

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** ( the "Agreement") is made and entered this \_\_\_\_ day of December, 2002, between Voice in the Wilderness Broadcasting, Inc. ("Buyer"), and Fred R. Morton and Evelyn K. Morton ("Seller").

### RECITALS

**WHEREAS**, Seller is the licensee and operator of KRCM(AM) licensed to Beaumont, Texas ("Station"), pursuant to the license issued by the FCC; and

**WHEREAS**, Seller desires to sell or assign to Buyer the Station and all of the assets, and the license and authorizing orders of the FCC of Seller related thereto, and Buyer desires to purchase and receive an assignment of the same from Seller, all on the terms and subject to the conditions set forth herein; and

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

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

### ARTICLE I DEFINITIONS

As used herein the following terms shall have the following meanings:

1.01 "Closing" shall mean the consummation of the transactions contemplated by this Agreement.

1.02 "Closing Date" shall mean the date no later than five (5) business days immediately following the date upon which there is an FCC Final Order authorizing, without materially adverse conditions to either Buyer or Seller, the assignment of the FCC License to Buyer. Provided further that the Closing Date shall, at Buyer's sole option, be any date after five (5) days notice after initial grant of approval of the assignment.

1.03 "FCC" shall mean the Federal Communications Commission or its successor.

1.04 "FCC Licenses" shall mean the license and authorizing orders which are described in Section 2.01(b).

1.05 "Final Order" (and "Final") means a grant, consent or authorization by the FCC which is no longer subject to reconsideration or review by the FCC or a court of competent

jurisdiction, and pursuant to which the FCC consents to the assignments of the FCC licenses contemplated by this Agreement, each such grant, consent or authorization being without the imposition of any conditions adverse to Buyer with respect to the assignment of the FCC Licenses to Buyer or the continued operation of the Station or the Station Assets.

1.06 "LMA" means that Lease Management Agreement entered into between Buyer and Seller dated October 16, 2002.

1.07 "Station" or "Stations" means broadcast station KRCM(AM), Beaumont, Texas.

1.08 "Station Assets" means the property described in Section 2.01.

## **ARTICLE II** **PURCHASE AND SALE OF STATION ASSETS**

**2.01 Transfer of Assets.** At the Closing, Seller shall sell, assign, transfer, and convey to Buyer, and Buyer shall purchase and acquire from Seller, all the assets (except as hereinafter expressly excluded), free and clear of all liens, charges, pledges, security interests, mortgages or other encumbrances of any nature whatsoever (except as hereinafter expressly permitted), now owned or later acquired and used by Seller or useful in operating the Station, including without limitation the following:

(a) Personal Property. All tangible personal property, whether owned or leased, of Seller which is useful or used in the operation of the Station, including all broadcasting and office equipment, furniture, furnishings, machinery, installations and fixtures currently used in or needed for such operation, including all replacements and additions between the date of this Agreement and the Closing Date including but not limited to property listed in Schedule 2.01(a).

(b) FCC Licenses. All FCC licenses, permits, and authorizations used or held for use in connection with operation of the Station and associated facilities, including but not limited to those attached as Schedule 2.01(b).

(c) Other Contracts. All contracts and agreements which are (1) set forth on Schedule 2.01(c) to be assumed, or (2) consented to in writing by Buyer.

(d) FCC Reports. Copies of all reports required by the FCC to be maintained by the Seller relating to the operation of the Station, and all books of account, logs and records necessary or useful for the Buyer's operation of the Station;

(e) Other Data. All of Seller's rights in and to all the files, documents, records, and books of account relating to the operation of the Station or to the Station Assets, including, without limitation, the Station's local public file, programming information and studies, blueprints, technical information and engineering data, news and advertising studies or consulting reports, marketing and demographic data, sales correspondence, lists of advertisers,

promotional materials, credit and sales reports and filings with the FCC, all written Contracts to be assigned hereunder, logs, software programs and books and records relating to employees, financial, accounting and operation matters; but excluding records relating solely to any Excluded Asset (as hereinafter defined). Seller reserves reasonable access to any such data assigned;

(f) Intangible Assets. All of Seller's rights in and to the call letters "KRCM(AM)" as well as all of Seller's rights in and to all trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, computer software, programs and programming material of whatever form or nature, jingles, slogans, the Station's logos and all other logos or licenses to use same and all other intangible property rights of Seller, which are used or useful in connection with the operation of the Station but not limited to those listed in Schedule 4.13 (collectively, the "Intellectual Property"), together with any goodwill and any additions thereto between the date hereof and the Closing Date;

(g) Real Property. All of Seller's rights and title free and clear of all liens and encumbrances to the Real Property including leasehold interests identified in Schedule 2.01(g).

(h) Programming. All programming materials and elements of whatever form or nature owned by Seller, whether recorded on tape or other medium or intended for live performance, and all copyrights owned by or licensed to Seller that are used or useful in connection with the operation of the Station, including all such programs, materials, elements and copyrights acquired by Seller between the date hereof and the Closing Date; and

(i) Warranties. All of Seller's rights under manufacturers' and vendors' warranties relating to items included in the Station Assets and all similar rights against third parties relating to items included in the Station Assets to the extent contractually assignable.

**2.02 Excluded Assets**. The following are expressly excluded from the Station Assets to be purchased and sold:

(a) cash on hand as of the Closing Date.

**2.03 No Assumption of Liabilities**. Buyer shall assume no liabilities or obligations of Seller, including, without limitation, accounts payable, debts, liabilities, and other obligations, whether pursuant to a contract or otherwise, except for those liabilities and obligations that are expressly to be assumed pursuant to Section 2.01. Seller shall cause all liabilities and obligations to be assumed by Buyer to be brought current at Closing by Seller.

**2.04 Purchase Price, Terms of Payment**. The purchase price (the "Purchase Price"), as the same may be adjusted pursuant to this Agreement, shall be a total of **Two Hundred Fifty Five Thousand Dollars (\$255,000)** to be paid in cash or by wire transfer of immediately available funds at Closing.

**2.05 Purchase Deposit**.

(a) Earnest Money Deposit. Buyer has made and Seller acknowledges receipt of a **Ten Thousand Dollars (\$10,000)** Earnest Money Deposit. The Earnest Money Deposit shall be credited towards the Purchase Price or shall otherwise be disbursed as provided in Section 2.05(c) below.

