

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of August 14, 2004 between Wyoming Channel 2, Inc., an Arkansas corporation ("Seller") and K-TWO TV of Wyoming, Inc., a Wyoming corporation ("Buyer").

### **Recitals**

A. Seller owns and operates analog television broadcast station Ktwo-TV, Casper, Wyoming, and its allotted digital channel (collectively, the "Station") pursuant to certain authorizations issued by the Federal Communications Commission (the "FCC").

B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (defined below).

### **Agreement**

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:

## **ARTICLE 1: PURCHASE OF ASSETS**

1.1. Station Assets. On the terms and subject to the conditions hereof, on the Closing Date (defined below), Seller shall assign, transfer, convey and deliver to Buyer, and Buyer shall acquire from Seller, all right, title and interest of Seller in, to and under all assets used or useable in the operation of the Station, including but not limited to the following assets (the "Station Assets"):

(a) All of the licenses and other authorizations (including call signs) issued by the FCC for the operation of the Station described on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing (the "FCC Licenses");

(b) All of the personal property listed on *Schedule 1.1(b)*, except any retirements or dispositions thereof made between the date hereof and Closing (i) in the ordinary course of business and consistent with past practices of Seller and (ii) in accordance with the terms of this Agreement (the "Tangible Personal Property"), and specifically excluding all property related to Equity Broadcasting Corporation's satellite uplink and master control facilities in Arkansas;

(c) The real property listed on *Schedule 1.1(c)* and all buildings, improvements and fixtures thereon, together with all strips and gores, rights of way, easements, strips and gores privileges and appurtenances pertaining thereto, including any right, title and interest of Seller in and to any street adjoining any portion of such real property (the "Real Property");

(d) Those contracts and agreements used in connection with the business and operations of the Station that are listed on *Schedule 1.1(d)* and those contracts under which the business of the Station is conducted by Seller not required pursuant to Section 2.8(a) to be listed on *Schedule 1.1(d)* (other than contracts described in clause (iv) of Section 2.8(a)), together with all contracts, agreements, and leases made between the date hereof and Closing in the ordinary course of the Station's business and in compliance with Section 4.1(f) below (the "Station Contracts");

(e) The Station's call letters and the trademarks, trade names, domain names, service marks, franchises, copyrights, computer software, programs and programming material, jingles, slogans, logos, and other intangible property which are used or held for use in the operation of the Station, including without limitation those listed on *Schedule 1.1(e)*, and all goodwill associated therewith (the "Intangible Property"); and

(f) The files, documents, records, and books of account (or copies thereof) relating to the operation of the Station, including, to the extent the following exist, the Station's local public files, programming information and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, but excluding records relating to the Excluded Assets (defined below).

Notwithstanding the foregoing, the Station Assets shall not include the Excluded Assets.

The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances ("Liens") except for (i) Assumed Obligations (defined below), (ii) liens for taxes not yet due and payable for which Buyer receives a credit pursuant to Section 1.6, (iii) with respect to the Real Property, such easements, rights of way, building and use restrictions and other similar exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station, or (iv) as described in *Schedule 1.1(g)* (collectively, "Permitted Liens").

1.2. Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets along with all rights, title and interest therein (the "Excluded Assets"):

(a) All cash and cash equivalents of Seller, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, asset or money market accounts and all such similar accounts or investments;

(b) All tangible and intangible personal property of Seller disposed of or consumed in the ordinary course of business of Seller and in accordance with the terms of this Agreement between the date of this Agreement and Closing;

(c) All Station Contracts that are terminated or expire prior to Closing in the ordinary course of business of Seller;

(d) Seller's name, corporate minute books, charter documents, corporate stock record books and such other books and records as pertain to the organization, existence or share capitalization of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(e) All contracts of insurance, and subject to Section 1.11, all insurance proceeds or claims made thereunder;

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

(g) All accounts receivable of the Station existing as of the Closing Date (the "Receivables");

(h) All assets primarily used or held for use in the operation of any other radio or television station owned or operated by Seller or an affiliate of Seller; and

(i) All assets not listed on *Schedules 1.1(a), 1.1(b) and 1.1(c)* .

1.3. Assumption of Obligations. Subject to the terms and conditions hereof, on the Closing Date (defined below), Buyer shall assume the obligations of Seller arising from and relating to the period after Closing under the Station Contracts (the "Assumed Obligations"); provided that the Assumed Obligations shall not include (a) liabilities arising out of any facts, circumstances or actions that constitute a misrepresentation or breach of any warranty or covenant by Seller made in this Agreement, (b) any indebtedness for borrowed money of Seller, except as specified in Section 1.4 below, (c) any liabilities of Seller resulting from, or arising out of, relating to, in the nature of or caused by any breach of contract, breach of warranty, tort, infringement, claim or lawsuit relating to the period prior to the Closing Date, or (d) the liabilities of Seller for the accrued vacation or sick pay of its employees which accrued prior to the Closing Date. Buyer does not assume or agree to discharge or perform, and will not be deemed by reason of the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, to have assumed or to have agreed to discharge or perform, and Seller shall remain liable for, all liabilities, obligations or commitments of Seller (the "Retained Liabilities"), other than the Assumed Obligations.

