

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of June 4, 2001 among Nassau Broadcasting I, L.L.C., a Delaware limited liability company ("NBI"), Nassau Broadcasting II, L.L.C., a Delaware limited liability company ("NBII"), and Nassau Broadcasting Partners, L.P., a Delaware limited partnership ("NBPLP") (NBI, NBII, NBPLP and any entities that are or as at the Closing (as defined herein) will be subsidiaries of any of the above named entities to the extent any of the Assets (as defined herein) to be sold pursuant to this Agreement are owned by such subsidiaries as at the Closing, including without limitation North Shore Broadcasting Corporation and Seashore Broadcasting Corporation, are collectively referred to herein as "Seller"), with their principal place of business located at 619 Alexander Road, Third Floor, Princeton, New Jersey 08540, and Millennium Radio Group, LLC, a Delaware limited liability company (referred to herein as "Buyer"), with their principal place of business located at 220 North Pointe Parkway, Suite D, Amherst, New York 14228.

### Recitals

A. Seller owns and operates the following radio broadcasting stations (the "Owned Stations") pursuant to certain authorizations issued by the Federal Communications Commission (the "FCC"):

WJLK-FM  
WADB-AM  
WBBO-FM

B. NBPLP operates the following stations (the "Licensed Stations" and, collectively with the Owned Stations, the "Stations") under a Time Brokerage Agreement dated July 1, 1996 with North Shore Broadcasting Corporation and Seashore Broadcasting Corporation and is the proposed purchaser of the Licensed Stations pursuant to a Stock Purchase Agreement dated July 1, 1996 among NBPLP and all of the shareholders of each of North Shore Broadcasting Corporation and Seashore Broadcasting Corporation:

WOBM-FM  
WOBM-AM

C. Subject to the terms and conditions set forth herein, Buyer desires to acquire substantially all of the assets used in connection with the business and operations of the Stations and Seller, subject to the terms and conditions set forth herein, desires to sell the same to Buyer.

NOW, THEREFORE, taking the foregoing into account and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

## 1. SALE AND TRANSFER OF ASSETS.

1.1 Assets to be Transferred. Subject to the terms and conditions of this Agreement, on the Closing Date (as defined in Section 10.1), Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and accept from Seller, all of Seller's right, title and interest in all of the properties and assets, real and personal, tangible and intangible, of every type and description owned, leased or licensed by Seller and used or held for use in connection with the business and operations of the Stations, together with all rights and privileges associated with such assets and the business of the Stations, free and clear of all Liens (as defined herein) except for any Excluded Assets (as defined in Section 1.2) (collectively, the "Assets"). Without limiting the foregoing, the Assets shall include the following:

1.1(a) Licenses and Authorizations. All of Seller's rights in and to the licenses, permits and other authorizations issued to the Seller by any governmental entity, including, without limitation, those issued by the FCC, as listed and described in Schedule 1.1(a), with respect to the operation of the Stations and their auxiliaries, including, without limitation, all rights in and to the call letters WJLK-FM, WADB-AM, WBBO-FM, WOBN-FM and WOBN-AM and any variations thereof, and all applications therefor, together with any renewals, extensions or modifications thereof and additions thereto or applications filed between the date hereof and the Closing Date (collectively, "Licenses"). All of Seller's interest in the Licenses will be assigned to Buyer as hereinafter provided;

1.1(b) Tangible Personal Property. All equipment, electrical devices, antennas, cables, vehicles, furniture, fixtures, office materials and supplies, hardware, tools, inventory, spare parts, records, tapes, discs, carts and other tangible personal property of every kind and description owned or leased by Seller and used or held for use (including those not in operating condition) in connection with the business and operations of the Stations, including, without limitation, those items listed and described on Schedule 1.1(b) attached hereto or any replacements thereafter acquired prior to the Closing Date (except as the same may be disposed of in the ordinary course of business) and including all rights under any manufacturers' and vendors' warranties to the extent transferable;

1.1(c) Leased Real Property. All rights and interests of Seller under leases of real property used or held for use in connection with the business and operations of the Stations, which leases are described on Schedule 1.1(c) attached hereto ("Leased Property"). The lease terms shall continue as set forth in the leases for the Leased Property.

1.1(d) Agreements for Sale of Time: Trade/Barter Agreements. Those orders and agreements now existing for the sale of advertising time on the Stations, to the extent of the unexpired portion thereof, for cash ("Cash Agreements") as listed and described in Schedule 1.1(d)-1, those orders, agreements and arrangements for the exchange of advertising time on the Stations, to the extent of the unexpired portion thereof, for consideration other than cash ("Trade Out Agreements"), as listed and described in Schedule 1.1(d)-2 and any additional Cash Agreements or Trade Out Agreements entered into in the ordinary course of business between the date hereof and the Closing Date to the extent of the unexpired portion thereof;

provided, however, that any trade payables associated with such Cash Agreements and Trade Out Agreements do not exceed trade receivables; all to the extent transferable or assignable. To the extent trade payables do exceed trade receivables the Purchase Price shall be reduced by the amount of such deficit in excess of \$10,000.

1.1(e) Other Contracts. In addition to those agreements referenced in Section 1.1(d), the unexpired contracts, agreements, arrangements, leases, commitments or understandings relating to the operations of the Stations, written or oral, described in Schedule 1.1(e) hereto (as well as those entered into by Seller in accordance with Section 6.2 prior to the Closing Date) (collectively, with the agreements referenced in Section 1.1(d) "Assumed Contracts");

1.1(f) Intangible Rights. All of Seller's right, title and interest in and to all intangible property used in the business and operation of the Stations, including without limitation copyrights, trademarks, jingles, slogans fictitious or trade names, service marks, licenses, patents, permits, telephone numbers, current call letters, domain names, websites, software, proprietary information, technical information, and other similar intangible property rights and interests (and good will associated with any of the foregoing) applied for, issued to, or owned by Seller or under which Seller are licensed or franchised, and which are listed on Schedule 1.1(f) hereto (collectively, the "Intangible Property"). To the extent any such Intangible Property is necessary for the business and operations of the radio stations owned by Seller that are not to be sold to Buyer pursuant to this Agreement, then Seller shall retain ownership of such Intangible Property, but shall grant to Buyer, from and after the Closing pursuant to a license agreement (in form and substance reasonably satisfactory to Seller and Buyer) to be entered into by Seller and Buyer at the Closing, a perpetual, royalty free, non-exclusive, transferable license to use said Intangible Property in connection with the business and operation of the Stations;

1.1(g) Programming and Copyrights. All programs and programming materials and elements, music libraries and software of whatever form or nature owned, leased or licensed by Seller and used or held for use in connection with the business and operations of the Stations on the Closing Date, whether recorded on tape or any other media or intended for live performance, and whether completed or held in production and any related common law and statutory copyrights owned by Seller or used or held for use in connection with the business and operations of the Stations, or licensed or sublicensed to Seller in connection therewith;

1.1(h) FCC Records. All FCC station logs and other records that relate to the operation of the Stations as are required to be maintained under the rules and regulations of the FCC, including, but not limited to, an up-to-date and complete local public file;

1.1(i) Files and Records. All original files and other records of Seller relating to the business and operations of the Stations owned and in the possession of Seller (other than records relating to the corporate nature of Seller such as corporate minutes, corporate tax records and similar corporate records), including, without limitation, all available schematics, blueprints, engineering data, customer lists, reports, specifications, projections, statistics, promotional

graphics, original art work, mats, plates, negatives and other advertising, marketing or related materials, and copies of all other technical and financial information concerning the Stations and the Assets;

1.1(j) Causes of Action. All of Seller's rights in and to all causes of action in favor of Seller relating to the business or operations of the Stations, including, without limitation, any causes of action for past infringement on any of Seller's intellectual property; and

1.1(k) Goodwill. All of Seller's goodwill in, and going concern value of, the Stations.

1.2 Excluded Assets. There shall be excluded from the Assets, and retained by Seller, to the extent in existence on the Closing Date, the following assets, each as listed in Schedule 1.2 (collectively, the "Excluded Assets"):

1.2(a) Cash and Investments. All cash on hand or in bank accounts, and any and all other cash equivalents, including, without limitation, certificates of deposit, commercial paper, treasury bills, asset or money market accounts and all such similar accounts or investments, notes or other entitlements evidencing loans receivable and any securities owned or held by Seller;

1.2(b) Certain Assets. Pension, profit sharing and savings plans and trusts, employee benefit plans and any assets of any of the foregoing;

1.2(c) Files and Records. The files and records referred to in the parenthetical in Section 1.1(i); and

1.2(d) Accounts Receivable. All of Seller's accounts receivable outstanding as of the close of business on the Closing Date ("Accounts Receivable").

1.2(e) Towers and Real Estate. The radio broadcasting tower, land and building located at 1015 Route 9, Bayville, New Jersey, and the radio broadcasting tower and land located at 46 Clayton Road, Howell, New Jersey.

## **2. PURCHASE PRICE AND EARNEST MONEY DEPOSIT.**

2.1 Purchase Price. In exchange for the Assets, Buyer shall pay to Seller on the Closing Date a sum of money equal to 14 times the adjusted broadcast cash flow ("ABCF") of the Stations for the twelve months ending on the last day of the month preceding the month of Closing (the "Purchase Price") and shall assume the Assumed Obligations (as defined herein). For this purpose, the parties hereto agree that ABCF means net income before interest, income tax, depreciation and amortization, local marketing agreement payments and corporate expenses, as adjusted by those items indicated on Schedule 2.1 attached hereto numbered by category as set forth therein, provided however that in no event shall the purchase price determined as described above be more than \$99,561,000 or less than \$81,459,000.

Buyer may, at its expense, conduct an audit of Seller's books and records relating to the Stations at any time before Closing to confirm ABCF (Audited ABCF) on which the purchase price will be based. If such audit does not occur prior to Closing, the purchase price will be calculated based on Seller's representation as to ABCF. If an audit is performed and Seller disputes the determination of Audited ABCF, Buyer and Seller shall select a nationally recognized independent certified public accounting firm whose fees and expenses shall be borne by Seller to determine Audited ABCF which shall be binding on both Buyer and Seller.

2.2 Escrow Amount, Liquidated Damages. Buyer shall cause to be deposited the sum of Twenty Million Dollars (\$20,000,000) (the "Escrow Amount") with Bank of New York (the "Escrow Agent") upon execution of this Agreement. All funds are to be held by the Escrow Agent in an interest-bearing account until the Closing, as hereinafter defined, with all interest thereon accruing to Seller pursuant to the terms of the Escrow Agreement attached hereto as Exhibit A. At the Closing, unless otherwise provided herein, Escrow Agent shall deliver the Escrow Amount together with any accrued interest thereon, to Seller in accordance with the terms of the Escrow Agreement.

In the event of rightful termination of this Agreement pursuant to Section 14.1(a), (b) or (c) the Escrow Amount, together with any and all interest accrued thereon, shall be returned to Buyer. In the event of rightful termination of this Agreement by Seller as the result of a Buyer's Event of Default as defined in Section 14.2 and Seller is not in material breach of its obligations and representations hereunder, Buyer shall cause the Escrow Amount ("Liquidated Damages Amount") to be paid to Seller as liquidated damages, and not as a penalty, with all interest on the Escrow Amount accruing to the benefit of the Seller. The parties agree that the Liquidated Damages Amount constitutes a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to Seller that could be reasonably anticipated and the anticipation that proof of actual damages would be costly or inconvenient, in the event of Buyer's inability or failure to close as provided herein. In placing their initials at the place provided below, Buyer and Seller each specifically confirms the accuracy of the statements made above and the fact that each was represented by counsel who explained the consequences of this liquidated damages provision at the time this Agreement was made.

