

**ASSET PURCHASE AGREEMENT**

by and between

**KJI BROADCASTING, LLC**

and

**Business Talk Radio.net, Inc.**

for the Sale and Purchase of

**WBET(AM), Brockton, Massachusetts**

**Dated as of March 24, 2006**

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** ("Agreement"), made and entered into as of this 24<sup>th</sup> day of March, 2006, by and between KJI Broadcasting, LLC, a limited liability company organized under the laws of the Commonwealth of Massachusetts ("Seller"), and BusinessTalkRadio.net, Inc., a company organized under the laws of the State of Delaware ("Buyer").

### **WITNESSETH:**

WHEREAS, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission") for the operation of Station WBET(AM), Brockton, Massachusetts (the "Station");

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

WHEREAS, the assignment of the license of the Station is subject to the prior approval of the Commission;

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

### **SECTION I**

#### **ASSETS TO BE SOLD**

1.1 On the Closing Date (as such term is defined in Section 9.1 hereof), Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the following (hereinafter collectively the "Assets") free and clear of any liens or liabilities:

1.1.1 Authorizations. All licenses, permits and authorizations issued or granted by the Commission for the operation of, or used in connection with the operation of the Station and all applications filed with the Commission (hereinafter "Commission Authorizations") which are listed in Schedule 1.1.1. All franchises, licenses, permits and authorizations issued by any administrative body or licensing authority or governmental or regulatory agency, other than the Commission Authorization, used or useful in connection with the operation of the Station (hereinafter "Other Authorizations") which are listed in Schedule 1.1.1.

1.1.2 Tangible Personal Property. All of Seller's rights in and to the fixed and tangible personal property used in the operation of the Station, including, but not limited to the physical assets and equipment, leasehold improvements, office furniture and fixtures,

office materials and supplies, inventory, spare parts, antennae, transmitters, business machines, motor vehicles, inflatables, and music libraries listed in Schedule 1.1.2, together with replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property").

1.1.3 Real Property. All of Seller's right in and to the land, buildings, improvements, and other real property and all leaseholds and other interests in real property and the buildings and improvements thereon (hereinafter collectively the "Real Property"), consisting of all real property and leases, contracts, easements, options and agreements creating such interests listed and described in Schedule 1.1.3.

1.1.4 Agreements. All Seller's rights to and in the contracts, agreements, and leases to which Seller or the Station is a party listed in Schedule 1.1.4 (hereinafter collectively "Agreements"), together with all contracts, agreements and leases, entered into or acquired by the Seller between the date hereof and the Closing Date which have been approved by Buyer.

1.1.5 Intangibles. All right, title and interest of Seller in and to the call letters "WBET(AM)", logos, jingles, marketing plans, copyrights, trademarks, trade names and other intangible property of Seller used or useful in the operation of or otherwise pertaining to the Station as set forth on Schedule 1.1.5 attached hereto and made a part hereof (hereinafter collectively the "Intangibles").

1.1.6 Business Records. Copies of financial records, engineering, advertising reports, programming studies, consulting reports, computing software, marketing data, and business and personnel records relating solely to the business or operation of the Station (hereinafter collectively "Business Records") or to assets or agreements purchased or assumed by Buyer.

1.1.7 Manufacturer and Vendor Warranties. All of Seller's rights under manufacturers and vendors' warranties to the extent assignable relating to items included in the Station Assets.

1.1.8 Internet Domain Name Registrations. All of Seller's right in and to the internet domain name registrations of the Station listed on Schedule 1.1.8.

The Assets shall be transferred to Buyer free and clear of all liens, encumbrances, debts, security interest, mortgages, trusts, claims, pledges, charges, covenants, conditions or restrictions of any kind ("Liens"). The Buyer acknowledges that as of the date of this Agreement, Liens attach to certain of the Assets, all of which shall be released as of the Closing Date and that the Seller shall cause such Liens to be released by payment in full of all relevant indebtedness out of the closing proceeds from the Purchase Price (as defined in Section 2.2) payable by the Buyer. Seller represents that such indebtedness shall be paid in full at the Closing so that at the closing all Assets shall be transferred to Buyer free of all Liens.

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

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

1.2.2 Seller's accounts receivable for services performed by it in connection with the operation of the Station prior to the Closing Date (the "Accounts Receivable");

1.2.3 All claims, rights and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits, which in each case relate solely to the period prior to the Closing Date;

1.2.4 All contracts that have terminated or expired prior to the Closing Date in the ordinary course of business and as permitted hereunder;

1.2.5 All contracts of Seller not assumed by Buyer;

1.2.6 The originals of Seller's corporate seal, minute books, charter documents, corporate records, corporate stock record books and such other copies of books and records as pertain to the organization, existence or share capitalization of Seller and, duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports as well as any other records or materials relating to Seller generally and not involving the operation of the Station, provided that Buyer shall have access to all such records which might remain in the possession of Seller for a period of five (5) years from the Closing Date;

1.2.7 Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller prior to the Closing Date;

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

1.2.9 All other personal assets of a personal nature not reasonably necessary to the conduct or operation of the Station.

1.2.10 Claims against third parties.

## SECTION 2

### PURCHASE PRICE

2.1 Purchase Price. In consideration of Seller's performance of this Agreement, the total purchase price (the "Purchase Price") to be paid by Buyer shall be One Million Dollars (\$1,000,000.00).

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

(a) Upon execution and delivery of this Agreement, Buyer shall deposit One Hundred Thousand Dollars (\$100,000.00) (the "Escrow Deposit") in the form of a cashier's or certified check. The Escrow Deposit shall be held and disbursed by Media Services Group, Inc. pursuant to the terms of an Escrow Agreement in the form attached hereto as Exhibit A (the "Escrow Agreement") which Escrow Agreement shall be signed by Seller, Buyer and Escrow Agent simultaneously with the execution of this Agreement.

(b) At the Closing, Buyer will pay to Seller by wire transfer of immediately available funds to a bank designated by Seller the sum of Nine Hundred Thousand Dollars (\$900,000.00), plus the Escrow Deposit (excluding all interest earned thereon) and plus or minus any adjustments made at the Closing pursuant to Section 3 of this Agreement.

2.3 Allocation of Purchase Price. The parties agree to allocate the Purchase Price pursuant to the requirements of Section 1060 of the Internal Revenue Code of 1986 in accordance with the schedule set forth in Exhibit B. In the event that the parties are unable to reach such an agreement prior to the Closing Date, they will select a qualified, independent and nationally recognized appraiser of broadcast properties and that firm's decision shall be binding upon the parties and the fees and expenses shall be borne equally by Buyer and Seller. The parties also agree to use such Purchase Price allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

2.4 Covenant Not To Compete. Seller agrees to refrain from owning or operating a radio broadcast facility licensed in programming a business talk format in the Boston, Massachusetts Arbitron metro area for a period of one (1) year from the Closing Date. As consideration for Seller's agreement not to compete in this manner, Buyer will pay Seller on the Closing Date the sum of One Dollar (\$1.00).