(b) Simultaneously with the execution and delivery of this Agreement, Buyer, Seller and Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, Virginia 22102-3807, as Escrow Agent (the "Escrow Agent") shall enter into an Escrow Agreement in the form of Schedule 2.05(a) hereto (the "Escrow Agreement") pursuant to which Buyer shall, on the execution of this Agreement, deposit the amount described below as a deposit on the amount of the Purchase Price. Such amounts held in escrow shall be applied as set forth herein and in the Escrow Agreement. In the event such Escrow Deposit is not timely made, this Agreement shall terminate without further obligation of either party.

(c) Pursuant to the terms of the Escrow Agreement, Buyer shall deliver **Twelve Thousand Seven Hundred and Fifty Dollars (\$12,750)** to Escrow Agent's trust account pursuant to the Escrow Agreement (the "Escrow Deposit"). In the event this Agreement is terminated solely because of Buyer's material breach of this Agreement and Seller shall not at such time be in material breach of this Agreement, the Escrow Deposit and interest thereon and Earnest Money Deposit shall be paid to Seller as liquidated damages as provided in Section 11.2. In the event this Agreement is terminated under any circumstances other than those set forth in the immediately preceding sentence, the Escrow Deposit and the interest accrued thereon and Earnest Money Deposit shall be paid to Buyer.

**2.06 Additional Consideration**. Provided the following conditions are met, Seller shall be entitled to additional consideration as provided below:

(a) If at any time, for a period of eight years from the date of Closing, Buyer or its successor obtains a construction permit authorizing KRCM to construct new facilities which provides a 0.25 mv/M signal over 50% of the Houston/Galveston metro area (the "Houston/Galveston Upgrade") and the Buyer sells the station, Seller shall be entitled to twenty percent (20%) of the net sales price. Buyer may, in its sole discretion, determine not to sell the Station. In such event Seller shall be entitled to twenty percent (20%) of the net fair market value of the Station. Net fair market value or net sales price shall be the fair market value or sale price of the Station less all reasonable costs incurred or to be incurred by Buyer related to the Houston/Galveston Upgrade. The fair market value of the Station shall be determined by a qualified media appraiser mutually agreeable to Buyer and Seller. In the event Buyer and Seller can not agree, each shall select an appraiser to establish the value of the Station by averaging the value of each appraisal. If the value established by each appraiser varies by more than 15%, each appraiser will select a third appraiser whose appraisal shall establish the Station value. In the event Buyer sells the Station at any time during this eight year period to a new purchaser, Buyer shall ensure that the new purchaser shall assume and be bound by the provisions of this Section 2.06.

(b) Buyer shall not be required to determine if it is technically feasible to file an application to modify the Station license to provide a Houston/Galveston Upgrade. (the "Houston/Galveston Upgrade Application"). In the event Seller is able, with reasonable certainty to demonstrate that a Houston/Galveston Upgrade is feasible, resulting in a modification of facilities and issuance of a construction permit, and Buyer determines not to file a Houston/Galveston Upgrade Application, then Seller shall be entitled to additional consideration equivalent to twenty percent (20%) of the net fair market value of the Station had the Houston/Galveston Upgrade Application been filed and granted.

(c) In the event the Houston/Galveston Upgrade is only possible if reasonable accommodation and an agreement is reached with Wharton County Radio, Inc., the licensee of 1390 MHZ, El Campo, Texas; Buyer or Seller may, but shall not be required to, reach an agreement with El Campo which would allow for the Houston/Galveston Upgrade. Any consideration to effect the agreement or accommodation with El Campo shall be paid eighty percent (80%) by Buyer and twenty percent (20%) by Seller; provided, however, Buyer shall have no obligation to pay any consideration hereunder unless Seller and Buyer agree in writing to the terms of any agreement with El Campo permitting the Houston/Galveston Upgrade.

(d) In the event an application for the Houston/Galveston Upgrade is filed, Seller agrees to incur all costs, to make a preliminary determination if a minor modification application is feasible to improve the coverage of KOLE(AM) in Port Arthur, Texas.

**2.07 Adjustment to Purchase Price.** If Closing occurs within sixty (60) days of public notice of FCC acceptance of the assignment application the purchase price shall be reduced by **Fifteen Thousand Dollars (\$15,000)**, and shall be reduced by an additional **Twenty Five Hundred Dollars (\$2,500)** every month thereafter for a maximum credit of **Seventeen Thousand Five Hundred Dollars (\$17,500)**.

**2.08 Closing.** The Closing shall take place at the offices of Buyer or at such other place agreed by Buyer and Seller prior to the Closing Date.

**2.09 Closing Date Adjustments.**

(a) Generally. Subject to the LMA, the income and expenses attributable to the operation of the Station up to 12:01 a.m. on the Closing Date (the "Adjustment Time") shall, except as otherwise expressly provided in this Agreement, be for the account of Seller and thereafter shall be for the account of Buyer. Income and expenses such as power and utility charges, lease rents, prepaid agreements, wages, commissions, payroll and property taxes, vacation pay and other fringe benefits of employees of Seller who enter the employment of Buyer, and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Adjustment Time. Revenues, expenses, taxes, costs and liabilities earned or incurred in connection with particular programs and announcements, shall be allocated to the time of performance of such programs and announcements without regard to the date of payment therefor. If any taxes are not known at the Closing Date, they shall be prorated as of the Adjustment Time on the Basis of taxes assessed for the preceding year. All other prorations

shall, to the extent feasible, be determined and set forth in a writing executed by the parties hereto and paid on the Closing Date, with a final settlement thereof to be made within 90 days after the Closing Date.

(b) Disputes. In the event of any disputes between the parties as to such adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in Section 2.09(a) and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties, and the fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer. Notwithstanding the foregoing, if the aggregate amount in dispute is \$5,000 or less, the disputed amount shall be shared equally by Buyer and Seller.

(c) Trade Agreements. At Closing there shall exist no obligation on Station to air announcements or programming under trade or other agreements executed by Seller pre-Closing except for trade agreements as provided in Schedule 2.07(c).

**2.10 Allocation of Purchase Price**. The Purchase Price shall be allocated among the Assets in a manner determined mutually by Buyer and Seller, and such allocation shall be completed prior to Closing unless otherwise agreed to by both parties in writing.

