or sent by registered or certified mail, first class, postage prepaid, or by telex, cable, telegram, facsimile machine or similar written means of communication, addressed as follows:

(a) if to Seller, to:

Mr. Van H. Archer, III  
Managing Member  
Chase Radio Properties, L.L.C.  
115 E. Travis, Suite 1427  
San Antonio, TX 78205  
Telecopier: 210.222.0975

with a copy, which shall not constitute notice to:

Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
3300 North 17<sup>th</sup> Street  
11th Floor  
Arlington, VA 22209-3801  
Telecopier: 703.812.0486

(b) if to Buyer, to:

Mr. John F. Levitt  
President  
Contra Costa County Radio, Inc.  
c/o Coast Radio Company, Inc.  
600 E. Main Street  
Vacaville, CA 95688  
Telecopier: 707.446.0122

with a copy which shall not constitute notice to:

Henry A. Solomon, Esq.  
 Garvey Schubert Barer  
 1000 Potomac Street, N.W., Fifth Floor  
 Washington, DC 20007-3501  
 Telecopier: 202.965.1729

or such other address with respect to any party hereto as such party may from time to time notify (as provided above) to the other party hereto. Any such notice, demand or communication shall be deemed to have been given (i) if so mailed, as of the close of the third business day following the date mailed, and (ii) if personally delivered or otherwise sent as provided above, on the date received.

13.5 **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, and the other Documents constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede any prior negotiations, agreements, understandings or arrangements between the parties with respect to the subject matter hereof.

13.6 **Binding Effect: Benefits.** Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or assigns. Except to the extent specified herein, nothing in this Agreement, express or implied, shall confer on any person other than the parties hereto and their respective successors or assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.7 **Assignment.** This Agreement and any rights hereunder may be assigned to a commonly controlled affiliate without the consent of the other party, provided that (i) no assignment shall delay the processing of the FCC Application, (ii) any assignee shall deliver to the other party a written assumption of this Agreement, and (iii) no assignment shall relieve a party of its obligations under this Agreement.

13.8 **Governing Law.** This Agreement shall in all respects be governed by and constructed in accordance with the laws of the State of California, including all matters of construction, validity and performance.

13.9 **Bulk Sales.** Seller shall, in accordance with Article IX, indemnify and hold Buyer harmless from and against any and all claims made against Buyer by reason of non-compliance with the provisions of the Bulk Sales Act or any similar law of any state or jurisdiction, if applicable.

13.10 **Amendments and Waivers.** No term or provision of this Agreement may be amended, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions.

13.11 **Severability**. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

13.12 **Headings**. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

13.13 **Counterparts**. This Agreement may be executed in any number of counterparts, and by either party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.14 **References**. All references in this Agreement to Articles and Sections are to Articles and Sections contained in this Agreement unless a different document is expressly specified.

13.15 **Schedules and Exhibits**. Unless otherwise specified herein, each Schedule and Exhibit referred to in this Agreement is attached hereto, and each such Schedule and Exhibit is hereby incorporated by reference and made a part hereof as if fully set forth herein.

13.16 **Section 1031 Asset Exchange**. The parties acknowledge that each may desire to effectuate a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code (the "Code"), which may include a non-simultaneous exchange, with respect to the sale and acquisition of the Sale Assets. The parties agree to cooperate with the other in connection therewith, provided each party participating in such an exchange agrees to hold the other free and harmless of, and indemnify the other from, any liabilities, claims, costs, damages, expenses and fees (including attorneys' fees) which may arise out of said party's participation in a tax-deferred exchange, including without limitation any claims by the Internal Revenue Service, and further provided, that the entry into or consummation of such exchange by either party shall not permit such party to delay the Closing of the transactions contemplated hereby.

13.17 **Execution of Additional Documents**. Each party hereto will at any time, and from time to time after the Closing Date, upon request of the other party hereto, execute, acknowledge and deliver all such further deeds, assignments, transfers, conveyances, powers of attorney and assurances, and take all such further action, as may be required to carry out the intent of this Agreement, and to transfer and vest title to any Asset being transferred hereunder, and to protect the right, title and interest in and enjoyment of all of the Assets sold, granted, assigned, transferred, delivered and conveyed pursuant to this Agreement; *provided, however*, that this Agreement shall be effective regardless of whether any such additional documents are executed.

13.18 **Time of the Essence**. Time is of the essence in this Agreement.