## SECTION 3

### ADJUSTMENTS

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

3.2 Adjustment Items. All income and expenses of the Station, including but not limited to the following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, and monies shall be paid at Closing in accordance with Sections 3.3 and 3.4 herein below.

3.2.1 Rentals or other charges, payable or paid in respect of leasehold interests or tenancies, or leased transmitter sites, studios, offices or other Real Property or equipment under any lease or tenancy of Real Property, and any and all equipment leases described in Schedules 1.1.3 and 1.14.

3.2.2 Real and personal property taxes and assessments (including, without limitation, sewerage assessments and fees), levied or assessed against or otherwise paid or payable with respect to any of the Assets.

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

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

3.2.5 License agreements with ASCAP, BMI and SESAC.

3.2.6 Unpaid obligations of Seller with respect to any lease, contract, or agreement which Buyer assumes, including, without limitation, prepaid premiums on any insurance policies that Seller has agreed to assign to Buyer and Buyer elects to assume. Security Deposits, if any, shall be refunded by Buyer to Seller. All such security deposits are listed on Schedule 1.1.4.

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

3.2.8 If the amount of any real or personal property tax to be prorated is not known on the Closing Date, such tax shall be apportioned on the basis of the most recent tax assessment. As soon as the new tax rate and valuation can be ascertained, there shall be a reapportionment and adjustment with respect to such tax even though that final proration and adjustment may take place more than sixty (60) days after the Closing Date.

3.2.9 Seller shall notify all persons employed by Seller in connection with the business of the change of the ownership of the business and shall pay all wages and bonuses owing to such employees (and all vacation, severance pay and fringe benefits to which such employees are entitled) such that any employee of Seller whom Buyer may elect to retain in Buyer's employ shall have no claim against Buyer by reason of any prior employment in Seller's business during Seller's ownership thereof.

3.3 Adjustments After Closing Date. Subject to the provisions of Section 3.2.8, if the amount of any Adjustment Items that cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within sixty (60) days after the Closing Date and payment therefore shall be made to the party entitled thereto within ten (10) days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid by the non-prevailing party as determined by the accountant.

## **SECTION 4**

### **APPLICATION TO AND CONSENT BY COMMISSION**

4.1 Commission Consent. Consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the Commission shall have given its consent in writing, without any condition materially adverse to Buyer or Seller, to the assignment of the Commission Authorizations to Buyer.

#### 4.2 Application For Commission Consent.

(a) Seller and Buyer agree to proceed expeditiously and with due diligence and to use their best efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder through the preparation, filing and prosecution of an application to assign the Commission Authorization from Seller to Buyer (the "Assignment Application"). Within seven (7) days after the date of this Agreement, each party shall have prepared its portion of the Assignment Application and all information, data, exhibits, resolutions, statements, and other materials ("Application Data") necessary and proper in connection with such Assignment Application and shall have uploaded the Application Data to the Commission's Consolidated Data Base System ("CDBS") in a form such that Seller's counsel may file it with the Commission. Seller's counsel shall provide the CDBS account number and password to Buyer's counsel sufficiently ahead of the filing deadline so that Buyer may timely upload the Application Data. Buyer's counsel shall notify Seller's counsel by electronic mail at

[gsmithwick@fccworld.com](mailto:gsmithwick@fccworld.com) when Seller's Application Data is ready for filing. Each party further agrees expeditiously to prepare Application amendments, respond to oral or written inquiries, and answer pleadings whenever such documents are required by the Commission or its rules.

(b) Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. Seller and Buyer shall each be responsible for one-half (1/2) of all filing fees imposed by the Commission. The cost for preparation of an engineering study concerning compliance by Buyer with the FCC's multiple ownership rules shall be borne solely by Buyer.

(c) Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in this Agreement. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the assignment application (but nothing in this Section shall limit any party's right to terminate this Agreement pursuant to Section 17 of this Agreement).

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

## SECTION 5

### ASSUMPTIONS

5.1 Buyer's Assumed Obligations. Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of the Seller accruing under the Agreements listed in Schedules 1.1.3 and 1.1.4, but only to the extent that such duties accrue after the Closing Date based on the operation of the Station by Buyer following the Closing Date (collectively, the "Assumed Obligations"). Except as specifically assumed by Buyer in this Agreement, Buyer is not assuming any liabilities other than those specified in this Agreement.

5.2 Seller's Liability. Seller shall remain liable for, and covenants to pay, satisfy, or discharge, all liabilities, payments, obligations, and duties under the Agreements or other instruments transferred or assigned to Buyer hereunder, accruing prior to or by reason of events occurring prior to the Closing Date. With respect to any contingent liabilities and any accounts payable of Seller which are not known or due as of the Closing Date, Seller and Buyer agree at the Closing to enter into arrangements reasonably satisfactory to Buyer concerning the payment by Seller of such accounts payable and the satisfaction of any contingent liabilities.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller hereby represents and warrants to Buyer as follows:

#### 6.1 Standing.

6.1.1 Seller is now and on the Closing Date will be a limited liability company validly existing and in good standing under the laws of the Commonwealth of Massachusetts. Seller has the full power to own the assets and to carry on the business of the Station as it now is being conducted and is qualified and in good standing in the State of Massachusetts.

6.1.2 Seller has the full power and authority to enter into this Agreement and to execute all of Seller's Closing Documents that require Seller's signature. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Seller's Closing Documents (on the Closing Date) are or will be authorized by all necessary limited liability company action of the Seller.

6.2 Binding Effect of Agreement. This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms. The execution, delivery, and performance of this Agreement or any of the Closing Documents do not violate any provision of the Certificate of Organization or the Operating Agreement of Seller, or contract provision or other commitment to which Seller or the Station is a party or under which it or its property is bound, or any judgment or order, and will not result in the creation or imposition of any material lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets.

6.3 Financial Statements. Schedule 6.3 contains copies of the following financial statements (collectively the "Financial Statements"): the unaudited balance sheets, income statements and statements of cash flow of the Seller as of and for the fiscal years ended December 31, 2004 and December 31, 2005. The Financial Statements have been prepared in accordance with generally acceptable principles of accounting consistently applied during the periods covered, are consistent with the books and records of the Seller and are true and accurate in all material respects. Seller understands that Buyer may supply financial statements to lending institutions to be reviewed in connection with loan applications or financing arrangements of Buyer, and Seller represents and warrants that any additional financial information furnished to Buyer will be complete and accurate in all material respects.

6.4 Conduct of the business. Since December 31, 2005, except as contemplated by, or disclosed pursuant to, this Agreement, Seller has conducted its business only in the ordinary course and in a manner consistent with past practices and there has not been any material change in the financial condition, results of operations, business or properties of Seller.