### **ARTICLE III** **GOVERNMENTAL CONSENTS**

**3.01 FCC Consent**. It is specifically understood and agreed by Buyer and Seller that the Closing, the assignment of the Station Licenses and the transfer of the Station Assets are expressly conditioned on and is subject to the prior consent and approval of the FCC without the imposition of any conditions materially adverse to Buyer (the “FCC Consent”).

**3.02 FCC Application**. If the same has not already been filed as of the time of the execution hereof, then within five (5) days from Buyer's request, Buyer and Seller shall file an application with the FCC for the FCC Consent (the “FCC Application”). Buyer and Seller shall prosecute the FCC Application with all reasonable diligence and otherwise use their commercially reasonable best efforts to obtain the FCC Consent as expeditiously as practicable (but neither Buyer nor Seller shall have any obligation to satisfy complaints or the FCC by taking any steps which would have a material adverse effect upon Buyer or Seller or upon any of their respective Affiliates). If the FCC Consent imposes any condition on Buyer or Seller or any of their respective Affiliates, such party shall use its commercially reasonable best efforts to comply with such condition; provided, however, that neither Buyer nor Seller shall be required hereunder to comply with any condition that would have a material adverse effect upon it or any of its Affiliates. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement as provided herein.

**ARTICLE IV**  
**SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof, shall survive the Closing and shall be unaffected by any investigation by Buyer:

**4.01 Organization and Standing.** Seller is an individual with full power and authority (i) to carry on its business and to own and lease the assets as and where such business is now being conducted and such assets are now owned and leased and (ii) to execute, perform and carry out its respective obligations under this Agreement according to its terms.

**4.02 Authorization and Binding of Obligation.** The sale, conveyance, transfer and assignment of the Station Assets to Buyer as herein provided has been duly authorized and approved by Seller as required by applicable law or otherwise, subject only to FCC approval. This Agreement is the valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

**4.03 Station Assets.** Seller has and on the Closing Date, will transfer to Buyer good and marketable title, free and clear of any mortgage, claim, lien, charge, security interest, or other encumbrances, the Station Assets.

**4.04 FCC and Other Authorizations.** Seller is the holder of the FCC Licenses and authorizations, which are the only FCC authorizations used by Seller in connection with or necessary for the operation of the Station and there is no action or proceeding, pending or threatened, before the FCC or otherwise, for the cancellation or modification of any of the FCC Licenses and authorizations, all of which are unimpaired by any act or omission of Seller or any of its employees or agents. Seller possesses all permits, certificates, licenses, approvals, and other authorizations from all governmental agencies necessary to carry on the business of the Station and to own and operate the Station Assets at the places and in the manner in which the business of the Station is now being, or is authorized to be, conducted.

The Station is not causing objectionable interference to the transmissions of any other broadcast station or communications facility nor has the Station received any complaints with respect thereto. No other broadcast station or communications facility is causing objectionable interference to transmissions of the Station or the public's reception of such transmissions. Seller does not have any reason to believe that the Station Licenses and other licenses, permits, or authorizations listed in Schedule 2.01(b) would not be renewed in their ordinary course to the best of Seller's knowledge. All material reports, forms, and statements required to be filed by Seller with the FCC with respect to the Station since the earlier of the (i) acquisition of the Station by Seller or (ii) grant of the last renewal of the Station License have been filed and are substantially complete and accurate. The operation of the Station and all of the Station Assets are in compliance in all respects with ANSI Radiation Standards.

**4.05 Contracts.** Schedule 4.05 lists all Contracts to which Seller is a party, including oral contracts and Trade Agreements, which are binding on Seller, as of the date of this Agreement and which related to the operation of the Station. Those Contracts, if any, to be assumed by Buyer are identified in Schedule 2.01(c). None of the Contracts to be assumed by Buyer require the consent of any third party unless specifically identified in Schedule 4.05(i). Neither the execution and delivery of this Agreement nor the performance hereof shall constitute a default under or breach of any contract, lease or other commitment or restriction of any kind to which Seller is bound.

**4.06 Status of Contracts, etc.** Seller has delivered to Buyer true and complete copies of all written Contracts, and true and complete memoranda of all oral Contracts, and any and all amendments and other modifications thereto. All of the Contracts are in full force and effect and are valid, binding and enforceable in accordance with their respective terms, except as limited by laws affecting creditors' rights or equitable principles generally. Seller has complied in all respects with all written and oral Contracts, and is not in default beyond any applicable grace periods under any thereof and no other contracting party is in default under any thereof.

**4.07 Absence of Conflicting Agreements or Required Consents.** Except as set forth in Article 5 with respect to governmental consents and in Schedule 4.05(i) with respect to consents required in connection with the assignment of certain Contracts, the execution, delivery and performance of this Agreement by Seller: (a) does not require the consent of any third party (including, without limitation, the consent of any governmental, regulatory, administrative or similar authority); (b) will not conflict with, result in breach of, or constitute a violation of or default under, any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Seller is a party or by which Seller, or any of the Station Assets are bound; (c) will not either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of terms, conditions or provision of, or constitute a default under, any Contract, agreement, instrument, license or permit to which Seller or any of the Station Assets is now subject; and (d) will not result in the creation of any lien, charge or encumbrance on any of the Station Assets.

**4.08 Judgements and Litigation.** No judgement has been entered and no litigation, proceeding or dispute is pending or threatened which materially adversely affects the title or interest of Seller in or to the Station and Station Assets, or its power or right to sell, convey, transfer or assign the same to Buyer as herein provided, or which could prevent or materially adversely affect the operation and use of the same by Buyer. Schedule 4.08 attached hereto describes all litigation, bankruptcy proceedings, and governmental investigations, pending or threatened, pertaining to the Station or the Station Assets.

**4.09 Employees; Labor Matters.** Seller is not a party to any collective bargaining agreement affecting the Station and no minority representation questions exist with respect to the persons employed by the Station and none is threatened. Seller has not experienced any work stoppage or labor dispute with respect to the Station.

**4.10 Conduct of Business in Ordinary Course: Adverse Change.**

(a) Seller has conducted the business of the Station only in the ordinary course consistent with past practices;

(b) There has not been any material adverse change in the business, assets, properties, prospects or condition (financial or otherwise) of Seller or the Station, or any damage, destruction, or loss affecting any of the Station Assets; and

(c) Seller has not created, assumed, or suffered any mortgage, pledge, lien or encumbrance on any of the Station Assets.