SELLER INITIAL HERE

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BUYER INITIAL HERE

2.3 Method of Payment of Purchase Price. The Purchase Price shall be paid at the Closing as follows:

2.3(a) Escrow Amount. Escrow Agent shall deliver the Escrow Amount and any interest earned thereon to Seller in accordance with the terms of the Escrow Agreement.

2.3(b) Balance of Purchase Price. In addition to the Escrow Amount to be delivered to Seller by the Escrow Agent pursuant to Subsection 2.3(a) hereof, the Buyer shall



deliver to Seller a wire transfer payable as directed by Seller in the amount required under Section 2.1 less the Escrow Amount without credit for the interest earned thereon.

### **3. ASSUMPTION OF LIABILITIES.**

On the Closing Date, Buyer shall assume the obligations of Seller arising or to be performed after the Closing Date pertaining to the ownership or operation of the Assets after the Closing Date but only insofar as they arise from Buyer's ownership of the Assets including Tangible Personal Property, the Leases, the Assumed Contracts including the sale of broadcast time, Intangible Property or its operation of the Stations (collectively, the "Assumed Obligations"). The Assumed Obligations are the only agreements, contracts, obligations or commitments of Seller, whether known or unknown, contingent or otherwise, that are to be assumed by Buyer as of the Closing Date. Seller shall be solely responsible, and there shall be no assumption of liability by Buyer, for any agreement, contract, obligation or commitment of Seller, whether known or unknown, contingent or otherwise, pertaining to either the Stations or any of the affairs of Seller, including, but not limited to, any agreement, executed or executory, relating to the exchange of time on the Stations for goods, wares, services, promotions, merchandising or anything other than cash which is not included in the Assumed Obligations. Buyer shall not be obligated to perform any contract, agreement, obligation or commitment of Seller, whether known or unknown, contingent or otherwise, not specifically assigned to and assumed by Buyer hereunder. The parties further specifically acknowledge and agree that Seller shall remain solely liable with respect to any obligation or liability relating to or arising from the ownership or operation of the Assets and any obligations of the Seller that may occur as a result of this transaction prior to the Closing Date.

### **4. SELLER'S REPRESENTATIONS AND WARRANTIES.**

As used in this Section 4, references to Seller's knowledge shall mean Seller's knowledge after Seller has exercised reasonable due diligence in making inquiries of its personnel and professional advisors. Seller represents and warrants that the following statements as to Seller, the Assets, the business and operation of the Stations are true and correct as of the date hereof and will be true and correct at the Closing Date, and shall be unaffected by any investigation heretofore or hereafter made by Buyer.

4.1 Licenses, Authorization and Compliance Therewith. Seller owns and/or will have at the time of Closing all franchises, licenses, permits, consents, approvals or authorizations of any public or governmental agency necessary to the conduct by Seller of the business and operations of the Stations, including, but not limited to, the Licenses described in Schedule 1.1(a) hereto, without any material conflict with the rights of others, all of which are or will be in full force and effect and will be subject to no Lien. Without material exception, Seller is in compliance with all of its obligations with respect thereto; and no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any of the foregoing or would materially adversely affect the rights of Seller thereunder. Except for the need for FCC approval, the consummation of the transactions contemplated hereby will in

no way affect the continuation, validity or effectiveness of the Licenses, or require the consent of any person or entity.

Except as may be provided in Schedule 1.1(a), Seller has no knowledge of any applications or any material complaints or proceedings pending or threatened as of the date hereof before the FCC directly relating to the business or operation of the Stations other than proceedings which generally affect the broadcast industry. On the Closing Date, Seller will have taken any and all proper action that Seller could have taken to ensure that the Stations will, unless otherwise provided in Section 4.8(b) below, be on the air operating at full licensed power (in accordance with the FCC's Rules and Regulations, the Communications Act of 1934, as amended (the "Act"), and regulations promulgated thereunder) under their present licenses. Seller has complied in all material respects with the Act and all FCC requirements for such authority will have been met, and there will be no uncorrected FCC violations as of the Closing Date. If notice of any such violation (other than violations that involve Buyer) is received or if Seller hereinafter becomes aware of any such violation prior to Closing, Seller, at its own expense, shall eliminate and cause to be removed all such violations by the date of Closing. Seller has not engaged in, nor has knowledge of, any activity which would cause or permit non-renewal, modification, revocation or suspension of any Licenses or result in the imposition of any fines, forfeitures or other administrative actions by the FCC with respect to the Stations, and no action, complaint or proceeding looking to or contemplating the non-renewal, modification, revocation or suspension of any such License or the imposition of any such fines, forfeitures or renewals is pending or threatened. No Seller entity is subject to any outstanding judgment or order of the FCC relating to the Stations. All returns, reports and statements required to be filed with the FCC or other governmental agency relating to the Stations including, without limitation, applications for renewal of authority, have been or will be duly and timely filed, and all said reports, returns and statements are or will be complete and correct as filed. Seller has or will have duly and timely paid all fees associated with any such filings. The "Public Inspection File" of the Stations will be complete and in full compliance with Section 73.3526 of the FCC's Rules and Regulations on the Closing Date. No renewal of any Station's license would constitute a major environmental action under the rules of the FCC. All towers and other structures used in the business and operations of the Stations or located on the Leased Property are obstruction marked and lighted to the extent required by, and in accordance with, the rules and regulations of the Federal Aviation Administration (the "FAA"), the FCC and other federal, state and local authorities. Appropriate notifications to the FAA and registrations with the FCC have been filed for such towers where required. With the exception of such temporary reduced power operations as are necessary for routine maintenance, Seller will take any and all proper action that Seller could have taken to ensure that the Stations operate in conformity with the Stations Licenses and within the operating power tolerances specified in 47 C.F.R. § 73.1560(a)(1) and 47 C.F.R. § 73.1560(b). No other broadcast Stations or radio communications facility is causing interference to the Stations' transmissions beyond that which is allowed by FCC rules and regulations. Seller has all necessary authority to use the call signs set forth on Schedule 1.1(a).



#### 4.2 Assets/Fee Property.

4.2(a) Title to Assets. Seller is the owner of and/or will on the Closing Date have good, valid and marketable title or valid leasehold to the Assets, and will on the Closing Date have full legal right, power and authority to assign, transfer and sell the Assets to Buyer, free and clear of all liens, pledges, claims, security interests, restrictions, mortgages, tenancies and other possessory interests, conditional sale or other title retention agreements, assessments, easements, rights of way, covenants, rights of first refusal, defects in title, encroachments and other burdens, options and other encumbrances of every nature whatsoever (collectively, the "Liens"). No action is pending or, to the knowledge of Seller, threatened, which would contest the ownership of, or right to transfer, any of the Assets to Buyer in accordance with the terms and conditions of this Agreement. The Assets will not on the Closing Date be subject to any contract, sale or other agreement, except as disclosed in writing to and expressly assumed or taken subject to by Buyer hereunder, and the delivery of the Assets to Buyer pursuant to the provisions of this Agreement will transfer good and valid title of the Assets to Buyer, free and clear of all Liens.

4.2(b) Real Property. The leases for the Leased Property described in Schedule 1.1(c) comprise all of the real property interests of every kind and description held by Seller and used or held for use in connection with the business and operations of the Stations. The buildings, improvements and fixtures that are included in the Leased Property are suitable for their intended use. The licenses, leases and subleases listed on Schedule 1.1(c) constitute, as of the date of this Agreement, all of the agreements for the use or occupancy of Leased Real Property to which any Seller entity is party (collectively, the "Leases"). With respect to each Lease: (i) such Lease is legal, valid, binding, enforceable and in full force and effect and (ii) to Seller's knowledge, no party to such Lease is in breach or default under such Lease, and no event has occurred which, with notice or lapse of time, would constitute such a breach or default under such Lease. The Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust or caused any Lien (other than Permitted Lien) to exist with respect to its interest in any such Lease. As of the date of this Agreement, the use and occupancy of the Leased Property by Seller is, and as of the Closing Date the use and occupancy of the Leased Property by the Seller will be, in compliance in all material respects with all regulations, codes, ordinances and statutes applicable to the Seller and the business and operation of the Stations. Seller has no notice of eminent domain proceedings or condemnation proceedings of any kind pending or, to Seller's knowledge, threatened against any of the Leased Property.

4.2(c) Condition of Tangible Personal Property. The equipment described in Schedule 1.1(b) hereto comprises all of the equipment used to operate the Stations as they are presently being operated in material compliance with the FCC's Rules and Regulations. From the date hereof until Closing, the Stations and the equipment will be operated and maintained in accordance with good engineering practices and in material compliance with all of the FCC's Rules and Regulations. Except as disclosed in Schedule 1.1(b), there are no material defects in any of the structures, improvements, electronic equipment or other tangible personal assets of the Stations, all of which are in good operating condition, subject to normal wear and tear.

4.3 Contracts, Leases, Agreements, Etc. Each of the Assumed Contracts is as to Seller valid, binding and enforceable in accordance with its terms, Seller is not in any material respect in default thereunder and, to the knowledge of Seller, each other party to the Contracts has performed in all material respects the obligations required to be performed by it and is not in any material respect in default thereunder. The Contracts are the only contracts, agreements, leases and legally binding contractual rights necessary to the business and to the operations of the Stations as the Stations are presently being operated. Except for Contracts marked with an asterisk on Schedules 1.1(c), 1.1(d)-1, 1.1(d)-2, and 1.1(e) ("Contract Schedules"), no consents are required to assign to Buyer Seller's interest in any such Contract and no notice is otherwise required to be given to any party to assign to Buyer Seller's interest in any such Contract. Each such Contract may be assumed by Buyer without any material adverse change, and is now, and on the Closing Date will be, in full force and effect.

4.4 Employees and Agreements Relating to Employment.

4.4(a) No labor union is currently certified, or collective bargaining agreement is in place, or otherwise recognized, as the collective bargaining representative for any of the Stations' employees. Seller has no, and has not had any, claims, charges or conflicts pending, or, to the knowledge of Seller, threatened against it before the Equal Employment Opportunity Commission, any state or local agency responsible for the prevention of unlawful employment practices or the FCC with respect to the Stations. Seller has no knowledge of any labor strike, or other employee or labor controversy or dispute pending which would materially affect the operation of the Stations.

4.4(b) Seller is not, and on the Closing Date will not be, except as disclosed on Schedule 4.4(b), a party to: (i) any labor contract, (ii) any vacation pay, severance pay or other benefit arrangement (including any "employee benefit plans" within the meaning of Section 3(3) of ERISA or similar plans) with its employees, or (iii) any employment contract or agreement which is not terminable upon termination notice of thirty (30) days.

4.4(c) Schedule 4.4(c) sets forth a complete list of the names, positions and locations of the employees of the Stations. Prior to closing, Seller shall deliver a list of employees of its Stations that it does not intend to rehire after closing. The Buyer may interview and elect to hire such listed employees, but not any other employees of Seller. Buyer is obligated to hire only those employees under employment contracts (and assume the obligations and liabilities under such employment contracts) which are included in the Seller's Station contracts listed in Schedule 1.1(e).