6.5 Real and Tangible and Intangible Personal Property.

6.5.1 Real Property. Schedule 1.1.3 attached hereto accurately lists and describes all of the Real Property leased or otherwise held or used by the Station which is being assigned or transferred to the Buyer. The Real Property listed in Schedule 1.1.3 comprises all real property interests necessary to conduct the business or operations of the Station as now conducted. There are no pending or, to the best of Seller's knowledge, threatened condemnation or eminent domain proceedings that may have a material adverse effect on Buyer's use of the Real Property for the operation of the Station after Closing. To the best of Seller's knowledge, there are no structural defects in the towers, buildings, structures and other improvements located on the Real Property. All utilities that are necessary for the present operation of the Station have been connected to the Real Property and are in working order. To the best of Seller's knowledge, no utility lines serving the Station pass over the lands of others except where appropriate easements or licenses have been obtained. To the best of Seller's knowledge, Seller's use and occupancy of the Real Property comply in all material respects with all regulations, codes, ordinances, and statutes of all Governmental Authorities, including without limitation all zoning, health, environmental protection and sanitary regulations and all occupational safety and health regulations. The transmitting facilities of the Station, including the tower, guy wires and ground systems, are now and on the Closing Date will be located entirely on the confines of the Real Property leased by Seller. Seller represents that it has access to the Real Property as set forth in Schedule 1.1.3. The Tower License Agreement and Office Lease set forth in Schedule 1.1.3 includes all real property interests necessary to conduct the business and operations of the Station as now conducted.

6.5.2 Intangibles and Domain Name. The Intangible Property set forth on Schedule 1.1.5 hereto and the domain name set forth on Schedule 1.1.8 hereto includes all call signs, slogans, logos and domain names used to promote or identify the Station. Seller has no knowledge of any infringement or unlawful or unauthorized use of those promotional rights, including without limitation the use of any call sign, slogan or logo by any broadcast stations or cable systems in the Brockton, Massachusetts marketing area which may be confusingly similar to the call signs, slogans, and logos currently used by the Station.

6.5.3 Tangible Personal Property. Schedule 1.1.2 attached hereto accurately lists all the Tangible Personal Property owned, leased, or otherwise held by the Station and/or Seller which is intended to be conveyed hereunder. Seller represents and warrants that the Tangible Personal Property listed in Schedule 1.1.2 is sufficient to carry out the normal operations of the Station. Seller is the owner of and at Closing, will have good, clear, marketable, and indefeasible title to all of the Tangible Personal Property listed in Schedule

1.1.2, free and clear of all liens, charges, encumbrances, restrictions, debts, demands, or claims of any kind or nature whatsoever.

6.5.4 Condition of Property. The Tangible Property listed in Schedule 1.1.2 (except as expressly noted therein) is in good and acceptable operating condition subject to normal wear and tear and shall be in substantially the same condition, reasonable wear and tear excepted, on the Closing Date as it was on the date of this Agreement. The Tangible Property is operated in all material respects in compliance with the Commission's regulations and requirements and all Commission Authorizations and Other Authorizations.

6.5.5 Engineering Inspection. Seller agrees that prior to the Closing Date, Buyer's engineer may inspect the equipment of the Station to insure that the equipment complies with all warranties and conditions set forth herein. Seller agrees to extend full cooperation to said engineer, including such access to the equipment and to logs pertaining thereto at such time or times as said engineer shall reasonably request.

6.6 Due diligence examination. Seller shall provide Buyer with complete copies of all real property inspection reports including environmental surveys previously conducted on such properties. Buyer shall have the right to conduct such further examination of the Real Property and other Assets as it shall deem appropriate, provided that Buyer shall pay all costs and expenses of its investigations and testing and shall hold Seller harmless from all costs and claims resulting from the Buyer's activities in this regard (but not relating in any way to any pre-existing conditions). Without limiting the generality of the foregoing, Buyer shall repair any damage to the Station, Assets and/or the Real Property caused by Buyer's testing and shall restore the Station, Assets and the Real Property to substantially the same condition as existed prior to Buyer's entry. Buyer's obligations under the foregoing sentence shall survive termination of this Agreement. No inspection or testing shall be done without Seller's approval as to the time and manner of such activities, which approval shall not be unreasonably withheld or delayed.

6.7 Agreements. Schedules 1.1.3 and 1.1.4 accurately lists all agreements, leases and other contracts (or, when the same are oral, a complete and correct description thereof) with respect to the Station to be conveyed hereby to Buyer (except for contracts for the sale of advertising time for cash sold substantially at rates and upon terms consistent with the Station's customary and normal selling business practices) to which, as of the date hereof, Seller and/or the Station is a party or by which Seller and/or the Station may be bound or obligated in any way.

6.8 Authorizations. Seller is the holder of all licenses, permits, and authorizations necessary to operate the business of the Station as it now is being conducted, including, without limitation, all Commission Authorizations and all Other Authorizations. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended (the "Communications Act"). There is no action pending nor to Seller's knowledge, threatened, before the Commission or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations or any Other Authorization, or any action which may result

in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation except as outlined in Schedule 6.8. Station is operating at its licensed power and within the parameters set forth in the Commission Authorization and within the tolerances set forth in the Commission's Rules governing technical parameters.

## 6.9 Litigation and Insurance.

6.9.1 Litigation; Compliance With Law. Seller is in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including compliance with the Communications Act and all rules and regulations issued thereunder. Except for proceedings affecting the broadcasting industry in general and as set forth in Schedule 6.8, Seller has received no notice of any complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature currently pending, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending, nor to Seller's knowledge, is any such matter threatened, against the Station, Seller, or any of the Assets being sold or transferred to Buyer, including, without limitation, any proceeding which may (a) adversely affect the Assets or the Commission Authorizations or Other Authorizations to be assigned hereunder, or the operation of the Station, or the ability of Buyer to own and operate the Station, or the use, ownership, or operation of any of the Assets by Buyer, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of the Commission Authorizations or Other Authorizations, or the issuance or imposition of any administrative sanction that might adversely affect the Assets or the Commission Authorizations or Other Authorizations, or the operation of the Station or the ability of Buyer to own and operate the Station or the use, ownership, or operation of any of the Assets by Buyer. Except as set forth in Schedule 6.8, to Seller's knowledge, no such litigation, investigation, or proceeding has been threatened. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Station.

6.9.2 Insurance. Set forth on Schedule 6.9.2 hereto is a description of all insurance policies maintained by Seller with respect to the Assets and the business of the Station. Seller maintains policies of fire, casualty, liability and other forms of insurance in such amounts and against such risks and losses as are reasonable and adequate for the business of the Station and the properties of Seller.

## 6.10 Personnel.

(a) A true and complete list of all persons currently employed at the Station, together with the present compensation rate (including commissions and bonuses) for each such person is set forth in Schedule 6.10. Schedule 6.10 also lists all employee compensation agreements affecting such persons and employee benefits currently

provided to such persons. At least two (2) weeks prior to the Closing Date, Seller shall provide Buyer with an updated list of all persons then employed at the Station, together with the compensation for each such employee. Buyer may, but shall not be obligated to, hire certain of the Seller's employees and Seller shall permit Buyer to engage in discussions with such of its employees as Buyer shall choose. Buyer may offer employment to certain of such employees. In any event, prior to the Closing Date, Seller shall terminate all of its employees and shall hold harmless Buyer as to any obligation or liability to any such employee as a result of such termination.

