

**EXECUTION COPY**

# **ASSET PURCHASE AGREEMENT**

*by and among*

**CITADEL BROADCASTING COMPANY,**

**BONIN BROADCASTING CORPORATION,**

*and*

**PITTMAN BROADCASTING SERVICES, LLC**

*for the Sale and Purchase of Stations*

**KVOL(AM), Lafayette, LA; KRXE(FM), Opelousas, LA; KFXZ(FM), Maurice, LA;  
KDYS(AM), Lafayette, LA; and WOPR(FM), Lacombe, LA**

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** ("Agreement") is made and entered into as of this 21st day of November, 2003, by and among **CITADEL BROADCASTING COMPANY**, a corporation organized under the laws of the State of Nevada ("Seller"), **PITTMAN BROADCASTING SERVICES, LLC**, a limited liability company organized under the laws of the State of Louisiana ("Buyer"), and **BONIN BROADCASTING CORPORATION**, a Louisiana corporation ("Bonin"). Bonin and Seller are referred to collectively herein as "Sellers".

### **WITNESSETH:**

**WHEREAS**, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission") for the operation of Stations WOPR(FM), Facility No. 49247, Lacombe, Louisiana; KRXE(FM), Facility No. 9416, Opelousas, Louisiana; KFXZ(FM), Facility No. 11605, Maurice, Louisiana; KDYS(AM), Facility No. 41054, Lafayette, Louisiana; and KVOL(AM), Facility No. 9415, Lafayette, Louisiana (the "Stations"); and

**WHEREAS**, Seller owns certain assets used in the operation of the Stations; and

**WHEREAS**, on November 6, 2003, the Commission granted an application (FCC File No. BALH-20030530AQO) to assign the licenses for Station KRXE(FM) from Seller to Bonin, pursuant to an agreement between Seller and Bonin dated as of May 29, 2003 (the "KRXE Agreement"); and

**WHEREAS**, Sellers anticipate consummating the KRXE Agreement after the date hereof, at which time Bonin will be the licensee of the KRXE(FM); and

**WHEREAS**, Sellers shall, upon consummation of the KRXE Agreement, enter into a Joint Sales Agreement, pursuant to which Bonin, as licensee of KRXE, shall operate KRXE and provide programming for KRXE as it determines suitable, in Bonin's sole discretion, and shall make available to Seller, for sale by Seller, all of the commercial time offered on KRXE; and

**WHEREAS**, upon consummation of the KRXE Agreement, Bonin agrees to file an application to assign the FCC licenses associated with KRXE to Buyer in accordance with Section 4.2 hereof, and on the Closing Date hereof, to assign its rights to the Purchased Assets, as defined below, associated with KRXE(FM) to Buyer.

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

**SECTION 1**  
**ASSETS TO BE SOLD**

1.1 On the Closing Date, Seller (and with respect to Station KRXE(FM), Bonin) shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the following assets (hereinafter collectively the "Purchased Assets") free and clear of any security interests, claims, encumbrances, liens or liabilities, except for Permitted Liens. "Permitted Liens" shall consist only of (i) liens for taxes, assessments, water and sewer charges, license fees, and all other fees, special assessments and charges assessed or imposed by a public body upon the Purchased Assets or any part thereof, provided such fees assessments or taxes are not yet due and payable or are being contested in good faith in an appropriate proceeding; (ii) zoning laws and ordinances; (iii) rights reserved to any governmental authority to regulate the affected property; (iv) other inchoate liens imposed by law (such as materialman's, mechanics', carriers', workers' and repairman's liens) arising in the ordinary course of business (provided that such liens do not interfere in any material respect with the use of the Purchased Assets and that Seller remains liable for paying such liens); (v) in respect of the Real Property, any easements, restrictions, or other matters that do not materially adversely affect the use of the Real Property as intended under this Agreement; and (vi) those additional liens described on **Schedule 1.1**:

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 Stations 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 Commission Authorizations, used or useful in connection with the operation of the Stations (hereinafter "Other Authorizations") which are listed in **Schedule 1.1.1**.

1.1.2 **Tangible Personal Property.** All of Seller's (and with respect to Station KRXE(FM), Bonin's) rights in and to the fixed and tangible property described and 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 **Agreements.** All Seller's (and with respect to Station KRXE(FM), Bonin's) rights to and in the contracts and agreements listed in **Schedule 1.1.3**, together with all contracts and agreements and leases, entered into or acquired by the Seller between the date hereof and the Closing Date which have been approved in writing by Buyer, and all right, title and interest of Seller (and in respect to Station KRXE(FM), Bonin) in and to all orders and agreements for the sale of advertising time and for the production of any programming on the Stations for cash, and all trade, barter and similar agreements for the sale of advertising time and for the production of any programming on the Stations other than for cash, and all such orders and agreements for advertising time entered into between the date hereof and the Closing Date, each in the ordinary course of business, and to the extent the foregoing have not been performed as of the Closing Date, in each case to which Seller or the Stations is a party and to be assumed

by Buyer pursuant to this Agreement. The agreements to be assumed by Buyer pursuant to this Section 1.1.3 shall be known collectively as the "Assumed Contracts."

1.1.4 **Intangibles.** All right, title and interest of Seller (and with respect to Station KRXE(FM), of Bonin) in and to logos, jingles, marketing plans, copyrights, trademarks, trade names, websites, domain names, and other intangible property set forth on **Schedule 1.1.4** attached hereto and made a part hereof (hereinafter collectively the "Intangibles"), and in any call sign identified with the Stations.

1.1.5 **Business Records.** Copies of financial records, engineering, advertising reports, programming studies, consulting reports, computer data, computing software to the extent assignable, marketing data, and business and personnel records relating solely to the business or operation of the Stations or to the Purchased Assets (hereinafter collectively "Business Records").

1.1.6 **Real Property.** Seller's (and in respect to Station KRXE(FM), Bonin's) interests in the leased real property set forth on **Schedule 1.1.6**, and all fixtures and appurtenances thereto (the "Real Property").