1.4. Purchase Price. In consideration for the sale of the Station Assets to Buyer, Buyer shall pay Seller the sum of One Million Two Hundred Thousand Dollars (\$1,200,000) (the "Purchase Price"); in addition, Buyer shall assume a debt which is secured by a mortgage on the Real Property in an amount no greater than Five Hundred Thousand Dollars (\$500,000) ("Debt"); and the Purchase Price is subject to adjustment pursuant to Section 1.6 below. Upon the execution of this Agreement, Buyer has the immediate right to pay off said mortgage (which shall not be refunded to Buyer upon termination of this Agreement for any reason) and acquire the Real Property; and if Buyer does so, (i) Seller will cooperate with Buyer in this regard in order to fulfill those aspects of this Agreement that apply to said pre-Closing conveyance of the

Real Property notwithstanding that the remainder of the Closing is not then taking place, and (ii) Buyer will retain separate office/main studio/master control facilities for the Station which Buyer will lease to Seller at Buyer's cost if for any reason the Closing does not take place. The above-specified One Million Two Hundred Thousand Dollars (\$1,200,000) shall be paid to Seller as follows: (a) Buyer has already paid, and Seller has received, Two Hundred Fifty Thousand Dollars (\$250,000); (b) at the Closing Buyer will pay Seller the remaining Nine Hundred Fifty Thousand Dollars (\$950,000) by wire transfer of immediately available funds, subject to the provisions of Section 1.5; and (c) Buyer shall assume the Debt in a form that relieves Seller from all obligations it currently has under the Debt.

1.5. Prepayments Towards Purchase Price. Buyer will make the following prepayments towards the Purchase Price on each date specified, but only if the Closing has not occurred by such date: August 16, 2004 – Three Hundred Fifty Thousand Dollars (\$350,000); February 16, 2005 – Three Hundred Fifty Thousand Dollars (\$350,000); August 16, 2005 – Two Hundred Forty Nine Thousand Nine Hundred Ninety Nine Dollars (\$249,999). Any such payments will reduce the amount Buyer pays to Seller at the Closing under Section 1.4.

1.6. Prorations and Adjustments.

(a) Except as otherwise provided herein, and subject to the Time Brokerage Agreement between Seller and Buyer dated March 1, 2004 (the "TBA"), all deposits, reserves and prepaid or deferred income and expenses arising from the conduct of the business and operation of the Station shall be prorated between Seller and Buyer as of 12:01 a.m. Mountain Time on the Closing Date. Such prorations shall include, without limitation, all *ad valorem* real estate and other property taxes (but excluding taxes arising by reason of the transfer of the Station Assets as contemplated hereby which shall be paid as set forth in Section 10.4), business and license fees, music and other license fees (including any retroactive adjustments thereof), utility expenses, accrued liabilities for vacation pay, sick pay, compensatory pay and similar amounts, amounts that may become payable in respect of unlicensed software, amounts due or to become due under contracts, rents, lease payments and similar prepaid and deferred items. Real estate taxes shall be apportioned on the basis of taxes assessed for the preceding year, with a reapportionment, if any, as soon as the new tax rate and valuation can be ascertained.

(b) Notwithstanding anything to the contrary set forth in Section 1.6(a) above, as between Buyer and Seller with respect to all contracts relating to program rights ("Program Contracts"), obligations to make cash payments of license and usage fees pursuant to each such Program Contract will be prorated between Seller and Buyer based on the number of days during the term of such Program Contract elapsed as of the Closing Date vis a vis the number of days during the term of such Program Contract occurring after the Closing Date.

(c) To the extent consistent with the provisions of clauses (a) and (b) above, the prorations shall be made in accordance with generally accepted accounting principles. Except as otherwise provided herein, the prorations and adjustments contemplated by this Section 1.6, to the extent practicable, shall be made on the Closing Date. As to those prorations and adjustments not capable of being ascertained on the Closing Date, an adjustment and proration shall be made within forty (40) calendar days of the Closing Date. 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 determined by an independent certified public accountant mutually acceptable to the parties, and the fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

1.7. Allocation. At Closing, or in connection with the final adjustment after Closing under Section 1.6, Seller and Buyer shall allocate the value of the assets comprising the Station Assets in accordance with their respective fair market values. The parties shall file their respective tax returns consistent with such allocation.

1.8. Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the "Closing") shall take place on the Closing Date, subject to the satisfaction or waiver of the conditions required to be satisfied or waived pursuant to Articles VI and VII. The "Closing Date" shall mean the date on which the Closing occurs which shall be the date which is the tenth (10th) business day after the date of the FCC Consent (as defined in Section 10.3). Alternatively, the Closing may take place at such other place, time or date as the parties may mutually agree upon in writing. The Closing shall be deemed effective as of 12:01 a.m., Mountain Time, on the Closing Date.