(b) To the best of its knowledge, the Seller has complied in all material respects with all federal, state and local laws relating to the employment of labor, including, without limitation, the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), laws relating to wages, hours, collective bargaining, unemployment insurance, workers' compensation and payment and withholding of taxes, and laws prohibiting discrimination against any class or group of employees, former employees or applicants for employment.

(c) Seller is not a party to any collective bargaining agreement covering or relating to any of Station's employees and has not recognized, and to Seller's knowledge, is not required to recognize, and has received no demand for recognition of any labor or trade union or to any other employment contract, labor agreement, or union agreement, written or oral..

#### 6.11 Taxes and Bankruptcy.

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

6.11.2 Bankruptcy. No voluntary or, to Seller's knowledge, involuntary petition in bankruptcy, receivership, insolvency, or reorganization with respect to Seller, or petition to appoint a receiver or trustee of Seller's property, has been filed by or, to Seller's knowledge, against Seller. Seller has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment or levy against it or against any of its properties to remain outstanding or unsatisfied for more than thirty (30) days.

#### 6.12 Environmental and OSHA Matters.

6.12.1 Environmental Matters. Seller has not received any written notice of any investigation or inquiry by any governmental entity under any applicable federal, state or local laws pertaining to health, safety, the environment, hazardous substances, or solid wastes

("Applicable Environmental Laws"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (for purposes of this Section, "CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984, as amended (for purposes of this Section, "RCRA"). To the best of Seller's knowledge, after due inquiry of all managers, engineers or other similar employees or agents of Seller having responsibility for or holding a position that reasonably could be expected to involve substantial knowledge about environmental matters related to the Station and after due examination of the files of the Station pertaining to environmental matters, the Station and the Assets are all in compliance in all respects with all Applicable Environmental Laws, all environmental permits from governmental entities required with respect thereto have been obtained and are in full force and effect, and Seller is in compliance therewith. Seller has not stored or disposed of, and has no knowledge of any other person having stored or disposed of, any Hazardous Substance (as said term is defined in any Applicable Environmental Law) on any of the Real Property used by the Station, except as set forth on Schedule 6.12.1.

6.12.2 OSHA Matters. To the best of its knowledge, Seller is in compliance with the requirements of the Occupational Safety and Health Act and the regulations promulgated thereunder and any similar laws or regulations of any state or local jurisdiction ("OSHA"). Seller has not received any citation from the Occupational Safety and Health Administration or any comparable administration of any state or local jurisdiction (an "Administration") or any Administration inspector setting forth any respect in which the facilities or operation of Seller are not in compliance with OSHA, or the regulations under such act, which non-compliance has not been corrected or remedied to the satisfaction of such Administration or inspector. Seller has heretofore furnished to Buyer copies of all citations heretofore issued to Seller and relating to the Station under OSHA and copies of all correspondence from and to such Administration and any Administration inspectors during the past three (3) years.

6.12.3 Environmental Audit. Buyer shall have the right to order a phase I environmental audit of the Real Property, which audit shall be conducted by a firm selected by Buyer at Buyer's expense, a copy of which shall be provided to Seller. In the event that this phase I environmental audit indicates that a further phase II environmental audit of any of the Real Property is warranted, such phase II audit shall be conducted by a firm selected by mutual agreement of Buyer and Seller and the cost of this latter environmental audit shall also be borne by the Buyer. If any phase II audit recommends remediation costing in excess of Twenty-Five Thousand Dollars (\$25,000), as supported by written estimates obtained from two (2) licensed environmental engineering firms, which estimates and the underlying phase II report or reports shall be provided to Seller, the Buyer may in its discretion opt to terminate this Agreement. In no event shall the Seller be obligated to bear the expense of any environmental remediation recommended by any such audits. All environmental audits conducted by Buyer under this Section 6.12.3 must be completed within three (3) months of the date of this Agreement and Buyer's right to terminate this

Agreement based on the results of a phase II audit as set forth above shall expire on the date that is two (2) months from the date hereof.

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

## SECTION 7

### WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER

Buyer covenants, represents, and warrants as follows:

7.1 Organization and Standing. Buyer is a corporation duly organized validly existing and in good standing under the laws of the State of Delaware, and as of the Closing Date, shall be duly qualified to do business and be in good standing in the Commonwealth of Massachusetts.

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

7.3 No Contravention. The execution, delivery and performance of this Agreement do not violate any provision of the Certificate of Organization or the Bylaws of Buyer, or any contract provision or other commitment to which Buyer is bound, or any judgment or order.

7.4 Litigation. Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint, before the Commission, other governmental body, or court, of any nature pending or, to the best of Buyer's knowledge, threatened against or affecting it which would affect Buyer's authority or ability to carry out this Agreement.

7.5 Buyer's Qualifications. There is no fact that would, under present law (including the Communications Act of 1934, as amended) and the present rules and

regulations of the Commission, disqualify Buyer from being the assignee of the Station or that would delay Commission approval of the Assignment Application. Should Buyer become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such disqualification. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification.

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

7.7 Financing. Buyer has and will have at Closing sufficient capital resources or financing in order to consummate the transactions and pay the Purchase Price hereunder. At Seller's request, Buyer shall provide Seller evidence of such financing.

## **SECTION 8**

### **SELLER'S CONDUCT OF BUSINESS PRIOR TO CLOSING AND BUYER'S ACCESS TO INFORMATION**

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

8.1.1 Seller shall conduct the business and operations of the Station in the ordinary course of business, consistent with past practices, and with the intent of preserving the ongoing operations and the Station Assets.

8.1.2 Seller shall maintain its normal inventory of spare parts at the Station. Seller shall not (i) sell, transfer or dispose of any assets relating to the Station, except worn-out, defective or obsolete equipment which is disposed of in the ordinary course of business and is replaced by equipment of equal quality and usefulness prior to the Closing Date, (ii) grant or agree to grant any general increases in the rates of salaries or compensation payable to employees of the Station other than in accordance with past practices, (iii) grant or agree to grant bonuses to executive, management or on-air employees of the Station, except in accordance with past practices, (iv) provide for any new pension, retirement or other employment benefits for employees of the Station or any increase in any existing benefits (other than as required by law), or (v) enter into new trade agreements which might require performance of services by the Station on or after the Closing Date, except in the ordinary course of business, consistent with past practices.