1.2 **Excluded Assets.** The Assets shall not include the following, along with all rights, title and interest therein, which shall collectively 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 (and in respect to Station KRXE(FM), Bonin's) accounts receivable for services performed by it in connection with the operation of the Stations prior to Closing;

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, unless Seller receives a credit therefor pursuant to Section 3.2 hereof;

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

1.2.5 All contracts not assumed by Buyer;

1.2.6 Seller's minute books, charter documents, partnership records, and such other books and records as pertain to the organization, existence or share capitalization of Seller, as well as any other records or materials relating to Seller generally and not involving the Purchased Assets or operation of the Stations;

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 tangible personal assets not listed on **Schedule 1.1.2.**

1.3 **Assignments of Contracts.** Buyer and Seller acknowledge that certain of the Assumed Contracts, and the rights and benefits thereunder, may not, by their terms, be assignable except with the prior consent of a third party. Such Assumed Contracts are identified by an asterisk on **Schedule 1.1.3.** Seller and Buyer agree to proceed expeditiously and with due diligence and in good faith and to use their commercially reasonable efforts and to cooperate with each other in seeking and obtaining any necessary consents of the transactions contemplated hereunder. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any such Assumed Contract so identified, and Buyer shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights of Buyer or Seller thereunder. Notwithstanding the foregoing, in such event, upon request of Buyer, Seller will cooperate with Buyer in a commercially reasonable manner to provide for Buyer all benefits to which Seller is entitled under such Assumed Contracts so long as Buyer undertakes to perform or cause to be performed the obligations of Seller under such Assumed Contract, and any transfer or assignment to Buyer by Seller of any such Assumed Contract or any right or benefit arising thereunder or resulting therefrom which shall require the consent or approval of any third party shall be made subject to such consent or approval being obtained. Seller will use its best efforts prior to, and if requested by Buyer, after the Closing Date, to obtain all necessary consents to the transfer and assignment of such Assumed Contracts. Buyer will cooperate with Seller, to the extent reasonably requested by Seller, to obtain any such consents provided that neither Buyer nor Seller shall have an obligation to make expenditures or grant any financial accommodation to obtain any such consent. Consent to the assignment of all contracts marked on **Schedule 1.1.3** with a double asterisk ("Material Contracts") must be obtained as a condition precedent to Buyer's obligation to close the transactions contemplated by this Agreement, unless such consent is waived by Buyer.

1.4 **Satisfaction of Liens.** Fifteen days prior to Closing, Seller shall provide Buyer with a lien search identifying all liens of any sort that remain outstanding on any of the Purchased Assets. At the Closing, Seller shall cause all liens on or relating to any of the Purchased Assets (other than Permitted Liens), to be released, extinguished and discharged in full, and shall deliver to Buyer instruments releasing, extinguishing and discharging all such liens, and all rights and claims of any holder(s) of any of such liens with respect to any of the Purchased Assets, all in such form and substance as Buyer shall reasonably require.

## **SECTION 2**

### **PURCHASE PRICE**

2.1 **Purchase Price.** In consideration of Sellers' performance of this Agreement, the total purchase price (the "Purchase Price") to be paid by Buyer shall be Four Million Two Hundred and Fifty Thousand Dollars (\$4,250,000.00), subject to adjustment pursuant to Section 3 hereto. The Purchase Price shall be paid as follows:

2.1.1 **Payment of Purchase Price.** Concurrent with the execution of this Agreement, Buyer shall deliver Two Hundred Twenty-Five Thousand Five Hundred Dollars (\$225,500.00) (the "Escrow Deposit"), which amount shall be held by Dan J. Alpert as Escrow Agent for the transaction, and which shall be released to Seller and credited to the Purchase Price at Closing. Also concurrent with the execution of this Agreement, Seller, Buyer and Escrow Agent shall enter into an Escrow Agreement governing the Escrow Deposit. The form of Escrow Agreement is attached hereto as **Exhibit A**. The Purchase Price shall be paid as follows:

(a) at Closing, Seller and Buyer shall jointly instruct the Escrow Agent to release the Escrow Deposit to Seller;

(b) at Closing, Buyer shall pay the remainder of the Purchase Price to Sellers, via same day wired funds pursuant to wire transfer instructions to be provided by Sellers within two business days prior to Closing.

2.2 **Allocation of Purchase Price.** The Parties shall use all reasonable efforts to agree to an allocation of the Purchase Price pursuant to the requirements of Section 1060 of the Internal Revenue Code of 1986 at least 30 days prior to the Closing Date. The parties also agree to use such Purchase Price allocation in completing and filing Internal Revenue Code Form 8594 for federal income tax purposes.

## **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.**

3.2.1 The following items shall be prorated as of the Adjustment Time, assuming a 365-day year or a 28-day, 30-day or 31-day month, as appropriate, and monies shall be paid at Closing as follows:

(a) 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 **Schedule 1.1.3**.

(b) Real and personal property taxes, assessments (including sewerage assessments and fees), and annual Regulatory Fees levied or assessed against or otherwise paid or payable with respect to any of the Purchased Assets.

(c) Transferable license, permit, and registration fees, and like items.

(d) 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 in connection with the Stations.

(e) License agreements with ASCAP, BMI and SESAC.

(f) Unpaid or prepaid obligations of Seller with respect to any Assumed Contract. Seller shall be compensated by Buyer for any security deposits, if any, previously paid by Seller for any such obligations in any amounts to which it is entitled.

(g) There shall be no proration for Sellers' trade and barter accounts, trade contracts and trade commitments receivable and payable, except as specified in Section 3.2.2 hereto.

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

3.2.2 A summary of Sellers' trade and barter accounts, trade contracts and trade commitments receivable and payable (the "Trade Accounts") as of the date hereof is included in Schedule 3.2.2, which lists the Sellers' gross dollar obligations to provide airtime by advertiser and the gross airtime assets available to the Seller. Buyer will assume such Trade Accounts; *provided, however*, that if the aggregate airtime liability of the Trade Accounts to be assumed by the Buyer exceeds the value of goods and services to be received by the Stations as of the Closing by more than \$5,000, all as determined in accordance with generally accepted accounting principles, then such excess above \$5,000 will be treated as prepaid time sales and adjusted for as a proration in Buyer's favor.