4.5 Litigation. Except as disclosed on Schedule 4.5, there are no actions, judgments, disputes, suits, proceedings, arbitrations, investigations or inquiries pending or, to the knowledge of Seller, threatened against or affecting Seller, the Assets or the business or operation of the Stations or questioning the validity of any action taken or to be taken in connection with the implementation of the provisions of this Agreement, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, agency, court or instrumentality, domestic or foreign, including but not limited to the FCC. There are no material

judgments, decrees, injunctions, writ, award or orders of any governmental entity or arbitrator outstanding against Seller or the business and operations of the Stations. Seller does not know or have reasonable grounds to know of any factors or circumstances which might be the basis of any action, suit or proceeding; and, to the best of Seller's knowledge, except as disclosed in Schedule 4.5, Seller has complied with all applicable statutes and regulations of all governmental authorities and agencies having jurisdiction over Seller.

#### 4.6 Compliance with Law.

4.6(a) Generally. Seller has complied and is in compliance in all material respects with all the Licenses, laws, rules, regulations, and orders of any governmental entity applicable to Seller, the business or operations of the Stations, and the Assets, including, without limitation, the Act and rules and regulations thereunder (collectively, the "Applicable Laws"). Seller has not been charged with and is not under investigation for any violation of Applicable Laws, nor, to the knowledge of Seller, is there any basis for any such charge or investigation, or for any claim for compensation or damages or otherwise arising out of any violation of the foregoing which might result in material adverse effect.

4.6(b) Hazardous Materials. Except as disclosed on Schedule 4.6, or as disclosed to Buyer as a result of an environmental inspection referred to in Section 6.3(b), the Stations and all Leased Property is, and to the best of Seller's knowledge with respect to any predecessor or prior owner, operator, or lessee has been, in compliance, in all material respects, with all Environmental Laws and no Hazardous or Toxic Materials (as hereinafter defined) have been stored, used or disposed of, on, or currently exist in any of the Leased Properties. For purposes of this Agreement, "Hazardous or Toxic Material" shall mean waste, substances, materials, smoke, gas, pollutants, contaminants, asbestos or asbestos related products, PCB'S, petroleum, crude oil, or any fraction or distillate thereof, or particulate matter designated as hazardous, toxic or dangerous, or requiring special handling, treatment or storage whether or not designated hazardous, toxic or dangerous under any environmental laws. For purposes of this Agreement "Environmental Laws" shall be interpreted to mean the Comprehensive Environmental Response Compensation and Liability Act, any successor to such law, and/or any other applicable federal, state, or local environmental, health or safety law, rule, regulation, common law, or other legal requirement concerning the treating, producing, handling, storing, releasing, spilling, leaking, pumping, pouring, emitting, or dumping of any waste, substance, materials, smoke, gas or particulate matter or imposing liability or standards in connection therewith.

4.7 Existence and Powers; No Conflict. The Seller entities are validly existing and in good standing under the laws of the State of Delaware, and are duly authorized to conduct business in each jurisdiction in which operation of the Stations makes such authorization necessary, have the power and authority to own or lease the Assets and to carry on business and operations of the Stations as now being conducted, and have all requisite power and authority to enter into, deliver and perform this Agreement. The execution, delivery, and performance of this Agreement by Seller has been duly and validly authorized, and no other action is required. Assuming the due execution and delivery of this Agreement by Buyer, this Agreement

constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity. Except as disclosed on Schedule 4.7, neither the execution and delivery of this Agreement by Seller, nor the compliance by Seller with the respective terms hereof: (i) will, to the best of Seller's knowledge, breach any Applicable Laws; (ii) will conflict with, result in a breach of, or constitute a default (or an event which, with notice or lapse of time, or both, would become a default) under any of the terms, conditions or provisions of any judgment, order, arbitration, injunction, decree or ruling of any court or governmental authority to which Seller or any of the Assets is subject or of Seller's governing documents or any agreement, commitment, arrangement, lease, insurance policy, or other instrument to which Seller is a party or by which it is bound; (iii) will result in the creation of any Lien upon any of the Assets; (iv) to Seller's knowledge, will give to any other person any interests or rights, including rights of termination or cancellation, in or with respect to any of the Assets; (v) will result in the loss or adverse modification of the Licenses or any other license, franchise, permit or other governmental authorization granted to or held by Seller; or (vi) require the consent of any person or governmental agency except as disclosed in this Agreement.

#### 4.8 Operation of Stations.

4.8(a) The Stations have been, and shall continue to be, operated (1) in compliance with the Licenses and the Applicable Laws, and (2) in a manner which will not expose human beings to any level of non-ionizing radiation higher than the levels recommended for human exposure in FCC Report & Order ET Docket 93-62, released August 1, 1996.

4.8(b) Seller shall give prompt written notice to Buyer if (i) the transmission of the regular broadcast programming of any of the Stations in the normal and usual manner is interrupted or discontinued other than as a result of weekly routine maintenance or public utility company activity, (ii) the Stations are operated at less than ninety percent (90%) of its licensed operating power for a period in excess of (A) twenty-four (24) consecutive hours or (B) an aggregate of seventy-two (72) hours in any thirty (30) day period; (iii) the Stations operate at reduced power for ten (10) days, thereby requiring written notification to the FCC pursuant to Section 73.1560(d) of the FCC Rules; or (iv) the programming format of the Stations is materially changed.

4.9 Insurance. The existing insurance policies, set forth on Schedule 4.9, are now, and on the Closing Date will be, in effect in accordance with their terms without default and in amounts and coverages consistent with Seller's past practice.

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

4.11 Intangibles. Seller has full right and authority to use the Intangible Property as presently used in the business and operation of the Stations, and except as otherwise noted in Schedule 1.1(f), no person has a right to receive a royalty or similar payment with respect to the use of any Intangible Property. Seller has not granted to any other person any right to use, and Seller has no knowledge of any other person's use of, the Intangible Property. Except as noted in Schedule 1.1(f), no notices have been received by Seller or the Stations that Seller's use of any of the Intangible Property infringes upon or otherwise violates any rights of a third party in or to Intangible Property.

4.12 Financial Statements. Seller has furnished Buyer with copies of the following financial statements: Seller's 2000 Financial Statement of Operations and monthly reports through December 31, 2000 for the Stations and monthly unaudited income statements and balance sheets for the four months ended April 30, 2001 for the Stations (collectively, the "Financial Statements"). All direct operating expenses of the Stations have been recorded in the Stations' historical and projected financial statements to determine net income from operations and broadcast cash flow. All the Financial Statements, including those to be provided under Section 6.11, will be or are complete and correct in all material respects, were prepared in accordance with GAAP consistently applied and present fairly the financial position and results of operations of the Stations at the dates and for the periods to which they relate. Seller represents that Seller has retained work papers, files, ledgers and other records and that Seller will make the same reasonably available to Buyer for purposes of review of the same by Buyer or Buyer's representatives in connection with this Agreement.

4.13 Undisclosed Liabilities. Except as set forth on Schedule 4.13, as of the date hereof and as of the Closing Date, there are no liabilities of Seller of any kind whatsoever with respect to the Assets or the Stations (whether absolute, accrued, contingent, known or otherwise, and whether due or to become due) that if known would be required to be reflected on, reserved against or disclosed in the notes to, a consolidated balance sheet of Seller prepared in accordance with GAAP, other than liabilities and obligations (a) provided for or reserved against in Seller's Financial Statements or (b) arising after December 31, 2000 in the ordinary course of business and consistent with past practices.

4.14 Taxes. As of the Closing Date, Seller shall have timely, accurately, and duly filed with the appropriate governmental agencies all Tax returns (defined below), declarations of estimated Tax, and Tax reports required to be filed by it, and all Taxes and other assessments which Seller has been required to pay, withhold or collect have been timely and duly paid, withheld and collected. There are no present disputes as to Taxes of any nature payable by Seller, or Seller has no knowledge of any impending audits or similar proceeding and Seller has not filed an IRS Form 872 (Consent Fixing Period of Limitations Upon Assessment of Income Tax) or otherwise agreed to extend the time for assessment of any taxes against it for any year. Any additional Taxes, interest, penalties, assessments or deficiencies that shall become due and payable with respect to any Tax return or Tax obligation of Seller on or prior to the Closing Date shall be the sole responsibility of Seller.

For purposes of this Agreement, "Tax" or "Taxes" shall mean all federal, state, local and foreign income, property, sales, excise, withholding and other taxes, tariffs or governmental charges of any nature whatsoever, and all interest, penalties and additions to tax without respect to any of the foregoing.

4.15 Absence of Certain Changes. Since Seller's acquisition or operation of the Stations, there has not been (i) any material adverse change in the property of Seller or any material labor dispute, grievance or organizational effort affecting the Assets, taken as a whole, or the business and operations of the Stations; (ii) any physical damage, destruction or loss (not covered by insurance) materially and adversely affecting the Assets, taken as a whole, or business and operations of the Stations; (iii) any sale, assignment, lease or other transfer or disposition of any of the assets or properties of Seller, except in the ordinary course of business and with adequate replacement property being acquired as necessary; or (iv) any waiver of any right resulting in, or reasonably expected to result in, a materially adverse affect on the Assets or the business and operations of the Stations.

4.16 No Third Party Options. There are no existing agreements with, options or rights of, or commitments to any person other than to Buyer to acquire any of the Assets or any interest therein.

4.17 Disclosure. No representation or warranty made by Seller in this Agreement (including the Schedules hereto) and no statement made in any certificate or document furnished or to be furnished by Seller in connection with the transactions contemplated by this Agreement contains or will contain as of the date made and as of the Closing Date any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty or statement not misleading to Buyer.

4.18 Related Party Obligations. Except as set forth on Schedule 4.18, no officer, director, shareholder or affiliate of any Seller entity, or any individual related by blood or marriage to any such person, or any entity in which any such person owns any beneficial interest, is a party to any agreement, contract, commitment, promissory note, loan, any other actual or proposed transaction with any Seller, or has any interest in any property used by any Seller entity, which is material to the business and operations of the Stations.

4.19 Sufficiency of Assets. The Assets constitute all the assets necessary to conduct the operations of the Stations substantially as they are being conducted and operated on the date of this Agreement.

## **5. BUYER'S REPRESENTATIONS AND WARRANTIES.**

As used in this Section 5, references to Buyer's knowledge shall mean Buyer's knowledge after Buyer has exercised reasonable due diligence in making inquiries of its personnel. Buyer represents and warrants that the following statements as to Buyer are correct as of the date hereof and will be correct at the Closing Date, and shall be unaffected by any investigation heretofore or hereafter made by Seller.

5.1 FCC Qualifications. Buyer has entered into an asset purchase agreement with a third party to acquire Radio Stations WFPG-AM, WFPG-FM and WPUR-FM, each serving Atlantic City, New Jersey (the "Atlantic City Stations"). Buyer has filed an application with the FCC for the FCC approval of the assignment to Buyer of the licenses held by the owners of the Atlantic City Stations and the FCC has consented to such assignment (the "FCC Approval"). Such FCC Approval has not yet become a Final Order. Based on the fact that Buyer has obtained the FCC Approval for the Atlantic City Stations, Buyer believes it is qualified to acquire the Licenses; provided, however, that neither this nor any other provision in this Agreement shall be deemed either (a) to create any representation or warranty with respect to any action the Department of Justice or the FCC may or may not take in connection with any information relating to any filing under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended and the regulations adopted thereunder (the "HSR Act") or similar filing before either agency, or (b) to predict the chances of any objection being filed against any of the applications or the outcome of the government's response thereto, although as of the date hereof Buyer has no specific knowledge of any threatened objection by any person or entity.