8.1.3 Except in the ordinary course of business, Seller shall not enter into or renew any lease, agreement or contract relating to the Station that involves payment or performance of services by Seller of Ten Thousand Dollars (\$10,000) or more per such lease, agreement or contract or per series of such related leases, agreements or contracts, if, absent such \$10,000 limit, the obligations of Seller contained in such series would be contained in a single instrument. Seller shall consult with Buyer prior to entering into any contract, lease or agreement that would impose any obligation on Buyer, other than agreements for the sale of advertising time on the Station consistent with the Station's past practices in existence during the six months preceding the date hereof.

8.1.4 Seller shall use its good faith reasonable efforts (i) to preserve the operation of the Station intact and to preserve the present character of the Station, its present level of billings, and present relationships with the Station's customers, suppliers, and others having business relations with the Station who are in good standing with the Station, and (ii) to continue to conduct the financial operations of the Station, including its credit and collection policies, with the same effort, and to the same extent and in the same manner, as in the prior conduct of the business of the Station.

8.1.5 Seller shall use its good faith reasonable efforts to obtain valid and binding consents of any third parties necessary for the assignment to Buyer of any contract to be assigned hereunder and shall use its reasonable efforts in assisting Buyer to obtain any necessary collateral assignments of such contracts to Buyer's lender(s).

8.1.6 Seller shall operate the Station and the Station Assets in all material respects in accordance with FCC rules and regulations and the Commission Authorizations and with all other laws, regulations, rules and orders, and shall not cause or permit by any act, or failure to act, any of the Commission Authorizations to expire, be surrendered, or otherwise terminated, or cause the FCC to institute any proceedings for the suspension or revocation of any of the Commission Authorizations, or fail to prosecute with due diligence any pending applications to the FCC.

8.1.7 Should any fact relating to Seller which could cause the FCC to deny its consent to the transactions contemplated by this Agreement come to Seller's attention, Seller will promptly notify Buyer thereof and each of Seller and Buyer will use its best efforts to take such steps as may be necessary to remove any such impediment to the transactions contemplated by this Agreement.

8.1.8 Upon reasonable prior notice and during normal business hours, Seller shall give Buyer, Buyer's designated potential lenders, and the counsel, accountants, consultants, engineers and other representatives of Buyer ("Buyer's Representatives"), access to all of Seller's properties, books, contracts, reports and records relating to the Station (including without limitation such access to the Tower Site) and will furnish Buyer's Representatives with all information (financial, operating or otherwise) that Buyer's Representatives may reasonably request. The rights of Buyer under this Section shall not be exercised in such a manner as to materially interfere with the business of the Station.

Buyer's representatives shall sign confidentiality agreements if reasonably requested by Seller.

8.1.9 Promptly upon their preparation after the end of each month (but in no event later than thirty (30) days after the end of such month), Seller shall deliver to Buyer (i) an unaudited statement of income and expense of the Station for the month then ended, and (ii) an unaudited balance sheet of the Station as of the end of such month. Each of such financial statements shall fairly present and accurately reflect in all material respects, the financial condition and results of operations of the Station to which it relates as of the date and for the Period covered by such statement. Promptly upon their preparation, Seller shall deliver to Buyer copies of any other financial statements or operating reports prepared by or delivered to Seller with respect to the Station, such as any monthly listing of sales by account.

8.1.10 Seller shall use its good faith reasonable efforts to maintain the employment at the Station of the employees of the Station, but Seller shall be permitted to terminate any such employee with cause without prior consultation with Buyer. Seller shall reasonably cooperate with Buyer in assisting Buyer to employ, from and after the Closing Date, the employees of the Station whom Buyer desires to employ, including, without limitation, permitting Buyer access to Seller's employees for discussions at such places and at such times as to not interfere with Seller's operations; provided, however, that Buyer shall take no action inconsistent with Section 8.3.

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

8.1.12 Seller shall not by any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms the Commission Authorizations with respect to the Station or give the Commission grounds to institute any proceeding for the revocation, suspension or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations.

8.1.13 Seller shall not create or suffer or permit the creation of any mortgage, conditional sales agreement, security interest, lien, hypothecation, pledge, encumbrance, restriction, liability, charge, claim or imperfection of title on any of the Assets or with respect thereto, other than those liens that will be satisfied in full at the closing.

8.1.14 Seller shall not fail to repair or maintain any of its transmitting, studio, and other technical equipment or any other equipment, supplies, and other Tangible Personal Property used or usable in the operations of the Station in accordance with the normal standards of maintenance applicable in the broadcast industry (and in no event at a standard below that standard at the date hereon).

8.1.15 Seller shall not take any action that could reasonably be expected to result in a material adverse change in the operation, financial condition or prospects of the Station.

8.2 Failure of Broadcast Transmissions. Seller shall give prompt written notice to Buyer if any of the following (a "Specified Event") shall occur and continue for a period in excess of forty-eight (48) consecutive hours: (i) the transmission of the regular broadcast programming of the Station in the normal and usual manner is interrupted or discontinued; or (ii) the Station is not operated in accordance with the directional parameters specified in the Station's license or is operated at less than ninety percent (90%) of its licensed power. If three (3) or more Specified Events occur prior to the Closing Date each lasting more than forty-eight (48) consecutive hours, or if the Station is not operated substantially at the licensed operating parameters for more than five (5) consecutive days, then Buyer may, at its option: (i) terminate this Agreement, or (ii) proceed in the manner set forth in Section 12.1 or 12.2.

8.3 Access to Information. Between the date hereof and the Closing Date, Seller will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers, and other representatives, reasonable access during reasonable business hours to the Assets. Seller shall furnish to Buyer such information and materials concerning the Station's affairs as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Station.

8.4 Restrictions on Buyer. Nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Station prior to the Closing Date and Seller shall have complete control of the programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity with the public interest, convenience and necessity and with all other requirements of law and this Agreement.

8.5 Buyer's Covenants. From the date of this Agreement until the Closing Date, Buyer covenants that it will take no action, or fail to take any action, that would disqualify it from becoming the licensee of the Station or delay the grant of the Assignment Application by the Commission. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

## **SECTION 9**

### **CONDITIONS FOR CLOSING**

9.1 Closing. The Closing of the transactions contemplated by this Agreement shall take place at the corporate offices of Seller or at such other place as mutually agreed upon in writing by Seller and Buyer, and on a date mutually agreed upon by Buyer and Seller, provided that such date shall in no event be later than five (5) days after the grant

by the Commission of the Assignment Application shall have become a Final Order (the "Closing Date"). For purposes of this Agreement, a "Final Order" shall mean the grant by the Commission of the Assignment Application, and shall include but not be limited to an order by the Chief, Mass Media Bureau, issued under delegated authority, (a) which grant or order has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration, appeal or stay, and the time for filing any such requests and for the FCC to set aside the action on its own motion (whether upon reconsideration or otherwise) has expired, or (ii) in the event of review, reconsideration or appeal, the Commission's order has been affirmed and become final by expiration of the time for further review, reconsideration or appeal. Notwithstanding anything contained in this Agreement to the contrary, if the Closing does not occur within twelve (12) months of the date of this Agreement, then either Seller or Buyer shall have the right to terminate this Agreement, provided, however, that the party seeking to terminate is not in default.