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

3.3 Buyer shall not be obligated to assume any obligations with respect to Seller's employees. All obligations for unused vacation time, severance fees or other costs and expenses relating to Seller's employees shall be remain solely the obligation of Seller.

3.4 **Adjustments After Closing Date.** Except as provided in Section 3.2.2, if the amount of any Adjustment Item(s) 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 therefor shall be made to the party entitled thereto within five (5) 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, amounts not in dispute shall nonetheless be paid at the time provided in this Section. If the amount in dispute exceeds \$5,000, the dispute 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 any such accountant shall be paid one-half by Seller and one-half by Buyer. If the amount in dispute is equal to or less than \$5,000, such amount shall be divided equally between Buyer and Seller.

#### **SECTION 4**

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

4.1 **Commission Consent.** Buyer and Sellers acknowledge that consummation of the purchase and sale provided for herein and the performance of the obligations of Sellers and Buyer under this Agreement is subject to the Commission's consent to the assignment of the Commission Authorizations to Buyer or Buyer's designee, as provided in Section 19.3 hereto.

4.2 **Applications For Commission Consent.**

(a) Sellers and Buyer agree to proceed expeditiously and with due diligence and in good faith and to use their commercially reasonable efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder. Within five (5) business days after the date hereof (and in the case of Bonin, within five (5) business days of consummation of the KRXE Agreement), Buyer and Sellers shall each have prepared their portions of applications requesting the assignment of the Commission Authorizations to Buyer or Buyer's designee ("Assignment Applications"), including all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Applications. Each party further agrees to expeditiously prepare amendments to the Assignment Applications, respond to oral or written inquiries, and answer pleadings whenever such are required.

(b) Prior to Closing, Seller shall, at its expense, complete the modifications as specified on **Schedule 4.2(b)** hereto.

(c) Following Closing, Sellers will cooperate in filing any applications necessary for assignment of any Antenna Structure Registrations ("ASR Assignment") for antenna structures included in the Purchased Assets to Buyer.



(d) Each party shall bear its own expenses incurred for the preparation, filing and prosecution of the Assignment Applications and the ASR Assignment. Seller and Buyer shall split equally all filing fees imposed by the Commission.

(e) 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 Sellers shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Applications (but nothing in this Section shall limit any party's right to terminate this Agreement in accordance with the terms herewith).

## **SECTION 5** **ASSUMPTIONS**

5.1 **Liabilities.** The Purchased Assets shall be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics' and materialmen's liens), pledges, conditional sales agreements, charges, mortgages, security interests, encumbrances and restrictions of any type or amount created or suffered by Sellers prior to the Closing Date, whether existing now or in the future, except for Permitted Liens.

5.2 **Buyer's Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of Sellers accruing on or after the Adjustment Time under the Assumed Contracts. Except as specifically assumed by Buyer in this Agreement, Buyer is not assuming any other liability, obligation, undertaking, expense or agreement of Sellers of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement, regardless of whether such obligation was incurred by Seller or Bonin (the "Excluded Obligations").

5.3 **Seller's Liability.** Seller shall remain liable for, and covenants to pay, satisfy, or discharge when due, all Excluded Obligations and all liabilities, payments, obligations, and duties under the Assumed Contracts accruing prior to or by reason of events occurring prior to the Adjustment Time, except to the extent that Buyer receives a credit therefor pursuant to Section 3.2 hereof (regardless of whether such obligation was incurred by Seller, Bonin, or any other party). With respect to any contingent liabilities and any accounts payable of Seller which are not known or due as of Closing, Seller and Buyer agree to enter into arrangements at the Closing reasonably satisfactory to Buyer concerning the payment by Seller of such accounts payable and the satisfaction of any contingent liabilities.

## **SECTION 6** **REPRESENTATIONS WARRANTIES AND COVENANTS OF SELLER**

6.1 **Seller's Best Knowledge.** "To the best of Seller's knowledge" shall mean the actual knowledge of Seller after (i) due inquiry of managers, department heads or other similar employee or agent of Seller having responsibility for or holding a position that reasonably could

be expected to involve substantial knowledge about the subject matter to which such Seller's best knowledge relates; and (ii) due examination of any documents, correspondence or other items contained in the files of Seller or the Stations reasonably expected to pertain to such subject matter.

## **6.2 Standing.**

6.2.1 Seller is a corporation validly existing and in good standing under the laws of the State of Nevada. Sellers have the full power to own the assets and to carry on the business of the Stations as they now are being conducted and is qualified and in good standing in the State of Louisiana.

6.2.2 Sellers have all necessary 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 Sellers' Closing Documents (on the Closing Date) are or will be authorized by all necessary actions of Sellers.

6.3 **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Sellers against Sellers in accordance with the terms of this Agreement. The execution, delivery, and performance of this Agreement does not violate any provisions of the organizational documents of Sellers, or any contract provision or other commitment to which Sellers or the Stations 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 lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Purchased Assets. The execution, delivery, and performance of this Agreement does not violate any contract provision or other commitment to which Sellers are a party or under which it or its property is bound, or any judgment or order, and, except as contemplated herein.

## **6.4 Real and Tangible Personal Property.**

6.4.1 **Real Property Leases.** **Schedule 1.1.6** attached hereto accurately lists and describes all of Seller's (or, following consummation of the sale of KRXE(FM) to Bonin, Bonin's) interest in the Real Property. Seller has delivered to Buyer true and correct copies of all leases held by Seller pertaining to the Real Property. Seller represents that it has full and legal access to the Real Property described and set forth in **Schedule 1.1.6**, except as may be assigned to Bonin following consummation of the KRXE(FM) transaction. To Seller's knowledge, the Real Property and the structures located thereon, and the present uses thereof, conform in all material respects with all material restrictive covenants and with all applicable zoning, environmental, and building codes, laws, rules and regulations. 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 Stations 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 have been connected to the Real Property are in working order, and 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. To Seller's knowledge, the transmitting facilities of the Stations, including the tower, guy wires and ground systems, are now and on the Closing Date will be located entirely on the Real Property.