5.2 Existence and Powers; No Conflict. The Buyer is validly existing and in good standing under the laws of the State of Delaware, have the power and authority to own or lease their properties and to carry on business as now being conducted, and have all requisite power and authority to enter into, deliver and perform this Agreement. The execution, delivery, and performance of this Agreement by the Buyer entities have been duly and validly authorized, and no other action is required. Assuming the due execution and delivery of this Agreement by Seller, this Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity. Neither execution and delivery of this Agreement by Buyer, nor the compliance by Buyer with the respective terms hereof: (i) will, to Buyer's knowledge, breach any Applicable Laws; (ii) will conflict with, result in a breach of or constitute a default (or an event which, with notice or lapse of time, or both, would become a default) under, any of the terms, conditions or provisions of, any judgment, order, arbitration, injunction, decree or ruling of any court or governmental authority to which Buyer is subject, Buyer's governing documents, or any contract, commitment, arrangement, or agreement to which Buyer is party or by which Buyer may be bound.

5.3 Disclosure. No representation or warranty made by Buyer in this Agreement (including the Schedules hereto) and no statement made in any certificate or document furnished or to be furnished by Buyer in connection with the transactions contemplated by this Agreement contains or will contain as of the date made and as of the Closing Date any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty or statement not misleading to Seller.

5.4 Litigation. Except as disclosed on Schedule 5.4, there are no actions, judgments, suits, proceedings, arbitrations, investigations or inquiries pending or, to the knowledge of Buyer, threatened against or affecting Buyer or questioning the validity of any action taken in connection with the implementation of the provisions of this Agreement, at law or in equity, or

before or by any federal, state, municipal or other governmental department, commission, board, agency, court or instrumentality, domestic or foreign that would prevent the consummation of the transactions hereunder.

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

5.6 Buyer's Financial Condition. Buyer has the ability to obtain the funds necessary to consummate the transactions contemplated hereby under the terms and conditions of this Agreement.

## **6. CONDUCT PRIOR TO CLOSING.**

6.1 Access and Information. Upon reasonable, advance notice, Seller shall give Buyer and its representatives reasonable access throughout the period prior to Closing to the operations, properties, books, contracts, agreements, leases, commitments, records, files, logs and employees of the Stations, and to the Assets, at reasonable times, provided that the normal operations of Seller's business shall not be reasonably disrupted. In addition, Seller shall deliver to Buyer copies of all of the Stations' monthly operating statements as the same may exist and shall furnish such additional information concerning the Stations as Buyer may from time to time reasonably request.

6.2 Conduct of Station Business. Between the date hereof and Closing:

6.2(a) Seller shall use its commercially reasonable efforts to produce the consent of any third parties necessary for the assignment to Buyer of any Contract marked with an asterisk and listed on the Contract Schedules;

6.2(b) Seller shall: (i) conduct the business of the Stations in a prudent and responsible manner in good faith and operate and maintain the Stations and the Assets in accordance with good engineering and Seller's past practices and in compliance with the terms of the Licenses and Applicable Laws; (ii) maintain the business and operations and operate the Stations in all material respects in accordance with all Applicable Laws, including without limitation the Act and the rules, regulations and policies of the FCC; (iii) keep all of the Assets to be transferred hereunder in substantially the same operating condition and repair as of the date hereof, reasonable wear and tear excepted; (iv) use all reasonable efforts to preserve the customers, goodwill and business reputation of the Stations; and (v) maintain its book of account and records including its billing and collection practices in the usual and ordinary manner and in accordance with GAAP;

6.2(c) Seller shall not, outside the ordinary course of business, (i) hire additional personnel or unreasonably increase the compensation or bonuses payable to any of the



Stations' employees; (ii) enter into an agreement to sell, assign, lease, mortgage, pledge, exchange or otherwise transfer or dispose of any of the Assets; (iii) enter into any new contract or renegotiate, modify, amend, renew, or terminate any existing Contract, except that Seller may, in the ordinary and usual course of business, enter into: (1) agreements for the sale of time on the Stations for such rates and on such terms as are consistent with Seller's normal and usual practices; (2) any contract(s) that require payments after the Closing Date not greater than \$10,000 individually or \$25,000 in the aggregate and that are terminable on thirty (30) days notice or less without premium or penalty; or (3) any contract(s) consented to by Buyer in writing; (iv) change the Stations' call letters, or change the Stations' facilities, or apply to the FCC for any construction permit(s) (except that this limitation shall not apply to an application for extension of time to construct under a construction permit outstanding as of the date of this Agreement), without Buyer's consent, which will not be unreasonably withheld or delayed, or make any material adverse changes in the Stations' leasehold improvements or other improvements and fixtures; (v) except as required by law or by any governmental agency, disclose any information relating to the Stations to any third party, other than to Seller's authorized employees, agents and professional advisors in the ordinary course of business and other than to Buyer and Buyer's authorized representatives as provided for herein; (vi) incur any debts, obligations, or liabilities that include obligations to be performed by Buyer after the Closing Date that exceed \$10,000 individually or \$25,000 in the aggregate, or create, assume or permit to exist any lien on any of the Assets; (vii) cancel or compromise any debt or claim, or waive or release any right of material value that will be assumed by or assigned to Buyer at Closing; or (viii) materially change the number of regularly scheduled commercial units run on the Stations;

6.2(d) Seller shall maintain in full force and effect the insurance described in Schedule 4.9; and

6.2(e) Seller shall give Buyer notice of any unusual operating problems or developments affecting Seller between the date hereof and the Closing Date, including, but not limited to, any problem or development which could materially adversely affect the Assets or the business and operations of the Stations, and shall keep Buyer fully apprised of all matters having material financial impact on Seller.

6.3(f) Seller shall promptly complete construction under WBBO (FM) construction permit FCC File No. BPH-20001103ABQ and shall promptly thereafter file and vigorously prosecute an application for covering license for such modification (the "WBBO (FM) Modification").

6.3 Buyer's Inspections and Approvals.

6.3(a) Environmental Audit. Buyer may perform, at its expense, such environmental investigations and audits (an "Audit") as it deems appropriate, including, without limitation, an audit of: (i) conditions with respect to contamination or pollution of surface or ground waters, soil and air, (ii) the disposal, presence, release or threat of release of hazardous or toxic material thereon, and (iii) compliance with Environmental Laws or other Applicable Laws

on any leased or owned premises including, without limitation, the leased premises relating to the Licensed Stations. If the Audit discloses a condition which contradicts the representations contained in Section 4.6(b), Seller, upon Buyer's request, will correct the condition prior to Closing. If Seller refuses to correct such condition, Buyer may, at its sole option, either proceed with the consummation of the transactions contemplated by this Agreement or terminate this Agreement and have the Escrow Amount with interest earned thereon returned to it.

6.3(b) Engineering Inspection. It is agreed that within ten (10) business days prior to the Closing Date, Buyer's engineer may inspect the property to be transferred to Buyer pursuant to this Agreement transferred to insure that the equipment complies with all warranties and conditions set forth herein. Seller agrees to extend full cooperation to said engineer, including such access to the equipment and to logs pertaining thereto at such time or times as said engineer shall reasonably request. If Buyer's engineer reports that the equipment fails to comply with said warranties, and Seller disputes the report, Buyer and Seller shall jointly select a consulting engineer to give a report on the disputed item(s). The consulting engineer's report shall be final and binding, and Seller shall repair any equipment that the consulting engineer reports does not meet the warranty set forth in Section 4.2(c) prior to Closing; provided, however, Seller's obligation to repair shall not exceed Fifty Thousand Dollars (\$50,000). If the repairs required exceed such amount and Seller refuses to make such repairs in excess of the cap, Buyer may, at its sole option, either proceed with the consummation of the transactions contemplated by this Agreement or terminate this Agreement and have the Escrow Amount with interest earned thereon returned to it. The fees and expenses of any consulting engineer jointly selected by Buyer and Seller pursuant to this Section 6.3(b) shall be borne equally by Buyer and Seller.

6.4 Risk of Loss/Assets. The risk of any loss, damage or destruction to any of the Assets from fire or other casualty or cause shall be borne by the Seller at all times prior to 12:01 a.m. on the Closing Date. Upon the occurrence of any loss or damage to any material portion of the Assets as a result of fire, casualty or other cause prior to Closing, Seller shall notify Buyer of same in writing immediately, stating with particularity the extent of such loss or damage incurred, the cause thereof if known, and the extent to which restoration, replacement and repair of the Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Subject to the provisions hereof, Buyer shall have the option (but not the obligation), in the event the loss or damage exceeds Five Hundred Thousand Dollars (\$500,000.00) and the property cannot be substantially repaired or restored within one hundred twenty (120) days, exercisable within ten (10) days after receipt of such notice from Seller to: (i) postpone the Closing until such time as the property has been completely repaired, replaced or restored; (ii) elect to consummate the Closing and accept the property in its "then" condition, in which event Seller shall at the Closing assign all rights under any insurance claim covering the loss and pay over any proceeds under any such insurance policy theretofore received by Seller with respect thereto; or (iii) terminate this Agreement at no cost or expense to Buyer if such repairs, replacements or restorations are not completed within one hundred twenty (120) days after the date specified herein as the Closing Date and have the Escrow Amount with interest thereon returned to it. In the event Buyer elects to postpone the Closing Date as provided in

clause (i) of this Subsection, the parties hereto will cooperate to extend the time during which this Agreement must be closed as specified in the consent of the FCC referred to herein.

6.5 Confidentiality. Between the date of this Agreement and the Closing Date, Buyer and Seller will continue to maintain strict confidentiality with respect to all documents and information furnished by or on behalf of Seller or Buyer, as the case may be (except for documents of information required to be disclosed by law; subject to Seller's or Buyer's right to contest such requirement), and, if this Agreement is terminated, Buyer shall return to Seller all such documents and information and Seller shall return to Buyer all such documents and information. Notwithstanding the foregoing, Buyer may make disclosure that may be required: (i) by its lenders; (ii) pursuant to any federal or state securities laws; or (iii) as may be necessary to advise any of Buyer's investors or advisors; provided, that, in such case, Buyer shall advise the investors of the confidentiality of the information, who must, as a condition of receiving such information, agree to keep such information confidential.