9.2 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 of such conditions on the Closing Date, notwithstanding that such condition is not fulfilled) on the Closing Date:

9.2.1 Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 11.1 below.

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

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

9.2.4 Seller shall be the holder of the Commission Authorizations listed in Schedule 1.1.1.

9.2.5 Seller shall have taken all limited liability company and other action necessary to consummate this transaction.

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

9.2.7 Seller shall have delivered to Buyer an opinion dated the Closing Date from counsel to Seller, in form and substance reasonably satisfactory to counsel for Buyer to the effect that:

(i) Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, with all requisite power and authority to own, operate and lease its properties and to carry on its business as now being conducted.

(ii) Seller has the power and authority to enter into and perform its obligations under this Agreement and all Closing Documents and to consummate the transactions contemplated hereby and thereby, and this Agreement and all Closing Documents (i) have been duly executed and delivered by Seller, and (ii) are the legal, valid and binding obligations of Seller, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium and similar laws of general application affecting the rights and remedies of creditors, and subject to a disclaimer as to any opinion respecting the availability of equitable remedies.

(iii) The execution and delivery by Seller of this Agreement and all other Closing Documents do not, and the performance by Seller of the terms thereof will not, (i) contravene Seller's Certificate of Organization or Operating Agreement, or (ii) violate any provision of United States federal or Massachusetts law applicable to Seller, the Station or the Stations Assets.

9.2.8 Seller shall have delivered to Buyer an opinion of Seller's FCC Counsel, addressed to Buyer, dated the Closing Date, in the form of Exhibit C attached hereto.

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

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

9.3.2 Buyer shall perform all of the obligations set forth in Section 2 of this Agreement with respect to the payment of the Purchase Price.

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

9.3.4 Buyer shall have delivered to Seller an opinion dated the Closing Date from counsel for Buyer in form and substance reasonably satisfactory to counsel for Seller to the effect that:

(a) Buyer is an entity duly organized, validly existing and in good standing under the laws of the State of its organization, with all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now being conducted and is qualified to do business and in good standing in the Commonwealth of Massachusetts.

(b) Buyer has the power and authority to enter into and perform its obligations under this Agreement and all Closing Documents and to consummate the transactions contemplated hereby and thereby, and this Agreement and all Closing Documents (i) have been duly executed and delivered by Buyer, and (ii) are the legal, valid and binding obligations of Buyer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, moratorium and similar laws of general application affecting the rights and remedies of creditors, and subject to a disclaimer as to any opinion respecting the availability of equitable remedies.

9.4 Failure of Conditions Precedent to Obligations of Buyer. In case of the failure of any of the conditions precedent described in Section 9.2 hereof on the date that is five (5) days after the grant of the Assignment Application has become a Final Order and if Seller, after having received notice of such failure from Buyer and having had a reasonable opportunity, has failed to cure same, Buyer shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent constitutes a material default by Seller, Buyer shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 16 hereof. Buyer shall not be deemed to have waived any failure by Seller to fulfill any of the conditions precedent described in Section 9.2 if Buyer does not have actual knowledge of such failure at the time of Closing.

9.5 Failure of Conditions Precedent to Obligations of Seller. In case of the failure of any of the conditions precedent described in Section 9.3 hereof on the date that is five (5) days after the grant of the Assignment Application has become a Final Order, and if Buyer, after having received notice of such failure from Seller and having had a reasonable opportunity, has failed to cure the same, Seller shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent results from a material default by Buyer, Seller shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 16 hereof. Seller shall not be deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 9.3 if Seller does not have actual knowledge of such failure at the time of Closing.

## SECTION 10

### OBLIGATIONS AT CLOSING

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

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

10.1.2 An executed Assignment and Assumption Agreement in form and substance reasonably satisfactory to Buyer assigning to Buyer the Agreements to be assigned hereunder.

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

10.1.4 A certified copy of the resolutions executed by the Managing Member of Seller authorizing the execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions provided for herein.

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

10.1.6 Copies of all Business Records.

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

10.1.8 An opinion of Seller's counsel, dated as of the Closing Date.

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

10.2.1 The Purchase Price as provided in Section 2.2.

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

10.2.3 An Assignment and Assumption Agreement executed by Buyer, in form and substance reasonably satisfactory to Seller pursuant to which Buyer assumes all of the Assumed Obligations.

10.2.4 A certified copy of the resolutions of the shareholders and/or directors of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein.

10.2.5 An opinion of Buyer's counsel, dated as of the Closing Date.

## **SECTION 11**

### **BROKERAGE**

Seller and Buyer hereby mutually represent and warrant that there are no finders, brokers, or intermediaries involved in this transaction, other than Media Services Group, Inc., and that neither Seller nor Buyer has agreed to pay any brokers, finders or consultants a fee in connection with this transaction other than Media Services Group, Inc., the payment of which shall be the sole responsibility of Seller.

## **SECTION 12**

### **INDEMNIFICATIONS**

12.1 Survival of Representations and Warranties and Claims Period. All representations and warranties made in this Agreement shall survive the Closing for a period of eighteen (18) months from the Closing Date; provided, however, the representations and warranties regarding tax matters shall survive the Closing Date until the expiration of all applicable statutes of limitations. All claims for indemnification under this Section 12 must be filed no later than the eighteen (18) month anniversary of the Closing Date, except for those claims related to representations and warranties regarding tax matters, which claims must be filed on or before the date of expiration of the applicable statute of limitations.

12.2 Breach of Seller's Agreements, Representations, and Warranties. From and after the Closing Date, Seller shall reimburse Buyer for, and indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), arising out of or by reason of:

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

(b) any act or omission of Seller with respect to, or any event or circumstance related to, the ownership or operation of the Station and/or the Assets, which act, omission, event or circumstance occurred or existed prior to the Closing Date (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed prior to the Closing Date under the Agreements, or any other lease, contract, or agreement related to the Station, and without regard to whether a claim with respect to such matter is asserted before or after the Closing Date);

(c) any liability or obligation related to the Station and the Assets which is not an Assumed Obligation; and

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

**12.3 Breach of Buyer's Agreements, Representations and Warranties.** From and after the Closing Date, Buyer shall reimburse Seller for, and indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without being limited to, payments, fines, penalties, interest, taxes, assessments, reasonable attorneys' fees and accounting fees of any kind or nature), arising out of or by reason of:

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

(b) any act or omission of Buyer with respect to, or any event or circumstance related to, the ownership or operation of the Station and/or the Assets, which act, omission, event or circumstance occurs or arises from and after the Closing Date (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed from and after the Closing Date under the Agreements or any other lease, contract or agreement related to the Station);

(c) the failure of Buyer to perform any of its obligations with respect to the Assumed Obligations; and

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

**12.4 Notice of Claim.** Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 12.2 or 12.3 hereof ("Notice of Claim") and the amount which is believed to be required to discharge the obligations of the indemnifying party resulting therefrom. Within ten (10) days after having been given the Notice of Claim, the indemnifying party may deliver to the other party (i) a written notice of objection to the payment of such claim ("Notice of Objection"), which Notice of Objection

shall set forth the basis for such objection; or (ii) a written notice that the indemnifying party intends to defend against such claim in good faith ("Notice of Intention to Defend"). If such a Notice of Intention to Defend is delivered, the indemnifying party shall have the right to hold in abeyance the claim for indemnification if and so long as such defense is conducted by the indemnifying party at its' expense in a manner effective to protect the indemnified party against such claim. If no Notice of Objection or Notice of Intention to Defend is given within the prescribed ten (10) day period, the indemnifying party shall promptly pay to the indemnified party the amount set forth in the Notice of Claim. If the parties are unable to resolve any Notice of Claim and corresponding Notice of Objection, the matter shall be submitted to arbitration in accordance with the provisions of Section 20.11 hereof.