6.4.2 **Tangible Personal Property.** **Schedule 1.1.2** attached hereto accurately lists all of the Tangible Personal Property to be transferred to Buyer pursuant to this Agreement. Seller warrants that except as otherwise provided in Section 1.1.2, Seller is the owner of (and at Closing, with respect to Station KRXE, Bonin will have) good, clear, marketable, and indefeasible title to all of the Tangible Personal Property being conveyed as described and 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, except for Permitted Liens.

6.4.3 **Condition of Property.** At the Closing, the Tangible Personal Property listed in **Schedule 1.1.2** (except as otherwise expressly noted therein) shall be transferred in operating condition and repair. Seller warrants that such equipment is currently (and at Closing, will be) operating in material compliance with Commission rules, regulations and policies.

6.5 **Agreements.** **Schedule 1.1.3** accurately lists all agreements, leases and other contracts (or, when the same are oral, a complete and correct description thereof) with respect to the Stations to be conveyed hereby to Buyer (except for contracts for the sale of advertising time for cash on the Stations sold substantially at rates and upon terms consistent with the Stations' customary and normal selling business practices) to which, as of the date hereof, Seller and/or the Stations is a party or by which Seller and/or the Stations may be bound or obligated in any way. Seller is not in default under any of the Assumed Contracts and, to the best of Seller's knowledge, the other parties to the Assumed Contracts are not in default thereunder. Sellers have not received or given written notice of any default thereunder from or to any of the parties thereto. Except as noted on **Schedule 1.1.3**, Sellers have all requisite power to assign its rights under the Assumed Contracts on terms and condition 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 Assumed Contracts.

6.6 **Authorizations.** Seller (and following the consummation of KRXE(FM), Bonin) is currently and shall remain the authorized legal holder of all licenses, permits, and authorizations necessary to operate the business of the Stations as it is now being conducted, including, without limitation, all Commission Authorizations and all Other Authorizations listed in **Schedule 1.1.1**, none of which is subject to any restrictions or conditions which would limit in any respect the full operation of the Stations as now operated except for restrictions or conditions listed on the face of such license. All Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended. Except as indicated on **Schedule 1.1.1**, the Stations are operating at maximum authorized facilities and in accordance with all material terms of the Commission Authorizations and all rules, regulations and policies of the Commission. There is no action pending, or 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 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 Stations or their operation.

**6.7 Litigation and Insurance.**

**6.7.1 Litigation; Compliance With Law.** To Seller's knowledge, except as set forth on **Schedule 6.7.1**, the Stations are 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 except as set forth on **Schedule 6.7.1**, there is no complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending, or to Seller's knowledge, threatened, against the Stations, Seller, or any of the Purchased Assets, including, without limitation, any proceeding which may (a) materially adversely affect the Purchased Assets or the Commission Authorizations or Other Authorizations to be assigned hereunder, or the operation of the Stations, or the ability of Buyer to own and operate the Stations, or the use, ownership, or operation of any of the Purchased 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 materially adversely affect the Purchased Assets or the Commission Authorizations or Other Authorizations, or the operation of the Stations or the ability of Buyer to own and operate the Stations or the use, ownership, or operation of any of the Purchased Assets by Buyer. In addition, to Sellers' knowledge, no such litigation, investigation, or proceeding has been threatened which would result in a material adverse effect upon the Stations or their business, operations, prospects or conditions (financial or otherwise). Sellers 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. Sellers are 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 material adverse effect on the Purchased Assets or the Stations.

**6.7.2 Insurance.** All of the Tangible Personal Property is insured, and such insurance includes public liability insurance for the Stations, and such policies are in full force and effect.

**6.8 Past Performance of Stations.** Except as regards station WOPR, for which a report is not available, Seller has provided to Buyer true and correct copies of sales reports of the Stations for the years ending December 31, 2001 and December 31, 2002, and for the seven-month period ending July 31, 2003, each of which fairly presents, in all material respects, the sales for the periods then ended.

**6.9 Employees and Labor Relations.**

**6.9.1** Except as set forth on **Schedule 6.9**, Sellers: (a) are not a party to any collective bargaining agreement covering or relating to any of Stations' employees and has not recognized, and to Sellers' knowledge, is not required to recognize, and has received no demand

for recognition by any contract with any of the employees of the Stations or to any other employment contract, labor agreement, or union agreement, written or oral; (b) other than as disclosed in the Schedules, have not promulgated any policy or entered into any agreement relating to the payment of pensions, profit sharing, or bonuses to any of its employees whose employment for which Buyer will be liable if such employee or employees are terminated or suspended; and (c) to Sellers' knowledge, has not committed any unfair labor practices in regards to any employees of the Stations.

6.9.2 Except as described on **Schedule 6.9** hereto Sellers have complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor at the Stations, including those relating to rates, hours, equal employment opportunity, collective bargaining, and the withholding and payment of taxes and contributions and has withheld all amounts required by law or agreement to be withheld from the wages or salaries of the Stations' employees and are not liable to the Stations' employees or any government body for arrears of wages or for any tax or penalty for failure to comply with the foregoing.

6.10 **Taxes and Other Matters.**

6.10.1 **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 Sellers relating to the Purchased Assets, the Stations, 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.

6.10.2 **UCC Financing Statements.** All of the Purchased Assets are and have been located in the State of Louisiana since the Purchased Assets were acquired by Sellers, and no party has filed a deed of trust, mortgage, or UCC financing statement with respect to the Purchased Assets except as set forth in **Schedule 6.10.2** hereto.

6.10.3 **Bankruptcy.** No voluntary or, to Seller's knowledge, involuntary petition in bankruptcy, receivership, insolvency, or reorganization with respect to Sellers, or petition to appoint a receiver or trustee of Sellers' property, has been filed by or, to Seller's knowledge, against Sellers. Sellers have 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.

6.11 **Environmental Matters.** Sellers makes the following representations and warranties with respect to environmental matters:

6.11.1 **Environmental.**

(a) As regards the Real Property, Sellers have complied in all material respects with all laws, rules and regulations of all federal, state, and local governments (and all agencies thereof) concerning the environment, public health and safety, and employee health and

safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed, commenced or, to Seller's knowledge, threatened against Seller alleging any failure to comply with any such law, rule or regulation as regards the Real Property.