**4.11 Call Letters, Trademarks and Tradenames.** Seller owns or otherwise has the full and exclusive right to use all, and no claims have been asserted or threatened by any person concerning the use by Seller of any, call letters, trademarks, tradenames, slogans, emblems and logos to be transferred to Buyer hereunder.

**4.12 Intellectual Property.** Schedule 4.14 hereto is a true and complete list of all Intellectual Property applied for, registered or issued to, and owned by Seller or under which Seller is a licensee and which is used in the conduct of the Seller's business and operations of the Station, and except as set forth on Schedule 4.15:

(a) Seller's right, title and interest in the Intellectual Property as owner or licensee, as applicable, is free and clear of all liens, claims, encumbrances, rights, or equities whatsoever of any third party and, to the extent any of the Intellectual Property is licensed to Seller, such interest is valid and uncontested by the licensor thereof or any third party;

(b) All computer software located at any of Seller's premises or used in Seller's business or operation of the Station is properly licensed to Seller, and all of Seller's uses of such computer software are authorized under such licenses;

(c) All of Seller's right, title and interest in and to the Intellectual Property and computer software shall be assignable to Buyer at Closing, and upon such assignment, Buyer shall receive complete and exclusive right, title, and interest in and to all tangible and intangible property rights existing in the Intellectual Property; and

(d) There are no infringements or unlawful use of such Intellectual Property.

**4.13 Other Agreements.** No person, organization or party, other than the Buyer has any options or contracts which could enable it to purchase or otherwise acquire the Station or the Station's Assets, in whole or in part.

**4.14 No Untrue Statements or Omissions.** The representations and warranties set forth above contain no untrue statement(s) and do not fail to state any fact necessary to prevent the statements made, in light of the circumstances under which they were made, from being misleading.

**4.15 Environmental.** Except as set forth in Schedule 4.17, Seller has complied to the best of its knowledge with all federal, state and local environmental laws, rules and regulations as in effect on the date hereof applicable to the Station and its operations, including but not limited to the FCC's guidelines regarding RF radiation. The technical equipment included in the Station Assets does not contain any PCB's. No hazardous or toxic waste, substance, material or pollutant (as those or similar terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq. or any other applicable federal, state and local environmental law, statute, ordinance, order, judgment, rule or regulation relating to the environment or the protection of human health ("Environmental Laws")), including but not limited to, any asbestos or asbestos-related products, oils or petroleum-derived compounds, CFC's, PCB's, or underground storage tanks, have been released, emitted or discharged by Seller or to the best of Seller's knowledge are otherwise currently located in, on, under, or about the real property on which the Station Assets are situated including the transmitter site or contained in the tangible personal property included in the Station Assets. The Station Assets and Seller's use thereof are not in violation of any Environmental Laws or any occupational, safety and health or other applicable law now in effect. Seller has not conducted any environmental study and its representations made herein are limited to information based on the best of its knowledge without conducting any independent study.

**4.16 Real Property.** Schedule 2.01(g) contains descriptions of all of Seller's interests, including leasehold interests and easements, and rights in and agreements with respect to real property used or held for use in connection with Seller's operation of the Station (the "Real Property"). All of the Real Property is in satisfactory condition and repair consistent with its current use and available for use in the conduct of business and operations of the Station. The Real property and the use thereof by Seller complies with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local governmental authorities, including without limitation, those relating to zoning, and the rules and regulations of the FCC. The improvements on the Real Property are in good working condition and repair and exist or are operating in compliance with good engineering practices and are adequate for their intended use. Seller has good and valid rights of ingress and egress to and from all of the Real Property from and to the public street systems for all usual street, road and utility purposes.

Seller has not received any notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or other law, order, regulation or requirement affecting such Real Property or improvements thereon, or of the need for any material repair, remedy, construction, alteration or installation with respect to the Real Property or improvements thereon, or any change in the means or methods of conducting operations thereon.

Seller has not assigned title to the estates identified on Schedule 2.01(g) or otherwise taken, or failed to take, any action which will adversely affect Seller's title therein. The contracts with respect to such Real Property listed on Schedule 2.01(g) constitute valid and

binding obligations of Seller and, to Seller's knowledge, of all other parties thereto, and are in full force and effect as of the date hereof. Except as disclosed on Schedule 2.01(g), Seller is not in default under any of the contracts with respect to such Real Property and to Seller's knowledge, the other parties to such Contracts are not in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto. Schedule 2.01(g) lists all third party consents necessary to assign such Contracts. Except as disclosed on Schedule 2.01(g), Seller has all requisite corporate power and authority to assign its rights under the Contracts with respect to such Real Property listed and described on Schedule 2.01(g) to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and such assignment will not affect the validity, enforceability or continuity of any such Contracts.

**4.17 Insurance.** The business, properties (including the Station Assets) and employees of the Station are insured against loss, damage or injury in amounts customary in the broadcast industry. All such insurance policies are in full force and effect.

**4.18 Taxes.** Seller has duly, timely and in the required manner filed all federal, state, local and foreign income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid. No event has occurred which could impose on Buyer any liability for any taxes, penalties, or interest due or to become due from Seller from any taxing authority. No audit by any taxing authority affecting Seller or any of the Station Assets is pending or threatened.

**4.19 Employee Benefit Plans.** Except as set forth in Schedule 4.21, Seller in connection with the Station is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of ERISA, whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan. Except pursuant to a plan or agreement listed on Schedule 4.21, and except as required by applicable law, Seller in connection with the Station has no fixed or contingent liability or obligation to any person now or formerly employed at the Station, including without limitation, pension or thrift plans, individual or supplemental pension or accrued compensation arrangements, contributions to hospitalization or other health or life insurance programs, incentive plans, bonus arrangements and vacation, sick leave, disability and termination arrangements or policies, including workers' compensation policies. Seller has administered any plan listed on Schedule 4.21 in material compliance with any applicable provisions of ERISA. Buyer shall not assume or hereby become obligated to pay any debt, obligation or liability arising from Seller's employee benefit plans, or any other employment arrangement and coverage under such plans and arrangements shall remain the responsibility of Seller.