12.5 Sole Remedy; Limitation of Liability. (a) The parties acknowledge and agree that except for matters involving fraud or willful or intentional misrepresentation, the indemnification provided for in this Section 12 shall be the sole and exclusive post-Closing remedy available to any party against the other with respect to any matter or claim related in whole or in part to the transactions contemplated by this Agreement.

(b) Notwithstanding anything else contained in this Section 12:

(i) neither party shall file a claim for indemnification until its damages or anticipated damages with respect to one or more matters subject to indemnification hereunder total Two Thousand Five Hundred Dollars (\$2,500) (the "Threshold Amount") in the aggregate; provided however once the Threshold Amount is attained, the indemnifying party shall be responsible for indemnifying the indemnified party against the full amount of its damages;

(ii) a party will not be deemed to have suffered an indemnifiable loss hereunder (either for actual indemnification purposes or for purposes of determining the Threshold Amount) to the extent of insurance proceeds received by the party with respect to such loss; and

(iii) in no event shall any party be obligated to the other for indemnification in an aggregate amount exceeding Twenty-Five Percent (25%) of the Purchase Price, except in the case of fraud or willful misconduct by the indemnifying party.

## **SECTION 13**

### **RISK OF LOSS**

The risk of loss, damage, impairment, confiscation or condemnation of the Station Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing. In the event of such loss, Seller shall promptly notify Buyer thereof in writing stating with particularity the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Station Assets lost, damaged or destroyed will be reimbursed under any insurance policy with respect thereto. Seller will apply all insurance proceeds recovered to repair, replace or restore any lost or damaged

property to its former condition in all material respects as soon as possible. If such repair, replacement or restoration has not been completed prior to the Closing Date, Buyer may, at its option:

(a) elect to consummate this transaction, in which event Seller shall assign to Buyer all of Seller's proceeds or rights to proceeds under any applicable insurance policies; or

(b) elect to postpone the Closing Date for a period of up to thirty (30) but not less than seven (7) days, with prior consent of the FCC if necessary (which consent the parties shall use their respective good faith reasonable efforts to obtain promptly) to permit the Seller to make such repair, replacement or restoration as is required to return the Station Assets to their former condition in all material respects. If, after the expiration of such extension period, the lost or damaged property has not been so repaired, replaced or restored, Buyer shall either (i) terminate this Agreement, or (ii) elect to consummate this transaction, in which event Seller shall assign to Buyer all of Seller's proceeds or rights to proceeds under any applicable insurance policies and pay any deductible from such policies to Buyer.

## **SECTION 14**

### **FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation, and execution and performance of this Agreement. Local transfer and title fees and sales taxes, if any, shall be paid by the party who is responsible for the same under applicable statutes.

## **SECTION 15**

### **BULK SALES LAW**

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

## **SECTION 16**

### **DEFAULT AND TERMINATION**

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

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

16.2 If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings.

16.3 Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be entitled to receive as liquidated damages the Escrow Deposit and all interest earned thereon through the date of payment. The parties agree that such amount shall constitute liquidated damages and shall be in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement. Buyer and Seller acknowledge and agree that liquidated damage amount is reasonable in light of the anticipated harm which will be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder.

16.4 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event Seller breaches this Agreement or defaults on the performance of its obligations hereunder, Buyer shall have the right to sue for specific performance or for other remedies available at law or equity in addition to the return of the Escrow Deposit.

## **SECTION 17**

### **SURVIVAL OF WARRANTIES**

The representations, warranties, covenants, indemnities and agreements contained herein or in any certificate delivered hereunder are and will be deemed and construed to be continuing representations, warranties, covenants, indemnities and agreements, and will survive the Closing for a period of eighteen (18) months after the Closing Date, except for representations and warranties related to tax matters, which shall survive until expiration of

the applicable statute of limitations with respect thereto. No investigations by or on behalf of any party hereto, nor any knowledge obtained by such party as a consequence thereof or otherwise, shall be deemed to limit, waive or modify in any respect any of the other party's representations, warranties, covenants or agreements contained herein, or limit the rights of such party to obtain damages or any other remedy provided for hereunder as a consequence of any breach of any representation, warranty, covenant, or agreement contained herein or pursuant to the indemnity provisions hereof; provided, however, in the event during the course of its due diligence, the Buyer becomes aware of any material breach of a Seller representation or warranty under this Agreement, it shall notify the Seller in writing thereof. If the Closing takes place, the Seller shall have the right to cure any breach of its representation and warranty as so notified by Buyer.

## **SECTION 18**

### **ACCOUNTS RECEIVABLE AND TRADE ACCOUNTS**

18.1 Collection Procedures. At Closing, Seller shall assign to Buyer all of the Accounts Receivable for purposes of collection only. Buyer shall use such efforts as are reasonable and in the ordinary course of business to collect the Accounts Receivable for a period of ninety (90) days following the Closing Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. During such ninety (90) day period, neither Seller nor its agents shall make any solicitation of them for collection purposes nor institute litigation for the collection of any amounts due thereunder. All payments received by Buyer during the Collection Period from any person obligated with respect to any of the Accounts Receivable shall be applied first to Seller's account and only after full satisfaction thereof to Buyer's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any Account Receivable, then Buyer may return that Account Receivable to Seller after which Seller shall be solely responsible for the collection thereof. Buyer shall pay over to Seller the full amount of the collected Accounts Receivable and Seller shall be responsible for the payment of all salesperson's, agency, and representative commissions due with respect to the same. Buyer shall not incur or cause to be incurred any collateral or outside fees, costs or charges in connection with its efforts at collection of the Accounts Receivable without first having obtained the authorization in writing of Seller. Buyer shall remit to Seller all amounts collected on Seller's behalf, together with a report detailing the collection amounts by customer, no less often than by the fifth (5<sup>th</sup>) day after the close of each month during which any amounts due to Seller are collected. Within five (5) business days following the expiration of the Collection Period, Buyer shall furnish Seller with a list of the Accounts Receivable collected during the Collection Period. Any of the Accounts Receivable that are not collected during the Collection Period shall be reassigned to Seller after which Buyer shall have no further obligation to Seller with respect to the Accounts Receivable; provided, however, that all funds subsequently received by Buyer (without time limitation) that are readily identifiable at the time of payment, whether by accompanying invoice or otherwise, as a payment on any Account Receivable shall be promptly paid over or forwarded to Seller. Buyer shall not have the right to compromise, settle, or adjust the amounts of any

of the Accounts Receivable without Seller's prior written consent, or to withhold any proceeds of the Accounts Receivable or to retain any uncollected Accounts Receivable after the expiration of the Collection Period for any reason whatsoever.