6.11.2 **OSHA Matters.** To Sellers' knowledge, the Stations are 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"). Sellers have 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 the Stations 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. Sellers have furnished to Buyer copies of all citations heretofore issued to Sellers and relating to the Stations under OSHA and copies of all correspondence from and to such Administration and any Administration inspectors during the past three (3) years.

6.12 **No Liabilities Attaching to Buyer.** Except as expressly provided in this Agreement or by operation of law, there are no liabilities of any kind or nature whatsoever of Sellers that attach or will, after the consummation of the transaction contemplated hereby, attach to Buyer, including, without limitation, any liability for or arising out of: (a) employee withholding, (b) worker's compensation, or (c) unemployment compensation.

6.13 **No Untrue Statements or Omission.** Sellers warrants that no representation or warranty made by Sellers in this Agreement or any schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Sellers, 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. Sellers warrants that all representations and warranties of Sellers 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 limited liability company organized under the laws of the State of Louisiana, and is duly qualified to do business and is in good standing in the State of Louisiana.

7.2 **Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into this Agreement and to execute 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 actions of Buyer.

This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement.

7.3 **No Contravention.** The execution, delivery, and performance of this Agreement or any of the Closing Documents do not violate any contract provision or other commitment to which Buyer is a party or under which it or its property is bound, or any judgment or order, except as contemplated herein.

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 threatened against or affecting Buyer 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 Stations. Buyer is financially qualified to file the Assignment Applications and to consummate the transactions contemplated herein.

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.

## **SECTION 8**

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

8.1 **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller or Bonin shall have complete control and supervision of and sole responsibility for the Stations, and during such period, Seller shall itself (or, in the case of KRXE(FM), Bonin shall) be required to:

8.1.1 operate the Stations in accordance in all material respects with the rules and regulations of the Commission, the Commission Authorizations and the Other Authorizations, and file all ownership reports, employment reports and other documents required to be filed during such period and maintain copies of the Stations' required filings;

8.1.2 maintain all of the Tangible Personal Property as specified in **Schedule 1.1.2**, in operating condition, subject to reasonable wear and tear, and repair or replace all items of Tangible Personal Property at time intervals consistent with prior practice, so that when the same are delivered to Buyer they shall satisfy all the warranties in all material respects on the part of Seller set forth herein;

8.1.3 maintain the existing inventory levels of the Stations (including spare parts, tubes, equipment and the like) and replace in the ordinary course inventory items expended, depleted or worn out;

8.1.4 operate the Stations in the ordinary course of business and substantially in the same manner as heretofore operated, particularly with regard to maintaining current year budgeted levels for operating expenses in the areas of programming, sales, engineering, and advertising and promotion; provided, however, that station KRXE shall be operated by Bonin in its reasonable discretion, subject to the FCC's rules.

8.1.5 follow its usual and customary policies with respect to extending credit for sale of air time and advertising on the Stations and with respect to collecting accounts recently arising from such extension of credit;

8.1.6 subject to Seller's or Bonin's obligations otherwise contained in this Agreement, use its commercially reasonable best efforts to keep the Stations and the Purchased Assets substantially intact, including their present operations, physical facilities, working conditions, and their relationships with lessors, advertisers, suppliers, customers and employees; provided, however, that station KRXE shall be operated by Bonin in its reasonable discretion, subject to the FCC's rules.

8.1.7 deliver to Buyer within ten (10) days after filing thereof with the Commission copies of any and all reports, applications, and/or responses relating to the Stations which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller or Bonin will furnish a written summary thereof); and

8.1.8 give prompt notice to Buyer of any occurrence that comes to Seller's or Bonin'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.

Seller shall be responsible to Buyer in the event Seller (or following consummation of the KRXE(FM) transaction, Bonin) fails to comply with any of the foregoing covenants.

8.2 **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not itself (or, following consummation of the KRXE(FM) transaction, Bonin), with respect to the Purchased Assets, the Stations, or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld:

8.2.1 by any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms the Commission Authorizations or any Other Authorizations with respect to the Stations 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 or Other Authorizations;



8.2.2 other than in the usual and ordinary course of business, sell or dispose of any of the Purchased Assets; Seller shall replace all Purchased Assets thus disposed of in the usual and ordinary course of business with like-assets having an aggregate value at least equal to the aggregate value of the Purchased Assets sold or otherwise disposed of;

8.2.3 except as regards the KRXE Agreement, 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 Purchased Assets or with respect thereto;

8.2.4 fail to repair or maintain any of the Stations' transmitting, studio, and other technical equipment or any other equipment, supplies, and other Tangible Personal Property 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); or

8.2.5 take any action that could reasonably be expected to result in a material impairment of the value or business of the Stations; provided, however, that station KRXE shall be operated by Bonin in its reasonable discretion, subject to the FCC's rules.

Seller shall be responsible to Buyer in the event Seller (or following consummation of the KRXE(FM) transaction, Bonin) fails to comply with any of the foregoing covenants.

8.3 **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 seventy-two hours: (i) the transmission of the regular broadcast programming of the Stations in the normal and usual manner is interrupted or discontinued; or (ii) the Stations are not operated in accordance with the directional parameters specified in the Stations' licenses or are operated at less than ninety percent (90%) of their licensed power. If any three or more Specified Events occur prior to the Closing Date, then Buyer may, at its option: (i) terminate this Agreement, or (ii) proceed in the manner set forth in Paragraph 16.1.

8.4 **Access to Equipment and 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 (and as part of the consummation of the KRXE(FM) transaction, shall cause Bonin to allow), reasonable access by prior appointment during reasonable business hours to the Purchased Assets. Sellers shall furnish to Buyer such information and materials concerning the Stations' affairs as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Stations. Seller also agrees that prior to the Closing Date, Buyer's engineer may inspect the equipment of the Stations to insure that the equipment complies with all warranties and conditions set forth in Section 6. Sellers agree 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.