6.6 Covenant Not to Compete.

6.6(a) Seller agrees that for a period of thirty (30) months after the Closing Date, neither any Seller entity, nor any of their affiliates, will, directly or indirectly, (i) own, manage, operate, control or participate in the ownership, management, operation or control of any business, whether in corporate, proprietorship or partnership form or otherwise, which is engaged in the operation of any radio station whose principal community contours overlap the principal community contours of any of the Stations; provided, however, that Seller and its principals may beneficially own up to five percent (5%) of any issued and outstanding class of securities that have been registered under the Exchange Act; or (ii) hire, without Buyer's written consent, solicit, encourage, entice or induce any person who is employed by Buyer or any of its affiliates at the date hereof or at any time hereafter, to terminate his or her employment with Buyer or any of its affiliates. Notwithstanding the foregoing, the parties hereto acknowledge and agree that throughout the non-competition period described above that Seller may continue to operate each of radio station WNJO and radio station WPST despite the fact that their community contours overlap the principal community contours of the Stations. The parties further acknowledge and agree that in the event that all of the required regulatory approvals have been obtained, notwithstanding the provisions of this Section 6.6, Seller shall be entitled to operate a Class B radio station, designated as WCHR-FM, on 105.7 MHz, which Seller intends to acquire based on the acquisition of a construction permit related thereto in a proposed stock purchase transaction with Manahawkin Communications Corporation, which transaction is presently pending before the FCC.

6.6(b) Equitable Relief. Seller acknowledges that the provisions of this Section 6.7 are reasonable, fair and equitable in scope, term and duration, are necessary to protect the legitimate business interests of Buyer, and are necessary for the protection of Buyer and that Buyer will be irrevocably damaged if such covenants are not specifically enforced. Accordingly, Seller agrees not to challenge the enforceability of this Section or any provision hereof nor raise any equitable defenses to such enforcement and that, in addition to any other relief to which Buyer may be entitled in the form of actual or punitive damages, Buyer shall be entitled to seek

and obtain injunctive relief from a court of competent jurisdiction for the purpose of restraining any Seller entity from any actual or threatened breach of such covenants. To the extent that a court finds that any provision hereof is unenforceable, such court shall seek to enforce the intention of the parties as set forth herein to the greatest extent allowable by law.

6.7 Employment Matters. Prior to the Closing Date, Buyer will provide Seller with a list (the "Employee List") of all employees to whom Buyer intends to make an offer of employment, which Employee List shall be derived from the list delivered to Buyer by Seller in accordance with Section 4.4(c). Buyer will offer employment as of the Closing to all employees on the Employee List on such terms of employment and conditions as shall be determined in Buyer's sole and absolute discretion. Seller shall be responsible for all obligations or liabilities to those employees not offered employment by Buyer, and Buyer shall have no obligations with respect to those employees.

6.8 Prohibited Action. Between the date of this Agreement and the Closing Date, neither Buyer nor Seller will commit any act or omission that would: (i) disqualify them as parties to an assignment of the Licenses or, as to Buyer, as owner or operator of the Stations and the Assets; (ii) jeopardize the validity of the Licenses; (iii) interfere with the existing relationships between the Stations and their advertisers, suppliers and others; (iv) terminate, modify or amend, any of the Assumed Contracts or Licenses, and, with respect to the Assumed Contracts only, waive any material default or breach thereunder; or (v) take any action that would jeopardize Seller's rightful possession of the Licenses, the potential for timely assignment of said Licenses to Buyer, or the unconditional renewal of said Licenses at the end of the current term.

6.9 Sale of Assets; Negotiations. Seller shall not, and Seller shall cause its respective affiliates, directors, officers, employees, agents, representatives, legal counsel, and financial advisors not to: (i) solicit, initiate, accept, consider, entertain or encourage the submission of proposals or offers from any person or entity with respect to the acquisition contemplated by this Agreement or any competing transaction wherein such person or entity would directly or indirectly acquire all or any portion of the Assets or ownership interests in Seller, or any merger, consolidation, or business combination, directly or indirectly, with or for Seller or all or substantially all of the Seller's business whereby this transaction could not be contemplated, or (ii) participate in any negotiations regarding, or, except as required by legal process (including pursuant to discovery or agreements existing on the date hereof), furnish to any person or entity (other than Buyer) to do or seek any of the foregoing. Seller shall not enter into any agreement or consummate any transactions that would interfere with the consummation of the transactions contemplated by this Agreement. Seller shall promptly notify Buyer in writing if it receives any written inquiry, proposal or offer described in this Section 6.9 or any verbal inquiry, proposal or offer described in this Section 6.9 that is competitive with the terms of the transactions contemplated by this Agreement and Seller shall inform such inquiring person or entity of the existence of this Agreement and make such inquiring person or entity aware of Seller's obligations under this Section 6.9. The notification under this Section 6.9 shall include the identity of the person or entity making such inquiry, offer, or other proposal, the terms thereof, and any other information with respect thereto as Buyer may reasonably request. Seller shall not

provide any confidential information concerning the Assets to any third party other than in the ordinary course of the business and consistent with prior practice, but in no event to other potential purchasers. Seller has ceased and caused to be terminated any existing activities, discussions or negotiations with any person or entity conducted heretofore with respect to any of the foregoing. Notwithstanding the foregoing, nothing contained in this Section 6.9 shall be construed to preclude Seller from discussing with third parties the disposition of other of its assets that are not subject to the terms and conditions contained herein.

6.10 Collection of Accounts Receivable. All cash accounts receivable in connection with the operation of the Stations, including but not limited to accounts receivable for broadcast time, on or prior to the Closing Date shall belong to the Seller. On the Closing Date, Seller shall assign to Buyer, as collection agent for Seller, for the purposes of collection only, all accounts receivable arising out of the conduct of the business and the operation of the Stations prior to or on the Closing Date. Seller shall deliver to Buyer on the Closing Date a complete statement of such accounts that are uncollectible. Seller, for a period of four (4) months following the Closing Date, will not make any attempt to collect such accounts receivable. Buyer shall collect such accounts receivable, without commission or compensation, for a period of four (4) months after the Closing Date in the normal course of business without any obligation to institute any litigation, or to employ counsel or a collection agency or use any other extraordinary means of collection. Any commission due to Seller's current or former employees at the Stations or of the business and operations of the Stations as a result of amounts collected on any such accounts receivable shall be paid by Buyer to such employees promptly after Buyer has received such collections, and such amounts shall be deducted from such accounts receivable remittances to be paid to Seller under this Section 6.10 and reflected in the documentation provided to Seller under this Section 6.10. Buyer will apply all such amounts collected to the debtor's oldest account receivable first, except that any such amounts collected by Buyer from debtors who are also indebted to Buyer for obligations on Stations arising after the Closing Date may be applied to Buyer's account where the debtor notifies Buyer that there is dispute between Seller and such debtor with respect to such account or if Buyer indicates that a payment is for a specific invoice, provided that Buyer immediately notifies Seller in writing of such dispute and/or application of amounts collected and returns such account to Seller. Seller may thereafter use all lawful means of effecting collection and shall have the right to settle its accounts with such debtors without notice to Buyer. In other cases in which there is a dispute and debtor is not presently indebted to Buyer, Buyer shall immediately notify seller upon learning of such dispute from the debtor and turn such account back to the seller and shall have no further obligation whatsoever to such account. For accounts where the debtor is indebted to both Seller and Buyer, Buyer may use all lawful means of effecting collection and shall have the right to settle its accounts with such debtors without notice to or consent of Seller; provided, however, that Buyer shall not settle any Seller's accounts for less than the total due without the consent of Seller, which settlement shall be binding on the Seller. As soon as practicable, but not later than the fifth (5th) day following the date Buyer closes its books for the businesses of the Stations for each of the first four (4) months following the Closing Date, Buyer shall furnish Seller with a collection report by advertiser, and pay over to Seller the amounts collected during the preceding broadcast month with respect to such accounts receivable. Upon the expiration of the four (4) month period, Buyer shall furnish Seller with a list of, and assign without recourse to Seller, all accounts

receivable which remain uncollected, together with all files or copies of files concerning the collection or attempts to collect such accounts. Thereafter, Buyer shall have no further obligation to collect Seller's accounts receivable except that Buyer shall immediately pay over to Seller any amounts subsequently paid to it with respect to any such reassigned account receivable.

6.11 Supplemental Financial Statements. Seller shall provide Buyer with copies of the monthly unaudited income statements and balance sheets applicable to the business and operations of the Stations prepared by Seller in the ordinary course of business commencing with the month ending May 31, 2001 until the Closing Date (collectively, the "Supplemental Financial Statements"). Seller shall provide such Supplemental Financial Statements to Buyer promptly upon such Supplemental Financial Statements becoming available to Seller, but in no event later than thirty (30) days after the end of each month. The Supplemental Financial Statements shall be subject to the representations and warranties as set forth in Section 4.12.

6.12 Financial Statements. In the event that Buyer or any subsequent purchaser (a "Subsequent Buyer") of any or all of the Stations is or becomes subject to the financial reporting requirements under Regulation S-X of the Securities Act of 1933, as amended ("Regulation S-X"), Seller shall use commercially reasonable efforts to cooperate with and assist Buyer and/or such Subsequent Buyer in its preparation of financial information for the business and operations of the Stations necessary to enable Buyer and/or such Subsequent Buyer to fulfill its financial reporting requirements under Regulation S-X, including without limitation, (a) requesting Seller's accountants to cooperate with Buyer and/or such Subsequent Buyer; (b) providing Buyer and/or such Subsequent Buyer with access to the books and records relating to the business and operations of the Stations; and (c) requesting the appropriate officers of Seller to sign management representation letters (reasonably acceptable in form and substance to Seller) if reasonably requested by the accountants preparing such financial information for Buyer and/or such Subsequent Buyer. Buyer acknowledges and agrees that the preparation of any such financial information for Buyer (including the preparation of any materials requested from Seller) shall be at Buyer's sole cost and expense and that Seller shall only provide such cooperation and assistance upon reasonable request and upon reasonable prior notice.

6.13 Further Information. Seller shall furnish to Buyer prior to the Closing such financial (including tax), legal and other information with respect to Seller and the business and operations of the Stations as Buyer or its authorized representatives may from time to time reasonably request.

6.14 Consents. Seller shall exercise commercially reasonable efforts to obtain, prior to the Closing, the consent and approval (in a form reasonably acceptable to Buyer) of any third parties whose consent or approval is necessary in connection with the consummation of the transactions contemplated hereby, with respect to the Assumed Contracts and Leases and requiring such consent. If any such consent or approval is not obtained, Seller will use commercially reasonable efforts (not involving the payment of money to any person) to secure an arrangement satisfactory to Buyer intended to provide for Buyer following the Closing the benefits under each Assumed Contract and Lease for which such consent or approval is not

obtained. Nothing in this Agreement will constitute an assignment or transfer or an attempted assignment or transfer of any Assumed Contract or Lease which by its terms or under applicable law or governmental rules or regulations requires the consent or approval of a third party (including, without limitation, a governmental authority) unless such consent or approval is obtained. Seller shall exercise commercially reasonable efforts to assist Buyer in taking all appropriate action to make such corrective filings or take other action as may be required to conform the U.S. Patent and Trademark Office records of ownership, assignment and grants or releases of security interests in the Intellectual Property to those records of Seller; provided, however, that Seller shall not be obligated to incur any liability, including to make any cash payments, or file any actions in connection with such efforts.

6.15 Obligation to Notify. Seller and Buyer shall act in accordance with the following:

(a) The parties shall promptly notify each other of : (i) any change in any information contained in the representations and warranties made in this Agreement, or (ii) any litigation, arbitration or administrative proceeding pending or threatened against a party which challenges the transactions contemplated hereby, including any challenges to the FCC application, and the parties shall use their commercially reasonable efforts to take such steps as may be necessary to remove any such impediment to the transactions contemplated hereby.