18.2 Trade Accounts Receivable; Trade Accounts Payable. As part and parcel of Seller's regular and usual operations, Seller has from time to time entered into various barter/trade transactions with suppliers of goods and services to Seller for which Seller has agreed to provide advertising time or broadcast time at discounted rates or at no additional charge. The trade accounts receivable and trade accounts payable are set forth on Schedule 18.2 attached hereto. To the extent that Seller is entitled to any remaining benefits of any such barter/trade transactions (collectively, the "trade accounts receivable") after the Closing Date, such trade accounts receivable shall belong to the Buyer. The Buyer acknowledges the existence of these transactions and further acknowledges that after the Closing Date, Buyer may have continuing obligations under such barter/trade transactions to provide advertising time or broadcast time at discounted rates or at no additional charge (the "trade accounts payable"). Buyer will receive a credit at closing for the agreed upon value of such trade accounts to the extent that the trade accounts payable exceed trade accounts receivable.

## SECTION 19

### NOTICES

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

If to Seller:

Joseph V. Gallagher, III  
Managing Member  
KJI Broadcasting, LLC  
27 Chastellux Avenue  
Newport, Rhode Island 02840

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

E. Colby Cameron, Esq.  
Cameron & Mittleman  
56 Exchange Terrace  
Providence, Rhode Island 02903

If to Buyer:

Michael L. Metter  
President & CEO  
BTR  
P.O. Box 4826  
Greenwich, CT 06831

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

Patrick J. O'Neil  
P.O. Box 711  
Vernon, New Jersey 07462

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

## **SECTION 20**

### **MISCELLANEOUS**

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

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

20.3 Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. Buyer may not assign its rights and benefits under this Agreement to any third party without the prior consent of Seller.

20.4 Additional Documents. The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of

this Agreement, the effective vesting in Buyer of title to the Assets, and/or the successful processing by the Commission of the Assignment Application to be filed with it, as provided in Section 4.2.

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

20.6 Governing Law. The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the Commonwealth of Massachusetts.

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

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

20.9 Severability. If any term or provision of this Agreement or its application shall, to any extent, be declared by a governmental entity of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable; provided, however, neither party shall have any obligation to consummate the transactions contemplated by this Agreement if it is adversely affected in any respect whatsoever and regardless of immateriality by a determination that any term or provision of this Agreement or its application shall, to any extent, be invalid or unenforceable

20.10 Arbitration. Any dispute arising under this Agreement or with respect to the transactions contemplated herein shall be submitted to arbitration. Such arbitration shall take place in Boston, Massachusetts or such other place mutually agreed to by the parties, with each party designating an arbitrator having some background and experience in broadcasting. The arbitrators so designated shall mutually select a third arbitrator with experience in the broadcasting industry and the third arbitrator so selected shall conduct an expeditious hearing pursuant to the rules and procedures of the American Arbitration Association ("AAA"). The written decision of the arbitrator, who shall be a member of the AAA, shall be final and binding upon Seller and Buyer. All expenses and attorneys' fees attendant to the arbitration shall be awarded by the arbitrator. In the event the arbitrator does not make such an award, the expenses of arbitration shall be split equally between the parties and each party shall pay its own attorneys' fees. Judgment upon any award rendered by the arbitrator may be entered in any federal or state court having jurisdiction and located in the Commonwealth of Massachusetts.

20.11 Confidentiality.

(a) The parties will keep the existence and terms of this Agreement, including, without limitation, the Purchase Price, confidential and will not disclose the same to any person, except for disclosures required by law, disclosures on tax returns, disclosures to employees who have a need to know such information, disclosures to attorneys, accountants and similar advisors and such disclosures as shall be mutually agreeable to the parties.

(b) The Buyer agrees that until after the Closing Date, it shall not disclose and shall cause its agents, attorneys, advisers and representatives not to disclose to any other party any confidential data or information provided to Buyer by Seller with respect to Seller, the Station and the Assets and, if the Closing does not occur as herein provided, Buyer will promptly return to Seller, at Buyer's expense, all books, records and other documents and papers obtained from Seller and all copies thereof.

20.12 Publicity. Seller and Buyer agree that all public announcements relating to this agreement or the transactions contemplated hereby, including announcements to employees, will be made only as may be agreed upon in writing by the parties, which consent shall not be unreasonably withheld.

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

SELLER:

KJI BROADCASTING, LLC

By: \_\_\_\_\_  
Joseph V. Gallagher, III  
Manager

BUYER:

BusinessTalkRadionet, Inc.

By: \_\_\_\_\_  
Michael L. Metter, President

## **LIST OF EXHIBITS AND SCHEDULES**

Exhibit A	Escrow Agreement
Exhibit B	Allocation of Purchase Price
Exhibit C	Form of Opinion of FCC Counsel
Schedule 1.1.1	Commission Authorizations and Other Authorizations
Schedule 1.1.2	Description of Tangible Personal Property
Schedule 1.1.3	Real Property
Schedule 1.1.4	Contracts, Agreements and Leases
Schedule 1.1.5	Intangibles
Schedule 1.1.8	Domain Name
Schedule 6.3	Financial Statements
Schedule 6.9.2	Insurance
Schedule 6.10	Personnel, Salaries and Benefits
Schedule 6.12	Environmental Matters
Schedule 18.2	Trade Accounts

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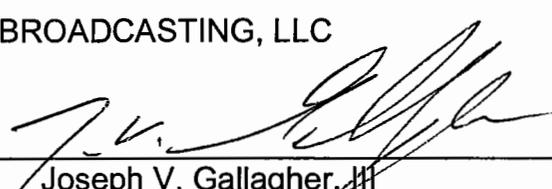
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KJI BROADCASTING, LLC

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

  
Joseph V. Gallagher, III  
Manager

BUYER:

BusinessTalkRadionet, Inc.

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

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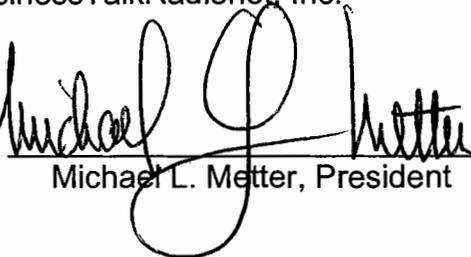
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