8.5 **Employment Offers.** Upon prior notice to Seller, and at mutually agreeable times, Seller will permit Buyer to meet with its employees not listed on **Schedule 8.5** prior to the Closing Date. Buyer may, at its option, extend offers of employment to all or any of Seller's

employees at the Stations, except for those listed on **Schedule 8.5** hereto, to be effective on the Closing Date, it being understood that Buyer shall have no obligation to employ any of the employees of Seller. From and after the execution of this Agreement, Seller will not take any action to preclude or discourage any of the Stations' employees from accepting an offer of employment extended by the Buyer.

8.6 **Restrictions on Buyer.** Except as provided below, nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Stations prior to the Closing Date and Seller shall have complete control of the programming and operation of the Stations between the date hereof and the Closing Date and shall operate the Stations in conformity with the public interest, convenience and necessity and with all other requirements of law and this Agreement.

8.7 **Commercially Reasonable Efforts.** Between the date of execution of this Agreement and the Closing, each party shall use commercially reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the other party to consummate the sale and purchase under this Agreement.

8.8 **Buyer's Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will not take, or fail to take, any action that would disqualify it from becoming the licensee of the Stations or delay the grant of the Assignment Applications 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 (the "Closing") shall take place within ten (10) business days after the date on which the FCC orders (the "Orders") approving the assignment of the Commission Authorizations from Seller to Buyer and from Bonin to Buyer have both been granted and both grants have become Final Orders; and *provided further*, that the parties shall not be obligated to proceed to Closing if (1) the Orders includes conditions materially adverse to Buyer or Seller; or (2) the conditions precedent to Closing have not been satisfied or waived. For purposes of this Agreement, the term "Final Order" shall mean a final order of the Commission which is not reversed, stayed, enjoined or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition or notice of appeal or for review by the Commission, and for any reconsideration, stay or setting aside by the Commission on its own motion or initiative, has expired.

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 except for Section 9.2.9, notwithstanding that such condition is not fulfilled) on the Closing Date:

9.2.1 Seller or Bonin shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.2.2 Each of the Seller's and Bonin'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 or Bonin 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, or with respect to Station KRXE(FM), Bonin, shall be the holder of the Commission Authorizations and Other Authorizations listed in **Schedule 1.1.1**.

9.2.5 Seller and Bonin shall have taken all internal and other actions necessary to consummate this transaction.

9.2.6 There shall be no material changes in the Tangible Personal Property as of the Closing Date as compared to the date hereof, other than changes that have been agreed to and accepted by Buyer, in its reasonable discretion, reasonable wear and tear excepted.

9.2.8 The parties to the Material Contracts shall have consented to the assignment of Seller's rights on terms substantially identical to the terms enjoyed by Seller at the time of execution of this Agreement, and shall have signed estoppel agreements certifying that Seller is not in breach of any of the terms and conditions of such Material Contracts and that such Material Contracts remain in full effect.

9.2.9 The Commission shall have granted its written consent to the Assignment Applications, and such consent shall be in full force and effect and shall contain no conditions that are materially adverse to Buyer.

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 except for Section 9.3.4, 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 Assumed Contracts arising at or after Adjustment Time.

9.3.4 The Commission shall have granted its written consent to the Assignment Applications, and such consent shall be in full force and effect and shall contain no conditions that are materially adverse to Seller.

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, 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, 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 (or in the case of assets used in conjunction with Station KRXE(FM), Bonin) 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 ownership, free and clear of all liens and encumbrances, except Permitted Liens, all Tangible Personal Property to be transferred hereunder.

10.1.2 Assignments to leases included in the Real Property.

10.1.3 An executed assignment agreement in form and substance reasonably satisfactory to Buyer assigning to Buyer the Assumed Contracts and Intangibles.

10.1.4 An executed assignment in form and substance reasonably satisfactory to counsel for Buyer assigning the Commission Authorizations to Buyer.

10.1.5 A certified copy of the resolutions of the Seller's (or in the case of KRXE(FM), Bonin's) Board of Directors authorizing the execution, delivery, and performance of this Agreement by Seller and Bonin and the consummation of the transactions provided for herein, certified by Seller's and Bonin's Secretaries.

10.1.6 A certificate executed by an officer of Seller and Bonin 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 or Bonin on or prior to the Closing Date have been performed in all material respects.

10.1.7 Copies of all material Business Records as described in Section 1.1.5 hereof, but excluding those described in Section 1.2.6 hereof.

10.1.8 Possession and ownership of and all of Seller's and Bonin's right, title and interest in and to the Purchased Assets.

10.1.9 An opinion of Seller's counsel, dated as of the Closing Date, in form and substance attached hereto as **Exhibit C**.

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

10.2.1 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.

10.2.2 An assumption agreement executed by Buyer, in form and substance reasonably satisfactory to Seller, pursuant to which Buyer assumes Seller's obligations under the Assumed Contracts.

10.2.3 A certified copy executed by Buyer's chief executive officer of the resolutions of the Member and Board of Managers of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein.

10.3 **Further Obligation of Seller at Closing.** At Closing, Seller shall, at its expense, move and install the KRXE studio and automation equipment to the studio location Buyer will be assuming at 3225 Ambassador Caffery Highway in the manner described in **Exhibit B** hereto, and shall provide to Buyer the all current and historical traffic data in conjunction with Stations KVOL(AM), KDYS(FM), KFXZ(FM), KRXE(FM).

## **SECTION 11** **BROKERAGE**

Other than Bergner & Co., Sellers and Buyer each represent and warrant to the other that it knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions. Seller shall be responsible for the fees incurred with respect to Bergner & Co. Buyer and Seller hereby agree to indemnify each other from and against any claim of any such obligation or liability by any person, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

## **SECTION 12** **INDEMNIFICATIONS**

12.1 **Breach of Seller's or Bonin's Agreements, Representations, and Warranties.** 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), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Buyer which exceed an aggregate of One Thousand Dollars (\$1,000.00) (except for a failure to discharge an Excluded Obligation, for which Buyer will be fully indemnified) by reason of:

- (a) any breach of any warranty, representation, or agreement of Seller or Bonin contained under this Agreement or in any certificate or other instrument furnished by Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;
- (b) except for obligations or liabilities expressly assumed by Buyer herein, the operation of the Stations or the ownership of the Purchased Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement prior to the Adjustment Time);
- (c) except for obligations or liabilities expressly assumed by Buyer herein, any transaction entered into by Seller or Bonin or arising in connection with the Stations or the operation of the business thereof or any of the Purchased Assets prior to the Closing; or
- (d) any and all actions, suits, or proceedings, incident to any of the foregoing.