(b) The parties shall not take any action: (i) inconsistent with their obligations or representations and warranties under this Agreement, or (ii) that would hinder or delay the consummation of the transactions contemplated hereby.

6.16 Timely Payments. Seller shall timely make or provide all payments, services or other consideration due under the Assumed Contracts and due under any employment contracts, so that all payments required to be made as of the Closing Date will have been paid, except for any amounts being contested by seller in good faith.

6.17 Tax Filings. Seller shall file all federal, state and municipal tax returns, reports and declarations required to be filed by Seller.

6.18 Maintenance of Licenses. Seller shall maintain in full force and effect the Licenses, and all other licenses, permits and authorizations relating to the Stations, and prepare and prosecute applications for renewal of the Licenses, if necessary.

6.19 WOBM Station Applications. NBPLP is party to a certain Stock Purchase Agreement dated July 1, 1996 between and among NBPLP and the shareholders of North Shore Broadcasting Corp. ("North Shore") and Seashore Broadcasting Corp. ("Seashore") (collectively North Shore and Seashore the "Companies"), as amended (the "Stock Agreement"). Pursuant to the Stock Agreement, NBPLP has agreed to purchase all the issued and outstanding stock of the Companies and seek FCC approval to the transfer of control of the Companies' FCC authorizations to NBPLP (the "Transfer Application"). Upon the execution of this Agreement, NBPLP will give notice to the Companies of NBPLP's intent to file the Transfer Application. Concurrently with the filing of the Application, as defined in Section 7.1 hereof, NBPLP shall

file the Transfer Application, wherein NBPLP shall request that the FCC act simultaneously to approve the Transfer Application and approve the assignment of the Companies' FCC authorizations to Buyer. For purposes of the rights, obligations and limitations of Sellers regarding the Application, as set forth in Article 7 of this Agreement, including but not limited to the duty to respond promptly to any requests for submission of additional information requested by the FCC such rights, obligations and limitations of Sellers shall be deemed to apply equally to the Transfer Application.

6.20 Lien Search. Seller shall have a professional lien search company conduct (no earlier than twenty (20) days before Closing) UCC, tax lien and judgment searched in the name of Seller and the Stations in the jurisdictions (state - and county - level) where the Assets are located and where Seller's principal offices are located ("Lien Searches"), deliver the results of the Lien Searches to Buyer no later than five (5) business days before Closing.

6.21 Tax Returns and Payment. From the date hereof through the Closing Date, Seller shall prepare and file all tax returns, reports and statements required to be filed by it prior to the Closing Date in a manner consistent with such filings in the past, and shall pay all Taxes required to be paid by it or prior to the Closing Date.

6.22 Subsidiaries. To the extent any of the Assets are owned by any subsidiaries of Seller as at the Closing, including without limitation North Shore Broadcasting Corporation and Seashore Broadcasting Corporation, Seller shall take all actions necessary to cause such subsidiaries to convey such Assets to Buyer at the Closing and to otherwise timely comply with all covenants and obligations of Seller hereunder.

## **7. APPLICATION FOR FCC APPROVAL AND OTHER REGULATORY FILINGS.**

7.1 Filing and Prosecution of FCC Application. No later than ten (10) business days after the date of this Agreement, Buyer and Seller shall join in an application to the FCC requesting the FCC's written consent to the assignment of the Licenses of the Stations to Buyer and to the consummation of the transactions contemplated by this Agreement ("Application"). Both parties shall promptly respond to any requests for the submission of additional information and shall vigorously oppose any protests, petition to deny, petition for reconsideration or appeal of the FCC's consent and approval that may be filed. Buyer and Seller shall proceed with due diligence and promptly take all steps necessary to the expeditious prosecution of such application to a favorable conclusion, using their vigorous efforts throughout.

7.2 Hart-Scott-Rodino. No later than ten (10) business days after the date of this Agreement, Buyer and Seller shall file the notices required to be filed by each under Section 7A of the Clayton Act, 15 U.S.C. § 18(a) as added by Section 201 of the HSR Act.

7.3 Expenses. Each party shall bear its own expenses in connection with the preparation of the applicable sections of the Application and in connection with the prosecution of the Application. Seller and Buyer will divide and pay equally the license transfer application fees charged by the FCC, the Hart-Scott-Rodino filing fees and the Escrow Agent fees.



7.4 Control of Stations. This Agreement shall not be consummated until the FCC has given its written consent to the assignment of the Licenses of the Stations. Buyer shall not, directly or indirectly, control, supervise, direct or attempt to control, supervise or direct the operation of the Stations prior to Closing; such operation shall be the sole responsibility of the Seller.

Seller acknowledges that the Seller has retained no rights of reversion in the WJLK-FM, WADB-AM, WBBO-FM, WOBN-FM and WOBN-AM licenses, and no right to the reassignment of the WJLK-FM, WADB-AM, WBBO-FM, WOBN-FM and WOBN-AM licenses in the future, and has not reserved the right to use the facilities of WJLK-FM, WADB-AM, WBBO-FM, WOBN-FM and WOBN-AM in the future for any reason whatsoever.

7.5 Reasonable Efforts. Subject to the obligations under Paragraph 7.1 above, each party hereto agrees to use its commercially reasonable efforts in the performance and fulfillment of all terms and conditions of this transaction applicable to such party and in filing an application for the FCC's consent, and agrees to execute such other and further documents as may be reasonably required to carry out the intent of this Agreement.

## **8. BULK SALES LAW.**

Buyer hereby waives compliance by Seller with the provisions of all bulk sales laws, or other similar provisions.

## **9. OBLIGATIONS UNDER CONTINUING CONTRACTS.**

Buyer shall execute and shall deliver to Seller at the Closing an assumption agreement by Buyer of Seller's obligations for the period on and after the Closing relating to the contractual obligations included in the Assets, as more particularly described in Section 10.3. From and after the Closing Date, Buyer shall perform all obligations under the Assumed Contracts included in the Assets, and shall indemnify and hold harmless Seller from any and all claims, liabilities and obligations, losses, damages or expenses arising out of said Assumed Contracts accruing by reason of matters occurring on and after the Closing Date. Except for the Assumed Obligations, Seller shall remain liable for, and shall indemnify and hold harmless Buyer from, any and all claims, liabilities, obligations, losses, damages or expenses accruing by reason of matters occurring prior to the Closing Date under the Contracts included in the Assets.

## **10. CLOSING.**

Subject to the terms and conditions herein stated, the parties agree as follows:

10.1 Closing Date. Provided that the FCC Approval for the transfer to Buyer of the FCC licenses for the Atlantic City Stations has become a Final Order (as defined below), the Closing of the transactions contemplated herein shall be held on a date in time as specified by the Buyer in writing to the Seller that is no more than two (2) weeks following the date that Seller delivers to Buyer the Supplemental Financial Statements (as defined in Section 6.11) for the month immediately preceeding the date upon which the approval of the FCC required for the

consummation of the transactions contemplated herein is granted ("Initial Grant"). In the event the FCC Approval for the transfer to Buyer of the FCC licenses for the Atlantic City Stations has not become a Final Order, the closing of the transaction contemplated herein shall be held on a date and time specified by the Buyer in writing that is no more than ten (10) calendar days after the date upon which the approval of the FCC required for the consummation of the transaction contemplated herein has become a Final Order. The Closing shall take place at the Trenton offices of Sterns & Weinroth at 10:30 a.m. local time, or at such other time or place as mutually agreed. In the event the parties are unable to complete the Closing on or before the date otherwise provided in this Section 10.1, either party may request a brief extension (up to five business days) of that date and the other party shall not unreasonably withhold its consent to such extension, provided that the party requesting such extension is not already in default under the terms of this Agreement. At the time of Closing, if the FCC approval is not then a "Final Order", which means an action by the FCC or its staff which is no longer subject to administrative or judicial review, reconsideration or appeal, the parties agree to execute the Unwind Agreement attached hereto and marked **Exhibit B**.

10.2 Documents to be Delivered by Seller. At the Closing, Seller shall execute and deliver or cause to be delivered to Buyer the following, in a form and substance reasonably acceptable by counsel for Buyer:

10.2(a) A bill of sale for all tangible personal property to be transferred hereunder, pursuant to Section 1.1(b), containing a warranty of title and covenant against all Liens.

10.2(b) One or more assignments assigning to Buyer the Licenses and the intangible property to be acquired by Buyer hereunder;

10.2(c) One or more assignments assigning to Buyer the Assumed Contracts to be assigned to Buyer hereunder, together with all necessary consents thereto and original copies of said Assumed Contracts;

10.2(d) A certificate from each Seller stating that: (i) all representations and warranties of Seller as set forth in this Agreement or in any statement, certificate, schedule, exhibit or other document delivered pursuant to this Agreement by Seller are true and correct in all material respects, as of the Closing Date; and (ii) Seller has, in all material respects, performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller at or prior the Closing Date;

10.2(e) An opinion of Sterns & Weinroth, counsel for Seller, in the form and substance agreed to;

10.2(f) An opinion of Patton Boggs, LLC, Seller's FCC counsel, in the form and substance agreed to.

10.2(g) Copies of all of the files, records and logs referred to in Sections 1.1(h) and 1.1(i) hereof and copies of all of the Licenses;

10.2(h) Certified resolutions from Seller approving the execution and delivery of this Agreement and each of the other documents delivered by Seller pursuant hereto and authorizing the consummation of the transactions contemplated hereby;

10.2(i) Governmental certificates showing that Seller is validly existing and in good standing in its state of formation and is in good standing in each jurisdiction where the operation of the Stations or the ownership of the Assets would so require, certified as of a date not more than ten days before the Closing Date;

10.2(j) Evidence satisfactory to Buyer's counsel regarding the release of any and all Liens with respect to the Assets;

10.2(k) A counterpart signature page of that certain Option Agreement in the form of **Exhibit C**.

10.2(l) Such other documents or instruments as counsel for Buyer may reasonably request and in a form reasonably acceptable to Buyer's counsel, which documents are necessary to carry into effect the provisions of this Agreement.

10.2(m) Estoppel Certificates with respect to the towers owned by Seller.

10.3 Documents to be Delivered by Buyer. At the Closing, Buyer shall execute and deliver or cause to be delivered to Seller the following, in a form and substance reasonably acceptable to Seller's counsel:

10.3(a) The Purchase Price as set forth in Section 2 of this Agreement consisting of: (i) Executed instructions to the Escrow Agent directing it to release to Seller the Escrow Amount in the amount of Twenty Million Dollars, \$20,000,000) and any interest earned on the escrow; and (ii) the balance of the purchase price as set forth in Section 2.1, payable by wire transfer.

10.3(b) One or more assumption agreements assuming the Assumed Contracts being assigned by Seller;

10.3(c) A certificate from Buyer stating that: (i) all representations and warranties of Buyer as set forth in this Agreement or any statement, certificate, or other document delivered pursuant to this Agreement by Buyer are true and correct in all material respects as of the Closing Date; and (ii) Buyer has, in all material respects, performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Buyer at or prior to the Closing Date;

10.3(d) Certified resolutions from Buyer approving the execution and delivery of this Agreement and each of the other documents delivered by Buyer pursuant hereto and authorizing the consummation of the transactions contemplated hereby;

10.3(e) A counterpart signature page of that certain Option Agreement in the form of **Exhibit C** attached hereto with the Option Payment specified therein.