**4.20 Personal Property.** Schedule 2.01(a) contains a list of all material items of tangible personal property owned by Seller and used in the conduct of the business and operations of the Station. Schedule 2.01(a) also separately lists any material tangible personal property leased by Seller pursuant to leases included within the Contracts. Except as disclosed in

Schedule 2.01(a), Seller has, and following the Closing, Buyer will have, good and marketable title to all of the Station Assets (other than those subject to lease, in which Seller has, and following the Closing Buyer will have, a good and marketable leasehold interest) and none of the Station Assets is, or at the Closing will be, subject to any Liens or title defects, except for liens for taxes not yet due and payable. The properties listed in Schedule 2.01(a), along with those properties subject to lease and included among the Contracts, constitute all material tangible personal property necessary to operate the Station as the same is now being operated. All items of tangible personal property included in the Station Assets are in good and technically sound operating condition and repair, are free from all material defect and damages, are suitable for the purposes for which they are now being used, and have been maintained in a manner consistent with generally accepted standards of good engineering practice.

**4.21 Compliance with FCC Regulations.** The operation of the Station and all of the Station Assets are in material compliance in all respects with: (a) all applicable engineering standards and operating requirements required to be met under applicable FCC rules; and (b) all other applicable federal, state and local rules, regulations, requirements and policies, including, but not limited to, equal employment opportunity policies of the FCC, and to the best of Seller's knowledge, there are no existing claims to the contrary.

\* \* \* \* \*

Whenever in this Article 4 a warranty or representation is qualified by a word or phrase referring to Seller's knowledge, it shall mean to the best of such party's actual knowledge after having made due inquiry of the employees, representatives and agents of Seller who would be expected to have knowledge of the matter, and with respect to the condition of any Station Assets, records or other object, if such person inspected it.

## **ARTICLE V** **COVENANTS OF SELLER**

**5.01 Affirmative Covenants.** Subject to the LMA, from the date hereof until the Closing Date, Seller shall:

(a) Afford Buyer and its representatives the opportunity at all reasonable times, following reasonable notice, to inspect the operation of the Station, to meet with the Station management personnel, to be notified of any change in methods or policies by or pursuant to which the Station are operated and to list and itemize its equipment and personal property and determine the condition of the assets of Seller and the Station Assets; keep its books and records pertaining to the Station and all contracts, licenses and leases relating to the Station at the Station's offices; and, at all reasonable times, following reasonable notice, permit Buyers' representatives to inspect such records and documents.

(b) Comply with all of its material contractual undertakings, perform all of its material duties and obligations under all contracts to which it is bound and otherwise cooperate

to make available to Buyer, by assignment at Closing, the rights of Seller under such contracts as Buyer shall wish to assume, it being understood, however, that Buyer shall not be obligated to assume any contractual obligations of Seller other than Seller's obligations under the contracts which Buyer has agreed to assume;

(c) Maintain in full force and effect and in good standing the FCC Licenses and comply in all material respects with all requirements of the FCC and any other agencies having jurisdiction over Seller or the Station or Station Assets;

(d) Maintain insurance coverage in force with respect to the Station at least equivalent to that currently in effect, all such policies are attached as Schedule 5.01(d) hereto;

(e) Fully maintain and keep in the same condition at Closing as the day the contract is signed, good condition or repair in all material respects every part of all tangible property in use at the transmitter site and included in the Station Assets;

(f) Fully and actively cooperate with Buyer in proceedings instituted to obtain the approval of the FCC to this transaction; and

(g) Otherwise generally conduct its business in the ordinary course consistent with past practices.

(h) Use reasonable efforts to ensure that the conditions set forth in Article V hereof are satisfied.

**5.02 Notification.** Seller agrees to notify Buyer of any litigation, arbitration or administrative proceeding pending or, to the best of its knowledge, threatened, which challenges the transactions contemplated hereby. Seller shall promptly notify Buyer if any of the normal broadcast transmissions of the Station are interrupted, interfered with or in any way impaired, and shall provide Buyer with prompt written notice of the problem and the measures being taken to correct such problem. If the Station is not restored so that operation is resumed to full licensed power and antenna height within five (5) days of such event, or if more than five (5) such events occur within any thirty (30) day period, or the Station shall be off the air for more than seventy-two (72) consecutive hours, then Buyer shall have the right to terminate this Agreement.

**5.03 Negative Covenants.** From the date hereof until the Closing Date, Seller shall not without obtaining the prior written consent of Buyer:

(a) Sell, assign, lease or otherwise transfer or dispose of any property or equipment included in the Station Assets outside of the ordinary course of business and consistent with past practice, unless property or equipment of equivalent value and utility is substituted therefore;

(b) Acquire any additional equipment or property having an aggregate cost in excess of \$5,000 or acquire any additional program rights or enter into any contract(s) therefore having an aggregate cost in excess of \$500;

(c) Enter into any other contracts or agreements other than in the ordinary course of business and consistent with past practice, or increase the ordinary compensation payable or to become payable to any employee or agent, except in the ordinary course of business and consistent with past practice or make any amendment or changes to existing contracts or agreements other than in the ordinary course consistent with past practice;

(d) Seller shall not increase or agree to increase the compensation, bonuses or other benefits for employees of Station, except in accordance with existing employment contracts or in accordance with past practices or policies.

(e) Seller shall not (i) sell broadcast time on a prepaid basis (other than in the course of existing credit purchases); (ii) modify, change, renew or terminate any Contract; (iii) change the advertising rates in effect as of the date hereof except in accordance with ordinary course of business pricing policies; (iv) create, assume or permit to exist any Liens or rights affecting any of the Station Assets, except for those in existence on the date of this Agreement and disclosed; (v) change the call letters of the Station; or (vi) take any action which would cause any representation or warranty contained herein to be or become false or invalid or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

**5.04 Other Items.** Except as otherwise specifically contemplated by this Agreement, until the Closing Date, Seller shall not:

(a) waive or release any right relating to the business or operations of the Station, except for adjustments or settlements made in the ordinary course of business consistent with past practices;

(b) transfer or grant any material rights under any of the Station Licenses;

(c) enter into any commitment for capital expenditures for which Buyer would become liable after the Closing Date;

(d) introduce any material changes in the broadcast hours or in the format of the Station or any other material change in the Station's programming policies; and

(e) enter into any transaction or make or enter into any contract or commitment with respect to the Station or the Station Assets which by reason of its size or otherwise is not in the ordinary course of business consistent with past practices.