12.2 **Breach of Buyer's Agreements, Representations and Warranties.** 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 limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Seller which exceeds an aggregate of One Thousand Dollars (\$1,000.00) by reason of:

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

(b) the operation of the Stations subsequent to Closing (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed on or after Closing under the Assumed Contracts);

(c) any transaction entered into by Buyer or arising in connection with the Stations or the operation of the Stations subsequent to the Closing;

(d) any and all liabilities or obligations of Seller expressly assumed by Buyer pursuant to this Agreement; or

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

12.3 **Notice of Claim.** All representations and warranties contained in this Agreement shall be deemed continuing representations and warranties and shall survive the Closing for a period of one (1) year. Any claim to indemnification in respect of a covenant or agreement shall be made before the expiration of the second anniversary of the Closing Date. Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 12.1 or 12.2 hereof ("Notice of Claim"), which amount is believed to be required to discharge the obligations of the indemnifying party resulting therefrom. Within ten (10) business 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 its claim for indemnification if and so long as such defense is conducted by the indemnifying party at the latter's 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) business 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, either party may take whatever action it deems reasonable, including without limitation, the filing of a claim, petition, or other pleading in a court of competent jurisdiction.

12.4 **Sole Remedy.** Except as provided to the contrary in this Agreement, the right to indemnification pursuant to this Section shall be the sole and exclusive remedy of each party in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement.

### **SECTION 13** **RISK OF LOSS**

The risk of any loss or damage to the Purchased Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or cause, reasonable wear and tear excepted, which impairs the ability of the Stations to broadcast is assumed and shall be borne by the Seller at all times before the Closing of this Agreement. If any such loss or damage occurs, Seller shall give prompt written notice of the loss or damage to Buyer and shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at its own cost and expense. In the event that Seller does not fully replace or restore any such lost or damaged Purchased Assets by the time the Closing otherwise would be held, and the cost of such replacements, restoration or repairs is in the aggregate Twenty Thousand Dollars (\$20,000) or less, the Closing shall occur as scheduled and the amount necessary to replace, restore or repair the damaged or lost property shall be credited against the Purchase Price to be paid to Seller. If the cost of such uncompleted replacement, restoration or repairs exceeds Twenty Thousand Dollars (\$20,000) in the aggregate, Buyer may, at its option, upon written notice to Seller, either (i) terminate this Agreement, or (ii) elect to close without restoration, in which event Seller will deliver to Buyer all insurance proceeds paid or payable by reason of the loss or damage. If Buyer terminates this Agreement under this Section, each party shall bear its own expenses.

### **SECTION 14** **FEES AND EXPENSES**

Seller and Buyer shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. Local transfer and title fees and sales taxes, if any, shall be paid equally by Buyer and Seller. Buyer shall pay the FCC filing fee associated with the Assignment Applications, subject to reimbursement for one-half pursuant to Section 4.2(d) hereof. All other expenses incurred in connection with this transaction shall be borne by the party incurring same.

### **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 **Termination.** This Agreement may be terminated prior to the Closing 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:

(a) if the other is in material breach or default of its respective covenants, agreements, or other obligations herein, or if any of its representations herein are not true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate;

(b) if the Commission denies the Assignment Applications or any part thereof or designates any part thereof for a trial-type hearing;

(c) if the grant of the Assignment Applications by the Commission have not become a Final Order within twelve (12) months after the Assignment Applications are accepted for filing with the Commission (unless Buyer elects pursuant to Section 9.1 to waive the requirement of a Final Order, and a Closing has occurred); or

(d) on the Closing Date, Seller or Buyer, as the case may be, have failed to comply with its obligations under Section 9.2 or 9.3 of this Agreement, and does not cure such failure within a reasonable time after the Closing Date, or as provided in Section 8.3.

A party shall be in "default" under this Agreement if it 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. 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. Except for monetary defaults, if the default is not curable or has not been cured within fifteen (15) calendar 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 fifteen (15) calendar 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. Notwithstanding the foregoing, in the event of monetary default, time shall be of the essence, and this Agreement may be terminated immediately.

16.2 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, Sellers shall be entitled to receive as liquidated damages the Escrow Deposit, including all interest earned thereon, allocated between Sellers as follows: Twenty-Six Thousand Four Hundred Seventy

Dollars (\$26,470.00) to Bonin, and the balance to Seller. 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.

16.3 Sellers agree 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 Sellers' performance under this Agreement, in addition to any other remedy to which it is entitled at law, and Sellers 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.

## **SECTION 17**

### **SURVIVAL OF WARRANTIES**

17.1 All representations and warranties made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for a period of two (2) years.

17.2 Neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors and assigns.

## **SECTION 18**

### **NOTICES**

18.1 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:

Citadel Broadcasting Company  
c/o Forstmann Little & Co.  
767 Fifth Avenue, 44<sup>th</sup> Floor  
New York, NY 10153  
Att'n: Mr. Farid Suleman  
Telephone: (212) 355-5656  
Facsimile: (212) 759-9059

and

Citadel Broadcasting Company  
7201 W. Mead Blvd.  
Suite 400  
Las Vegas, NV 89128  
Att'n: Mr. Randy Taylor, V.P. of Finance  
Telephone: (702) 804-8202  
Facsimile: (702) 804-8292

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

Leventhal Senter & Lerman PLLC  
2000 K Street, N.W.  
Suite 600  
Washington, DC 20006-1809  
Att'n: Steven A. Lerman, Esq.  
Telephone: (202) 429-8970  
Facsimile: (202) 293-7783

If to Buyer:

Dr. Marcus Pittman  
Pittman Broadcasting Services, LLC  
307 S. Jefferson Ave.  
Covington, LA 70433-3135  
Telephone: (800) 364-5502  
Facsimile: (985) 892-3372

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

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201  
Telephone: (703) 243-8690  
Facsimile: (703) 243-8692

If to Bonin:

Bonin Broadcasting Corporation  
145 West Main Street  
New Iberia, LA 70560  
or  
P.O. Box 12948  
New Iberia, LA 70562-2948  
Attn: Mr. Donald Bonin, President  
Telephone: (337) 365-6651  
Facsimile: (337) 365-6314

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

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, D.C. 20007  
Telephone: (202) 625-6241  
Facsimile: (202) 965-2018

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 19**

### **MISCELLANEOUS**

19.1 **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.