10.3(f) Governmental certificates showing that Buyer is validly existing and in good standing in its state of formation and is in good standing in each jurisdiction where the operation of the Stations or the ownership of the Assets would so require, certified as of a date not more than ten days before the Closing Date;

10.3(g) Such other documents or instruments as counsel for Seller may reasonably request and in a form acceptable to Seller's counsel, which documents are necessary to carry into effect the provisions of this Agreement.

10.4 Condition to Obligations of Buyer. The obligation of Buyer to consummate the purchase of the Assets at the Closing shall be subject to the performance, in all material respects, on or prior to the Closing Date, of all of the covenants and agreements as set forth elsewhere in this Agreement to be performed by Seller, and upon the following additional conditions:

10.4(a) The representations and warranties of Seller made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto shall be true and correct in all material respects as of the Closing Date; and

10.4(b) Since the date of this Agreement through the Closing Date, there shall not have occurred any material adverse change in the condition of the Assets or the financial condition or operating results of the Stations other than primarily as a result of regulatory changes affecting the radio broadcasting industry generally or general economic conditions; and

10.4(c) The consents required from all governmental agencies (including Initial Grant by the FCC) and third parties to Buyer's acquisition of the Assets shall have been granted, without any condition materially adverse to Buyer, and such consents shall be valid and outstanding on the Closing Date; and

10.4(d) No action or proceeding shall be pending, challenging the validity of this Agreement or seeking to delay the consummation of any of the transactions for which this Agreement provides, which in the reasonable opinion of Buyer is material to the transactions contemplated by this Agreement; and

10.4(e) All equipment to be transferred hereunder (i) is in reasonably good working order; (ii) is in material compliance with all applicable FCC rules and regulations; and

10.4(f) Seller shall have in all material respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and on the Closing Date; and

10.4(g) Seller shall have delivered or caused to be delivered to Buyer, on the Closing Date, the documents identified in Section 10.2, and

10.4(h) Seller shall have delivered to Buyer evidence satisfactory to Buyer's counsel regarding the release of any and all Liens with respect to the Assets; and

10.4(i) Buyer shall have received the Lien Search results and, to its reasonable satisfaction, shall have received such documents or assurances, as may be applicable, as Buyer may reasonably request to insure the release of any Lien on the Assets by the Closing Date; and

10.4(j) On the Closing Date, Seller shall be the legal holder of the Licenses; and

10.4(k) The FCC shall have granted its consent to the Assignment Application without imposing any condition materially adverse to Buyer or to any of the Stations; provided, that a condition materially adverse to Buyer or to any of the Stations hereunder shall include, but not be limited to, any requirement that Buyer restructure itself, its business plan or any of the transactions contemplated hereby. Nothing contained in this Agreement shall be construed to obligate Buyer to meet any such requirements; and

10.4(l) The waiting period (including any extensions) under the HSR Act applicable to the sale and purchase of the Assets pursuant to this Agreement shall have expired or been terminated.

Buyer shall have the right to waive any or all of the foregoing conditions of Closing at its sole option and risk.

10.5 Condition to Obligations of Seller. The obligation of Seller to consummate the sale of the Assets at the Closing shall be subject to the performance, in all material respects, on or prior to the Closing Date, of all of the covenants and agreements as set forth elsewhere in this Agreement to be performed by Buyer, and upon the following additional conditions:

10.5(a) The representations and warranties of Buyer made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto shall be true in all material respects as of the Closing Date; and

10.5(b) The consents required from all governmental agencies or third parties (including, without limitation, the Initial Grant of the FCC) to Buyer's acquisition of the Assets shall have been granted, without any condition materially adverse to Seller, and such consents shall be valid and outstanding on the Closing Date; and

10.5(c) Buyer shall have in all material respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and on the Closing Date; and

10.5(d) Buyer shall have delivered or caused to be delivered to Seller, on the Closing Date, the documents identified in Section 10.3; and

10.5(e) The waiting period (including any extensions) under the HSR Act applicable to the sale and purchase of the Assets pursuant to this Agreement shall have expired or been terminated.

Seller shall have the right to waive any or all of the foregoing conditions of Closing at its sole option and risk.

10.6 Further Assurance. From time to time, upon request and without further consideration on or after the Closing Date, Seller and Buyer will execute and deliver such other instruments of conveyance and transfer and take such other action as may be reasonably required more effectively to convey, transfer to and vest in the Buyer, and to put the Buyer in possession and operating control of, any part of the Assets, and, in the case of Assumed Contracts, if any, which cannot be transferred effectively without the consent of third parties which is unobtainable, to use commercially reasonable efforts to (a) secure to the Buyer the financial and business benefits of any such Assumed Contract and (b) enforce, at the request of Buyer, any rights of Seller arising from any such Assumed Contract (including, without limitation, the right to elect to terminate such Assumed Contract in accordance with the terms thereof upon the advice of Buyer).

## **11. OTHER CLOSING OBLIGATIONS.**

11.1 Prorations. Except as otherwise provided herein, Seller shall be entitled to all income earned or accrued and shall be responsible for all liabilities and obligations incurred or payable in connection with the operation of the Stations through the close of business on the day preceding the Closing Date. Buyer shall be entitled to all income earned or accrued and shall be responsible for all liabilities and obligations incurred or payable in connection with the operation of the Stations after the close of business on the day preceding the Closing Date. All overlapping items of income or expense shall be apportioned between Seller and Buyer as of the close of business on the day preceding the Closing Date, in accordance with GAAP, consistently applied, with the understanding that Buyer shall only have responsibility for the Assumed Obligations. Items to be apportioned include, but are not limited to, real estate and other property taxes, business and license fees, music and other license fees (including any retroactive adjustments thereof) utility and telephone expenses, amounts due or to become due under contracts, rents, lease payments and similar prepaid and deferred items.

Within sixty (60) days after the Closing Date, Buyer shall deliver to Seller a statement setting forth in reasonable detail the basis for prorations pursuant to this Section, and Buyer shall pay to Seller, or Seller shall pay to Buyer, as the case may be, any net amount due as the result of the proration statement. 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 herein and such disputes shall be settled by an independent certified public accountant, mutually acceptable to the parties, whose decision on the matter shall be binding and whose fees and expenses shall be borne equally by Buyer and Seller.

11.2 Fees, Sales and Transfer Taxes. All filing and recording fees in connection with any instrument of conveyance or transfer delivered pursuant to this Agreement shall be split

evenly by Buyer and Seller. Transfer taxes, if any, with the personal property and the intangible assets sold and transferred hereunder shall be split evenly by Buyer and Seller.

11.3 Other Taxes. Any and all sales taxes, unemployment insurance and social security taxes, and all other taxes due to any state, federal or local government by Seller on or before the Closing Date shall be paid by Seller when due.

## 12. ALLOCATION OF PURCHASE PRICE.

Within sixty (60) days following the Closing Date, Buyer and Seller shall use their commercially reasonable efforts to allocate the Purchase Price among the Assets. Each of the parties hereto agrees to prepare and file its tax returns reflecting the agreed allocation, including preparation and filing of IRS Form 8594.

## 13. INDEMNIFICATION.

13.1 Survival of Representations and Warranties. All covenants and agreements pertaining to matters to be performed after Closing and all representations and warranties contained in this Agreement shall survive for a period of eighteen (18) months after the Closing Date ("Survival Period") except that the representations and warranties with respect to title shall continue indefinitely. No claim may be brought under this Agreement or with respect to the transactions described herein unless written notice describing in reasonable detail the nature and basis of such claim is given in good faith on or prior to the last day of the Survival Period. In the event such notice is so given, the right to indemnification with respect to such claim under this Section 13 shall survive the Survival Period until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

13.2 Indemnity by Seller. Subject to 13.1, all Seller entities, jointly and severally, agree to pay and discharge and to save and protect Buyer and its affiliates and their respective officers, directors, shareholders, members, managers, partners, employees, agents and representatives free and harmless from all obligations, claims and demands (including reasonable attorneys fees incurred by Buyer with respect thereto) (collectively "Seller's Obligations") against, arising out of or in connection with: (a) any lease, contract or other agreement of Seller not required to be assumed by Buyer pursuant to this Agreement; (b) the ownership of the Stations or the Assets by Seller prior to the Closing (except for the Assumed Obligations); (c) any breach, violation or nonfulfillment by Seller of any covenant, agreement or warranty herein contained or in any certificate or other document delivered pursuant to this Agreement, or the inaccuracy of any representation of Seller made in this Agreement or in any certificate or other document delivered pursuant to this Agreement; and (d) any failure to comply with any "bulk sales" laws applicable to the transactions contemplated hereby.

13.3 Indemnity by Buyer. Subject to 13.1, Buyer agrees to pay and discharge and to save and protect Seller and its affiliates and their respective officers, directors, shareholders, members, managers, partners, employees, agents and representatives free and harmless from all obligations, claims, and demands (including but not limited to attorneys fees incurred by Seller with respect thereto) against, arising out of or in connection with: (a) any Assumed Obligations;

(b) that shall arise or accrue against or in connection with the ownership or operation of the Stations or the Assets by Buyer from and after the Closing; and (c) any breach, violation or nonfulfillment by Buyer of any covenant, agreement or warranty herein contained or in any certificate or other document delivered pursuant to this Agreement or the inaccuracy of any representation of Buyer made in this Agreement or in any certificate or other document delivered pursuant to this Agreement.

13.4 Indemnification Procedure, Right of Offset. In the event that any party hereto asserts a claim for indemnification hereunder, such party seeking indemnification shall give written notice to the indemnifying party specifying the nature and the amount, if known, of the claim asserted. The indemnifying party shall then have the right, using counsel reasonably satisfactory to the party seeking indemnification, to investigate, secure, contest or settle the claim alleged by such a third party (hereinafter called "contest"), provided that the party seeking indemnification may participate voluntarily, at its own expense, in any such contest through representatives and counsel of its own choice, and, provided further, that any such action by the indemnifying party relating to the contest shall be without prejudice to the party seeking indemnification.

Except as provided otherwise in the immediately preceding sentence, and subject to 13.1, the indemnifying party shall bear all costs of such contests and shall indemnify and hold the party seeking indemnification harmless against and from all costs, fees, and expenses of such contest. Unless and until the indemnifying party elects to prosecute the contest, the party seeking indemnification shall have the full right, at its option, to do so and to look to the indemnifying party under the provisions of this Agreement for the amount of the costs, if any, of prosecuting the contest. The failure of the indemnifying party to respond in writing to the aforesaid notice of the party seeking indemnification with respect to such contest within twenty (20) days after the receipt thereof shall be deemed an election not to prosecute the same. If the indemnifying party fails to prosecute the contest and the party seeking indemnification does not prosecute the contest or does so and the decision is rendered against it, the amount paid by the party seeking indemnification to the third party in settlement or satisfaction of the contest shall be deemed a valid claim hereunder. In the event that the contest involves any Seller's Obligations, Buyer shall have the right to offset the amount of the costs, if any, incurred by Buyer in prosecuting the contest together with any sums owed in connection with the resolution or settlement thereof against amounts which may be owed by Buyer to Seller.

The parties hereto shall make mutually available to each other all relevant information in their possession relating to any such contest and shall cooperate in the defense thereof.