[This space intentionally left blank. Signature Page follows]

[Signature Page to KABL-FM Asset Purchase Agreement]

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

SELLER:

**CHASE RADIO PROPERTIES, L.L.C.,**  
by its Managing Member.

Van H. Archer III

Date: 4-28-05

BUYER:

**CONTRA COSTA COUNTY RADIO,**  
**INC.,**  
By its President

\_\_\_\_\_

Date: \_\_\_\_\_

[Signature Page to KABL-FM Assēt Purchase Agreement]

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

SELLER:

**CHASE RADIO PROPERTIES, L.L.C.,**  
by its Managing Member.

\_\_\_\_\_

Date: \_\_\_\_\_

BUYER:

**CONTRA COSTA COUNTY RADIO,  
INC.,**  
By its President

  
\_\_\_\_\_

Date: 4.28.05

SCHEDULES AND EXHIBIT

**Exhibit A, Escrow Agreement**

Schedules

- 2.1(a) Tangible Personal Property**
- 2.1(b) FCC Licenses**
- 2.1(c) Station Agreements**
- 2.9 LMA Expenses**
- 3.6 Tangible Personal Property Exceptions**
- 3.6(a) Permitted Liens**
- 3.10(c) Assumed Station Agreements**

**Schedule 2.1(a)**

**Tangible Personal Property**

**Chase Radio, Walnut Creek  
Fixed Asset List**

4/25/2005

<b>Studio</b>	<b>Manufacture</b>	<b>Description</b>	<b>Model number</b>
	Wheatstone	Console	
	Yamaha	Tuner	
	JBL	Speaker	
	JBL	Speaker	
	Dennon	CD Player	
	Dennon	CD Player	
	Senheiser	Microphone	MD-421
	Senheiser	Microphone	MD-421
	Whitelights	Mic Stand	
	Whitelights	Mic Stand	
	Ikea	Table	
	Ikea	Table	
	Custom	Table rack	
	Custom	Table rack	
	Sage	EAS Monitor	
	Middle Atlantic	Rack	
	Wiring	Custom	
	Crown	Monitor Amp	D-65
	Radio Systems	DA	
	Marti	STL Transmitter	STL-10
	Marti	STL Transmitter	STL-10
	Scala	STL antenna	
	Sony	Radio for EAS	
	Misc Office Furniture		
<b>Transmitter site</b>			
	Rockwell	Transmitter	831D-2
	Belar	FM Monitor	
	Belar	Stereo Monitor	
	Middle Atlantic	Rack	
	Moseley	Remote Control	MRC-1620
	Marti	STL Receiver	R-10
	Marti	STL Receiver	R-10
	Orban	Audio Processor	8100
	Jampro	3 Bay End Fed	
	Andrew	various	
	Bird	Inline section	
	Bird	Watt meter panel	
	Bird	Slug	
	Various	Air-conditioned	
	Various	Fan	
	Sony	Telephone	
	Scala	STL antenna	Mini flector
	Scala	STL antenna	Mini flector

## Booster

Scala	Antenna	CL-FM
Magnum	Mounting	Custom
Various	Coax and Connectors	
TTC	Booster transmitter	XL 1 FM
Various	Wooden Cabinet	
Custom	Matching	50 ohms to 75 ohms

## Schedule 2.1(b)

### FCC Licenses

<u>Call Letters</u>	<u>Fac. ID</u>	<u>File No.</u>
KABL-FM	36032	BRH-19970801B8
KABL-FM	36032	BPH-19990618IK
KABL-FM	36032	BLH-20050329ABJ *
KABL-FM3	36033	BLFTB-9931118TD
WLI674	36032	L00358479 (STL)
WPJA561	36032	L00358479 (STL)

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\* Pending. Station operating under BPH-199906181K and program test authority.

## **Schedule 2.1(c)**

### **Station Agreements**

1. License Agreement between Chase Radio Properties, LLC and George W. Moore, April 22, 2005 (KABL-FM transmitter site). \*
2. Lease between 1660 Olympic Holdings, LLC and Chase Radio Properties, LLC, January 28, 2005 (KABL-FM Studio location). \*
3. Lease between Chase Radio Properties, LLC and Jason Taylor, April 2005 (KABL-FM3 transmitter site).

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\* Consent to assignment required.

**Schedule 3.6**

**Title**

No exceptions.

**Schedule 3.6(a)**

**Liens**

None.

**Schedule 3.10(c)**

**Required Consents**

See Schedule 2.1(c).