## **ARTICLE VI** **BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

Buyer covenants, represents and warrants with and to Seller as follows:

**6.01 Authorization.** The execution and delivery of this Agreement and the Documents by Buyer and the acceptance by Buyer of the sale, conveyance, transfer and assignment of the Station Assets to Buyer as herein provided, will be duly authorized and approved on behalf of Buyer as required by applicable law or otherwise. The provisions of this Agreement will upon consummation of the Closing be valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

**6.02 Buyer Qualifications.** Buyer knows of no reason it is not qualified to be an FCC licensee.

**6.03 Satisfaction of Conditions.** Buyer shall use its best efforts to insure that the conditions set forth in Article VII hereof are satisfied.

**6.04 Absence of Conflicting Agreements or Required Consents.** Except as set forth herein with respect to governmental consents, the execution, delivery and performance of this Agreement by Buyer: (a) does not conflict with the provisions of the Articles of Incorporation or Bylaws; (b) does not require the consent of any third party not affiliated with Buyer; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Buyer is bound; and (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement, instrument, license or permit to which Buyer is now subject.

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

**6.06 Commissions or Finder's Fees.** Neither Buyer nor any person or entity acting on behalf of Buyer has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

**ARTICLE VII**  
**CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

The obligation of Buyer to consummate the transactions contemplated hereby shall be subject to the following conditions precedent, which may be waived by Buyer in writing:

**7.01 Representations and Warranties.** All of Seller's representations and warranties set forth herein, or in any Exhibit, Schedule or document, shall, at the time of Closing, be substantially true and accurate as if made on and as of the Closing Date unless another date is set forth in a particular representation or warranty.

**7.02 Performance.** Seller shall have performed and complied in all material respects with all agreements, obligations, covenants and conditions required by this Agreement to be performed or complied with it on or prior to the Closing Date.

**7.03 Closing Documents.** Seller shall have delivered or cause to be delivered to Buyer, on the Closing Date, all deeds, bills of sale, endorsements, assignments and other instruments of conveyance and transfer reasonably satisfactory in form and substance to Buyer, effecting the sale, transfer, assignment and conveyance of the Station Assets to Buyer, including, without limitation, each of the documents required to be delivered by them pursuant to Article IX.

**7.04 FCC Licenses.**

(a) Seller shall hold regular licenses and authorizations from the FCC authorizing it to operate the Station on the same frequency as under, and at no less power and with no shorter terms than those provided in, the FCC License and there will not otherwise have been any material adverse change, actual or threatened, in the terms of such license or the operations authorized thereunder;

(b) Seller shall be operating the Station substantially in accordance with the terms of the licenses then in effect; and

(c) The FCC shall not have instituted any proceeding or otherwise taken action which could result in any such adverse change.

**7.05 Consents and Approvals.** Each person, firm or corporation, the consent or approval of which is required to permit the sale, conveyance, transfer and assignment of the Station Assets or any material part thereof shall have duly consented to or approved such sale, conveyance, transfer and assignment.

**7.06 Other Certificates.** Seller shall have furnished Buyer with such certificates of governmental authorities or of others to evidence compliance with the conditions set forth in this Article VI as may be reasonably requested by Buyer.

**7.07 Assignment of FCC Licenses.** The FCC shall have authorized the assignment of the FCC Licenses to Buyer, such authorization shall not be subject to any conditions that are materially adverse to Buyer and such authorization shall have become a Final Order, unless Buyer shall elect to close earlier following issuance of FCC authorization.

**7.08 No Adverse Change.** No material adverse change in the condition or status of the Station or Station Assets shall have occurred or be threatened.

**7.09 Third Party Consents.** Seller shall have obtained and shall have delivered to Buyer all third-party consents that may be required for assignment of Contracts to be assumed by Buyer listed on Schedule 2.01(c) without any condition materially adverse to Buyer.

## **ARTICLE VIII** **CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS**

The obligations of Seller to consummate the transactions contemplated hereby shall be subject to the following conditions precedent:

**8.01 Representations and Warranties.** All of Buyer's representations and warranties set forth herein shall, at the time of Closing, be true and accurate in all material respects as if made on and as of the Closing Date.

**8.02 Performance.** Buyer shall have performed and complied in all material respects with all agreements, obligations, covenants and conditions required by this Agreement to be performed or complied with on or prior to the Closing Date.

**8.03 Assignment of FCC Licenses.** The FCC shall have authorized the assignment of the FCC License to Buyer, such authorization shall not be subject to any conditions that are materially adverse to Seller and such authorization shall have become a Final Order, unless Buyer shall elect to close earlier following issuance of FCC authorization.

**8.04 Certificates.** Buyer shall have furnished Seller with such certificates of the respective officers of Buyer or certificates of governmental authorities or of others to evidence compliance with the conditions set forth in this Article VII as may be reasonably requested by Seller.

## **ARTICLE IX** **DOCUMENTS TO BE DELIVERED AT CLOSING**

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

(a) A certificate, dated as of the Closing Date, from Seller, executed by Seller after due inquiry, to the effect that:

(i) The representations and warranties of Seller contained in the Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and

(ii) Seller has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(b) Instruments of conveyance and transfer, in form and substance reasonably satisfactory to Buyer, effecting the sale, transfer, assignment and conveyance of the Station Assets to Buyer, including: (i) assignments of the Station Licenses; (ii) bills of sale for all Personal Property; (iii) assignments of the Contracts to be assigned hereunder, including any necessary third party consents; and (iv) assignments of all intangible personal property including all books, records, logs and similar assets.