#### **14. TERMINATION BEFORE CLOSING; DEFAULT AND REMEDIES.**

14.1 Termination before Closing. If the Closing shall not have previously occurred, this Agreement may be terminated:

14.1(a) In the event that the Closing has not taken place on or before the date that is one (1) year from the date of this Agreement;



14.1(b) By Buyer, pursuant to Section 6.3(a) or (b) or Section 6.4 hereof;

14.1(c) By Buyer, upon the occurrence of a Seller's Event of Default (as defined in Section 14.2(b)) or upon the failure of any condition precedent to Buyer's obligation to close set forth in Section 10.4;

14.1(d) By Seller, upon the occurrence of a Buyer's Event of Default (as defined in Section 14.2(a)) or upon Buyer's failure to perform a condition precedent to Seller's obligation to close set forth in Section 10.5(c);

14.1(e) By Buyer or Seller by written notice to the other, if a court of competent jurisdiction or other governmental entity shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties hereto shall use commercially reasonable efforts to lift), in each case permanently restraining, permanently enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling or other action shall have become final and nonappealable;

14.1(f) By written notice of Buyer to Seller if the FCC consent to the Assignment Application contains any condition materially adverse to Buyer or that materially adversely affects the Assets;

In the event of a termination by Seller pursuant to Section 14.1(d) above upon the occurrence of a Buyer's Event of Default (as defined in Section 14.2(a)), Seller, as its sole and exclusive remedy, shall be entitled to retain the Escrow Amount with the interest earned thereon, as liquidated damages in accordance with Section 2.2 hereof. In the event of termination of this Agreement for any other reason, Buyer shall be entitled to a return of the Escrow Amount with the interest earned thereon as further provided in Section 2.2 hereof.

#### 14.2 Default and Remedies.

14.2(a) The occurrence of any one or more of the following events shall constitute a default of this Agreement by Buyer ("Buyer's Event of Default"):

(i) The material breach of any representation or warranty by Buyer hereunder, unless such breach is cured within thirty (30) days after written notice of such breach;

(ii) The failure by Buyer to timely consummate the transactions contemplated by this Agreement in violation of the provisions of this Agreement;

14.2(b) The occurrence of any one or more of the following events shall constitute a default of this Agreement by Seller ("Seller's Event of Default"):

(i) The material breach of any representation or warranty by Seller hereunder unless such breach is cured within thirty (30) days after written notice of such breach;

(ii) The failure by Seller to timely consummate the transactions contemplated by this Agreement in violation of the terms of this Agreement;

14.2(c) Seller acknowledges that the Stations are of a special, unique, and extraordinary character, and that any breach of this Agreement by Seller could not be compensated for by damages. Accordingly, upon the occurrence of a Seller's Event of Default, Buyer shall be entitled, provided that an uncured Buyer's Event of Default has not occurred, in addition to any other remedies that Buyer may have, to enforcement of this Agreement (subject to obtaining any required approval of the FCC) by a decree of specific performance or injunctive relief requiring Seller to fulfill its obligations under this Agreement. In any action to specifically enforce Seller's obligation to close the transaction contemplated by this Agreement, Seller shall waive the defense that there is an adequate remedy at law or in equity and agrees that Buyer shall be entitled to obtain specific performance of Seller's obligation to close hereunder without being required to prove actual damages. As a condition to seeking specific performance, Buyer shall not be required to tender the Purchase Price, but shall be required to demonstrate that Buyer is ready, willing and able to tender the Purchase Price and to consummate the purchase of the Stations as contemplated hereunder.

14.3 Procedures and Effect of Termination. In order to effect the termination of this Agreement pursuant to, and in accordance with, the terms and conditions of any provision of Section 14.1, written notice of such termination shall be given to the other party to this Agreement and this Agreement, assuming the relevant provision of Section 14.1 has been satisfied, shall terminate and the transactions contemplated hereby shall be abandoned, without further action by either of the parties hereto. If this Agreement is terminated as provided herein upon request therefor, each party shall redeliver all documents, work papers and other materials of the other party hereto, and all copies of any such materials, relating to the transactions contemplated hereby, whether obtained before or after the execution hereof, to the party furnishing the same.

## 15. NOTICES.

All notices and other communications hereunder shall be in writing and be deemed to have been duly given if delivered personally or by overnight courier or sent by telecopy (and confirmed by regular mail) or mailed by registered mail, postage prepaid, addressed as follows:

(a) If to Seller, to:

Louis F. Mercatanti, Jr.  
Nassau Broadcasting Partners, L.P.  
619 Alexander Road, Third Floor  
Princeton, NJ 08540

with a copy to:

Timothy R. Smith, Esq.  
619 Alexander Road, Third Floor  
Princeton, NJ 08540

(b) If to Buyer, to:

Charles W. Banta  
Millennium Radio Group, LLC  
220 North Point Parkway, Suite D  
Amherst, NY 14228

with a copy to:

William E. Wallace, Esq.  
Kaye Scholer LLP  
425 Park Avenue  
New York, NY 10022

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

#### **16. CONTROL OF STATIONS.**

Between the date of this Agreement and the Closing Date, Buyer shall not control, manage or supervise the operation of the Stations or the conduct of the Stations' business, all of which shall remain the sole responsibility and under the control of Seller, provided that this Section 16 shall not be deemed to be consent by Buyer to Seller's noncompliance (if any) with this Agreement.

#### **17. EXPENSES.**

Unless otherwise agreed to in writing by the parties hereto, each party shall pay its own costs and expenses, including any and all legal and accounting fees, associated with its performance and compliance with all conditions and agreements contained herein on its or their part to be performed or complied with.

#### **18. BROKERS.**

Seller acknowledges, represents and warrants to Buyer that Salomon Smith Barney, Inc., represented by Tristram Collins, and Serafin Bros., represented by Glenn Serafin have acted as the "Broker" in this transaction for Seller and that Buyer has not retained a "Broker" in this transaction, except with respect to Peter Handy and Star Media Group. Buyer shall be fully responsible for any fees due to Peter Handy and Star Media Group in connection with the transactions contemplated hereby. Each party shall be responsible for its own brokerage fees. Buyer and Seller each represent to the other that there is no other finder, consultant or broker

involved in this transaction and that such party has not agreed to pay any other finder, consultant or broker fee in connection with this transaction. If any other finder, consultant or broker claims a fee, the party whose actions led to that claim will bear sole responsibility for paying or settling that claim and shall indemnify the other party against the same.

**19. SECTION HEADINGS.**

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**20. ENTIRE AGREEMENT; FILINGS.**

This Agreement and all Schedules and Exhibits attached hereto constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior understandings and agreements among the parties, whether oral or written, contain the entire understanding of the parties and shall not be changed, modified, amended, extended, terminated, waived or discharged except by subsequent instrument in writing signed by the parties hereto. To the extent permitted by the FCC, the Schedules shall not be filed with the FCC or otherwise disclosed or made public.

**21. COUNTERPARTS.**

This Agreement may be signed in any number of counterparts with the same effect as if the signature to each counterpart were on the same instrument.

**22. SURVIVAL.**

The provisions hereof, which by their terms are to be performed or observed after the Closing Date, shall 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.

**23. CONFIDENTIALITY.**

Neither party shall make any announcement or disclose to the press or others without the other party's consent as to timing and content (which shall not be unreasonable withheld or delayed), as to the purchase/sale of the Stations prior to the Closing. It is understood that the foregoing non-disclosure requirement is not intended to preclude Seller from complying with the FCC's public notice requirements, Buyer from complying with the Securities Act or having discussions with financial entities, consultants and attorneys outside the Stations who will also be advised of the need and agreement for deferred disclosure and shall agree to such confidentiality and deferred disclosure or either party from complying with applicable law.

**24. ASSIGNABILITY.**

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, whether by operation of law or otherwise; provided,

however, that without releasing Buyer from any of their obligations or liabilities hereunder nothing in this Agreement shall limit Buyer's ability to sell, assign or transfer any or all of its respective rights under this Agreement to a wholly owned subsidiary of the Buyer. Nothing in this Agreement shall limit Buyer's ability to make a collateral assignment of its rights under this Agreement to any institutional lender that provides funds to Buyer without the consent of Seller. Seller shall execute an acknowledgment of such assignment(s) and collateral assignments in such forms as Buyer or its institutional lenders may from time to time reasonably request; provided, however, that unless written notice is given to Seller that any such collateral assignment has been foreclosed upon, Seller shall be entitled to deal exclusively with Buyer as to any matters arising under this Agreement or any of the other agreements delivered pursuant hereto. In the event of such an assignment, the provisions of this Agreement shall inure to the benefit of and be binding on Buyer's successors and assigns.

**25. GOVERNING LAW.**

This Agreement shall be governed by, construed (both as to validity and performance) and enforced in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed wholly within such jurisdiction.

**26. ATTORNEYS' FEES.**

In the event of commencement of suit by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive such attorneys' fees and costs as may be adjudged reasonable in addition to any other relief granted.

**27. SEVERABILITY.**

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

**28. FURTHER ACTIONS.**

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

**29. AMENDMENTS**

No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed

by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

**30. NO THIRD PARTY RIGHTS**

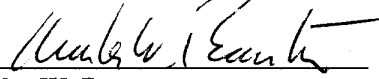
Nothing in this Agreement, express or implied, shall be construed to confer upon any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable rights, remedies, claims, obligations or liabilities under or by reason of this Agreement.

**{Signature Page to follow}**

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties hereto as of the date first above written.

**MILLENNIUM RADIO GROUP, LLC**

By:   
Name: Charles W. Banta  
Title: \_\_\_\_\_

**NASSAU BROADCASTING II, L.L.C.,**

By: Nassau Broadcasting I, L.L.C.,  
as Sole Member  
By: Nassau Broadcasting Partners, L.P.,  
as Sole Member  
By: Nassau Broadcasting Partners, Inc.,  
its General Partner

By: \_\_\_\_\_  
Louis F. Mercatanti, Jr.  
President

**NASSAU BROADCASTING I, L.L.C.,**

By: Nassau Broadcasting Partners, L.P.,  
as Sole Member  
By: Nassau Broadcasting Partners, Inc.,  
its General Partner

By: \_\_\_\_\_  
Louis F. Mercatanti, Jr.  
President

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**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties hereto as of the date first above written.

**MILLENNIUM RADIO GROUP, LLC**

By: \_\_\_\_\_  
Name: Charles W. Banta  
Title: \_\_\_\_\_

**NASSAU BROADCASTING II, L.L.C.,**

By: Nassau Broadcasting I, L.L.C.,  
as Sole Member  
By: Nassau Broadcasting Partners, L.P.,  
as Sole Member  
By: Nassau Broadcasting Partners, Inc.,  
its General Partner

By:  \_\_\_\_\_  
Louis F. Mercatanti, Jr.  
President

**NASSAU BROADCASTING I, L.L.C.,**

By: Nassau Broadcasting Partners, L.P.,  
as Sole Member  
By: Nassau Broadcasting Partners, Inc.,  
its General Partner

By:  \_\_\_\_\_  
Louis F. Mercatanti, Jr.  
President



**NASSAU BROADCASTING PARTNERS, L.P.**

**By: Nassau Broadcasting Partners, Inc.,  
its General Partner**

**By:**

  
\_\_\_\_\_  
**Louis E. Mercatanti, Jr.**  
**President**