19.2 **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 and 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.

19.3 **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Buyer may freely assign this Agreement to any corporation under common control of Buyer's principals, and upon the prior written consent of Seller, which consent shall not be unreasonably withheld, Buyer may assign any or all of the rights and benefits under this Agreement to any

third party which is qualified to be a Commission licensee and which has the financial capacity to close this transaction. Should Buyer assign its rights to acquire the Stations it is acquiring hereunder, Buyer's assignee shall be entitled, without limitation, to (i) rely on all of the representation, warranties and covenants of Seller or Bonin hereunder, and (ii) to the benefit of all indemnifications provided by Seller or Bonin hereunder. Seller will cooperate with Buyer and execute any documents reasonably necessary to effectuate such assignment.

19.4 **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 application to be filed with it, as provided in Section 4.2.

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

19.6 **Legal Actions.** If either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

19.7 **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 State of Louisiana.

19.8 **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.

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

19.10 **Severability.** If any term or provision of this Agreement or its application shall, to any extent, be declared 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.

19.11 **Confidentiality and Publicity.** Buyer and Seller will keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents, or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby, except where such information is known or available through other lawful sources or where such party is advised by counsel that its disclosure is required in accordance with applicable law. 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.

19.12 **Choice of Forum.** The parties agree that the only and exclusive forum for any action brought to resolve any dispute arising out of this Agreement shall be the federal or state courts having jurisdiction over New Orleans, Louisiana. No party shall oppose or assert a defense against such litigation in said courts on the grounds that the court lacks personal jurisdiction.

19.13 **1031 Exchange.** Seller agrees to cooperate with Buyer as reasonably requested by Buyer to assist Buyer in consummating a tax deferred exchange under Section 1031 of the *Internal Revenue Code of 1986*, and the comparable provisions of applicable state law, provided Seller shall incur no additional liabilities, expenses or costs as a result of or connected with such exchange.

## **SECTION 20** **DEFINITIONS**

*“Adjustment Time”* shall have the meaning set forth in Section 3.1.

*“Administration”* shall have the meaning set forth in Section 6.11.2.

*“Agreement”* shall mean this Asset Purchase Agreement.

*“ASR Assignment”* shall have the meaning set forth in Section 4.2.

*“Assignment Applications”* shall have the meaning set forth in Section 4.2.

*“Assumed Contracts”* shall have the meaning set forth in Section 1.1.3.

*“Bonin”* shall mean Bonin Broadcasting Corporation.

*“Business Records”* shall have the meaning set forth in Section 1.1.5.

*“Buyer”* shall mean Pittman Broadcasting Services, LLC, or its designee as provided in the Agreement.

*“Buyer’s Closing Documents”* shall have the meaning set forth in Section 10.2.

*“Closing”* shall have the meaning set forth in Section 9.1.

*“Closing Date”* shall mean the date on which the Closing occurs.

*“Commission”* shall mean the Federal Communications Commission.

*“Commission Authorizations”* shall have the meaning set forth in Section 1.1.1.

*“Escrow Deposit”* shall have the meaning set forth in Section 2.1.1.

*“Excluded Assets”* shall have the meaning set forth in Section 1.2.

*“Excluded Obligations”* shall have the meaning set forth in Section 5.2.

*“Final Order”* shall have the meaning set forth in Section 9.1.

*“Intangibles”* shall have the meaning set forth in Section 1.1.4.

*“KRXE Agreement”* shall have the meaning set forth in the recitals hereto.

*“Material Contracts”* shall have the meaning set forth in Section 1.3.

*“Order”* shall have the meaning set forth in Section 9.1

*“OSHA”* shall have the meaning set forth in Section 6.11.2.

*“Other Authorizations”* shall have the meaning set forth in Section 1.1.1.

*“Permitted Liens”* shall have the meaning set forth in Section 1.1.

*“Purchase Price”* shall have the meaning set forth in Section 2.1.

*“Purchased Assets”* shall have the meaning set forth in Section 1.1.

*“Real Property”* shall have the meaning set forth in Section 1.1.6.

*“Seller”* shall mean Citadel Broadcasting Company.

*“Seller’s Closing Documents”* shall have the meaning set forth in Section 10.1.

*“Seller’s Knowledge”* shall have the meaning set forth in Section 6.1.

*“Specified Event”* shall have the meaning set forth in Section 8.3.

*“Stations”* shall have the meaning set forth in the preamble of this Agreement.

*“Tangible Personal Property”* shall have the meaning set forth in Section 1.1.2.


*“Trade Accounts”* shall have the meaning set forth in Section 3.2.2.

**[the remainder of this page is intentionally left blank]**



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.

**CITADEL BROADCASTING COMPANY**

By:   
Randy L. Taylor  
Vice President - Finance

**PITTMAN BROADCASTING SERVICES, LLC**

By: \_\_\_\_\_  
Marcus Pittman  
Member

**BONIN BROADCASTING CORPORATION**

By: \_\_\_\_\_  
Donald Bonin  
President

**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.

**CITADEL BROADCASTING COMPANY**

By: \_\_\_\_\_  
Randy L. Taylor  
Vice President - Finance

**PITTMAN BROADCASTING SERVICES, LLC**

By:  \_\_\_\_\_  
Marcus Pittman  
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**BONIN BROADCASTING CORPORATION**

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Donald Bonin  
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By: \_\_\_\_\_  
Marcus Pittman  
Member

**BONIN BROADCASTING CORPORATION**

By: Donald Bonin  
Donald Bonin  
President