(c) At the time and place of Closing, originals and all copies of all program, operations, transmission or maintenance logs and all other records required to be maintained by the FCC with respect to the Station, including the public file of the Station, shall be left at the Station and thereby delivered to Buyer;

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

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

(a) Certified resolutions of the Board of Directors of Buyer approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby;

(b) Governmental certificates showing that Buyer is a corporation in good standing;

(c) The Purchase Price in accordance with Section 2.04 hereof;

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

## **ARTICLE X** **TERMINATION RIGHTS**

### **10.01 Termination.**

(a) This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other upon the occurrence of any of the following:

(i) if, on or prior to the Closing Date, the other party breaches in a material respect any of its representations or warranties hereunder or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained herein and such breach or default shall remain uncured for a period of twenty (20) days after a notice of such breach or default has been given to the other party;

(ii) if the FCC denies the FCC Application or designates the FCC Application for a trial-type hearing;

(iii) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing; or

(iv) if the Closing has not occurred within twelve (12) months after acceptance by the FCC of the FCC Form 314 application for assignment of the Station licenses to Buyer.

## **ARTICLE XI** **REMEDIES**

**11.01 Default by Seller.** Seller recognizes that, in the event Seller defaults in the performance of its obligations under this Agreement, monetary damages alone will not be adequate. Buyer shall therefore be entitled in such event, in addition to bringing suit at law or equity for money or other damages, to obtain specific performance of the terms of this Agreement. In any action to enforce the provisions of this Agreement, Seller shall waive the defense that there is an adequate remedy at law or equity and agree that Buyer shall have the right to obtain specific performance of the terms of this Agreement without being required to provide actual damages, post bond or furnish other security. In addition, Buyer shall be entitled to obtain from Seller court costs and reasonable attorneys fees incurred by it in enforcing its rights hereunder or in seeking monetary damages. As a condition to seeking specific performance, Buyer shall not be required to have tendered the consideration specified in this Agreement, but shall be ready, willing and able to do so.

**11.02 Default by Buyer.** If the transactions contemplated by this Agreement are not consummated as a result of Buyer's wrongful failure to close hereunder, and Seller is not also in breach under this Agreement, then Seller shall be entitled to payment of **Twenty Two Thousand Seven Hundred Fifty Dollars (\$22,750)** (the Earnest Money Deposit and Escrow Deposits) as liquidated damages in full settlement of any damages of any nature or kind that Seller may suffer or allege to suffer as the result thereof. It is understood and agreed that the amount of liquidated damages represents Buyer's and Seller's reasonable estimate of actual damages and does not constitute a penalty. Recovery of liquidated damages under this Section shall be the sole and

exclusive remedy of Seller against Buyer for failing to consummate this agreement and shall be applicable regardless of the actual amount of damages sustained. In addition, Seller shall be entitled to obtain from Buyer court costs and reasonable attorneys fees incurred by it in enforcing its rights hereunder.

## **ARTICLE XII** **MISCELLANEOUS**

**12.01 Risk of Loss.** Seller shall bear the risk of loss as to all tangible property included in the Station Assets until the Closing Date. In the event that material damage or loss to any such property exists on the Closing Date, Buyer, at its option, may (i) proceed to close, accept responsibility for repair and accept an assignment of all insurance proceeds applicable to such loss, or (ii) defer the Closing to a date set forth in a writing delivered to Seller which date shall be no more than 60 days after the previously scheduled Closing Date by which such loss shall be restored or repaired to Buyer's reasonable satisfaction.

**12.02 Applications for Commission Consent.** Within five (5) days of this Agreement's execution, Seller and Buyer will join in application to be filed with the FCC seeking assignment and transfer of all Licenses (and any extensions or renewals thereof) from Seller to Buyer. Seller and Buyer will diligently take, or cooperate in the taking of, all steps that are necessary, proper or desirable to expedite the preparation of such applications and their prosecution to a favorable conclusion. Seller shall after the Closing Date file with the FCC (or furnish to Buyer for filing with the FCC) all information required by the FCC relating to the operation of the Station prior to the Closing Date.

**12.03 Indemnification by Buyer.** Subject to the provisions of this Agreement, Buyer agrees to indemnify and defend and hold Seller harmless from and against all liability, loss, damage or injury, together with all reasonable costs and expenses relating thereto, including reasonable legal and accounting fees and expenses, arising out of (i) any breach of any representation, warranty or covenant of Buyer set forth herein (whether due to commission, omission or otherwise), or (ii) any contracts Buyer had agreed to assume herein or pursuant to the Assumption Agreement (but only beginning with the date Buyer actually assumes such contracts).

**12.04 Indemnification of Third-Party Claims.** The following provisions shall apply to any Claim subject to indemnification which is (i) a suit, action or arbitration proceeding filed or instituted by any third party, or (ii) any other form of proceeding or assessment instituted by any Government Entity:

(a) *Notice and Defense.* The party or parties to be indemnified (whether one or more, the "*Indemnified Party*") will give the party from whom indemnification is sought (the "*Indemnifying Party*") prompt written notice of any such Claim, and the Indemnifying Party will undertake the defense thereof by representatives chosen by it. The assumption of defense shall constitute an admission by the Indemnifying Party of its indemnification obligation hereunder with respect to such Claim, and its undertaking to pay directly all costs, expenses, damages,

judgments, awards, penalties and assessments incurred in connection therewith. Failure to give such notice shall not affect the Indemnifying Party's duty or obligations under this Article 11, except to the extent the Indemnifying Party is prejudiced thereby. So long as the Indemnifying Party is defending any such Claim actively and in good faith, the Indemnified Party shall not settle such Claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials required by them and in the possession or under the control of the Indemnified Party, for the use of the Indemnifying Party and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense.

(b) *Failure to Defend.* If the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim actively and in good faith, the Indemnified Party will (upon further notice) have the right to undertake the defense, compromise or settlement of such Claim or consent to the entry of a judgment with respect to such Claim, on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall thereafter have no right to challenge the Indemnified Party's defense, compromise, settlement or consent to judgment.

(c) *Indemnified Party's Rights.* Anything in this Article 11 to the contrary notwithstanding, (i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, compromise or settle such Claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Liability in respect of such Claim.

**12.05 Payment.** The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Article 12, which payment may be accomplished in whole or in part, at the option of the Indemnified Party, by the Indemnified Party setting off any amount owed to the Indemnifying Party by the Indemnified Party. To the extent set-off is made by an Indemnified Party in satisfaction or partial satisfaction of an indemnity obligation under this Article 11 that is disputed by the Indemnifying Party, upon a subsequent determination by final judgment not subject to appeal that all or a portion of such indemnity obligation was not owed to the Indemnified Party, the Indemnified Party shall pay the Indemnifying Party the amount which was set off and not owed together with interest from the date of set-off until the date of such payment at an annual rate equal to the prime lending rate then being published by money center banks. Upon judgment, determination, settlement or compromise of any third party Claim, the Indemnifying Party shall pay promptly on behalf of the Indemnified Party, and/or to the Indemnified Party in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other Claims of the Indemnified Party with respect thereto, unless in the case of a judgment an appeal is made from the judgment. If the Indemnifying Party desires to appeal from an adverse judgment, then the Indemnifying Party shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. Upon the payment in full by the Indemnifying Party

of such amounts, the Indemnifying Party shall succeed to the rights of such Indemnified Party, to the extent not waived in settlement, against the third party who made such third party Claim.

**12.06 Indemnification by Seller.** Subject to the provisions of this Agreement, Seller agrees to indemnify and defend and hold Buyer harmless from and against any and all liability, loss, damage or injury, together with all reasonable costs and expenses relating thereto, including reasonable legal and accounting fees and expenses (collectively, "Indemnifiable Costs"), arising out of (i) any breach by Seller of any representation, warranty or covenant of Seller set forth herein (whether due to commission, omission or otherwise), (ii) any contracts which Buyer does not assume pursuant to the terms of this Agreement or pursuant to the Assumption Agreement, or (iii) any other obligation or liability of Seller, whether with respect to the Station or otherwise, not expressly assumed by Buyer hereunder or pursuant to the Assumption Agreement.

**12.07 Survival.** The obligations to indemnify hereunder and the agreements, covenants, representations and warranties made herein shall survive the Closing and any dissolution, liquidation, merger or consolidation of Buyer, on the one hand, or Seller, on the other hand, and shall bind the successors and assigns of Buyer and Seller. Notwithstanding the foregoing, the obligations to indemnify hereunder and the agreements, covenants, representations and warranties made herein, shall expire on the first anniversary of the date of this Agreement, provided however, that any obligation set forth herein shall survive in accordance with its express terms.

**12.08 Defense.** If any action, suit or proceeding shall be commenced against, or any claim or demand be asserted against, a party to this Agreement in respect of which that party proposed to demand indemnification hereunder, notification shall be given to that effect to the indemnifying party, who shall assume the entire control of, subject to the right of the notifying party to participate (at its expense and with counsel of its choice) in, the defense thereof.

**12.09 Expenses.** Whether or not the transactions provided for herein are consummated, each party's expenses incurred in connection with the preparation and performance of this Agreement and the transactions contemplated hereby shall be paid for by that party.

**12.10 Amendment.** This Agreement may be amended only by a writing signed by all parties hereto.

**12.11 Notices.** Any notice given hereunder shall be in writing and shall be deemed duly given: if sent by overnight delivery service, within one (1) day after such mailing, if hand delivered, when so delivered, or if transmitted by telegram or telecopy, when received at the addresses below their respective names below:

Seller:	Mr. Fred R. Morton P.O. Box 704 Sugar Land, TX 77487-0704 FAX: (281) 403-6314
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With a copy to: James A. Koerner, Esq.  
Koerner & Olender, P.C.  
5809 Nicholson Lane, Suite 124  
North Bethesda, MD 20852-5706  
FAX: (301) 468-3343

Buyer: Mr. Ralph H. McBride  
Voice in the Wilderness Broadcasting, Inc.  
Post Office Box 22257  
Beaumont, TX 77720-2257  
FAX: (409) 832-5686

With a copy to: A. Wray Fitch III  
Gammon & Grange, P.C.  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102-3807  
FAX: (703) 761-5023

**12.12 Assignment.** This Agreement may not be assigned without prior written consent of the non-assigning party, provided however Buyer may assign its interests to an entity substantially owned or controlled by Buyer.

**12.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall be but a single instrument.

**12.14 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its choice of law provisions), except as they may be preempted by federal statute or the rules and regulations of the FCC.

**12.15 Severability.** Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and where ever there is any conflict between any provision of this Agreement and any applicable statute, law, ordinance, order or regulation, such statute, law, ordinance, order or regulation shall prevail; provided, however, that in such an event the provision of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provision of this Agreement shall be affected hereby and all such other provisions shall continue in full force and effect.

**12.16 Headings.** The descriptive headings of the several sections and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**12.17 Documents.** Each party hereto agrees to execute and, if necessary, to file with the appropriate governmental entities, such documents as may be reasonably necessary in order to carry out the purposes of this Agreement.

**12.18 No Waiver.** The failure of any party to insist upon strict performance of any obligation hereunder shall not constitute a waiver of such party's right to demand strict compliance therewith in the future.

**12.19 Termination.** The transactions contemplated herein may be terminated at any time prior to the Closing by mutual consent in writing of the parties hereto.

**12.20 No Third Party Beneficiary.** Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**12.21 Assignment Fees.** Buyer and Seller shall equally share any and all FCC fees attributable to the assignment of the Station as contemplated hereunder.

**12.22 No Right of Reverter.** Upon closing of the instant transaction, Seller will have no rights of reversion or license reassignment, and no reservation of time on the Station for any period whatsoever.

**12.23 Entire Agreement.** This Agreement, and the exhibits hereto embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

**12.24 Environmental Audit.** Buyer may cause an environmental audit of the Real Property and Personal Property to be conducted by a company selected by Buyer. All costs of such audit shall be paid by Buyer. If the environmental audit discloses the presence of any Hazardous Substance, Seller shall have the option to properly remove such Hazardous Substance and otherwise bring the Real Property and Personal Property into compliance with Environmental Laws at Seller's expense, including without limitation by obtaining all licenses and permits as required under Environmental Laws to evidence the proper disposal of Hazardous Substances; provided, however, that if Seller does not exercise such option, Buyer may, in its sole discretion, terminate its obligations hereunder upon written notice to Seller. Failure to conduct any audit or investigation shall not adversely affect Buyer's rights to rely upon the representations, warranties and covenants of Seller.

[Intentionally Blank -- Signatures on Next Page]

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

**FRED R. MORTON**

Attest: \_\_\_\_\_

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

**EVELYN K. MORTON**

Attest: \_\_\_\_\_

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

**INC.**

**VOICE IN THE WILDERNESS BROADCASTING,**

Attest: \_\_\_\_\_

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

Ralph H. McBride, President