1.9. Collection of Accounts Receivable; Assumption of Accounts Payable. Seller shall collect all accounts receivable of Seller relating to the Station and existing as of such date (the "Accounts Receivable"). Buyer shall not compromise, settle or adjust the amount of any Accounts Receivable without Seller's prior written consent. If Buyer receives a payment from an account debtor of an Accounts Receivable, Buyer shall promptly notify Seller thereof and shall remit the payment immediately to Seller.

1.10 DTV. The Station has been assigned channel 17 by the FCC for the provision of digital television ("DTV") service. Seller has received a construction permit from the FCC for the Station's DTV operations and "special temporary authority" to operate the DTV station with reduced power (the "DTV STA").

1.11 Risk of Loss. The risk of loss of or damage to any of the Station Assets, and the risk of any interruption in the Station's normal broadcast transmission, shall remain with Seller at all times until 12:01 a.m. Mountain Time on the Closing Date. If prior to Closing the Station shall suffer any loss, taking, condemnation, damage or destruction of or to any of the Station Assets or the Station, at Closing, Seller shall assign to Buyer all its rights under any insurance and all proceeds of insurance (excluding business interruption proceeds for periods prior to the Closing Date) covering the property damage, destruction or loss not repaired, replaced or restored prior to Closing.

## **ARTICLE 2: REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties to Buyer:

2.1. Organization. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each

jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Seller pursuant hereto (collectively, the "Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof.

2.2. Authorization. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller or the shareholders of Seller. This Agreement is, and each Ancillary Agreement when executed and delivered by Seller and the other parties thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3. No Conflicts. Neither the execution and delivery by Seller of this Agreement and the Ancillary Agreements or the consummation by Seller of any of the transactions contemplated hereby or thereby nor compliance by Seller with or fulfillment by Seller of the terms, conditions and provisions hereof or thereof will conflict with, result in a breach of, constitute a default under, result in the creation of any Lien, except as listed in *Schedule 1.1(g)*, upon any Station Asset under, terminate, amend or modify or give any person the right to terminate, amend or modify, any organizational documents of Seller, any Station Contract, or any law, judgment, order, or decree to which Seller is subject or, except as set forth on *Schedule 1.1(d)*, require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except the FCC Consent.

2.4. FCC Licenses. Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)* and such FCC Licenses constitute all those necessary to operate the Station as a television broadcast station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending any action by or before the FCC or any other governmental authority to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability), and there is not now issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture against Seller with respect to the Station. With respect to the Station, Seller is in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "Communications Act"), and the rules and policies of the FCC.

2.5. Taxes. Seller has, in respect of the Station's business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable. To Seller's knowledge, all of such returns, reports and estimates are true and

complete in all material respects. Seller has withheld all taxes required to be withheld under applicable law and regulations, and such withholdings have either been paid to the proper governmental agency or set aside in accounts for such purpose, or accrued, reserved against and entered upon the books of Seller, as the case may be. To Seller's knowledge, there are, and after the date of this Agreement will be, no tax deficiencies (including penalties and interest) of any kind assessed against or relating to Seller or the Station Assets with respect to any taxable periods ending on or before, or including, the Closing Date of a character or nature that would result in Liens or claims on any of the Station Assets or on Buyer's title or use of the Station Assets or that would result in any claim against Buyer or the Station Assets.

2.6. Personal Property. *Schedule 1.1(b)* contains a list of all material items of Tangible Personal Property included in the Station Assets. Seller has title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Each of the material items of equipment is in operating condition and repair, ordinary wear and tear excepted, is operating and has been serviced and maintained by Seller in accordance with normal industry standards and practices and FCC rules and published policies. Seller maintains insurance policies (or other arrangements) with respect to the Station and the Station Assets consistent with its practices for other stations, and will maintain such policies until Closing. The Station Assets include all of the assets, properties and rights of every type and description, real, personal and mixed, tangible and intangible, that are necessary for the business of owning and operating the Station as currently conducted. Except as set forth on Schedule 2.6, Seller owns good and marketable title to or has valid leasehold interests in all of the Station Assets free and clear of any and all Liens except for Permitted Liens.

2.7. Real Property.

(a) *Schedule 1.1(c)* contains a description of all real property used in the operation of the Station. Seller has fee simple title to the Real Property indicated as owned by Seller on *Schedule 1.1(c)* ("Owned Real Property") free and clear of Liens other than Permitted Liens. *Schedule 1.1(c)* includes a description of each lease of Real Property or similar agreement included in the Station Assets (the "Real Property Leases"). The Owned Real Property includes, and the Real Property Leases provide, access to the Station's facilities. To Seller's knowledge, the Real Property is not subject to any suit for condemnation or other taking by any public authority. There are no parties in possession of any portion of the Real Property other than Seller, whether as lessees, tenants at will, trespassers or otherwise. To Seller's knowledge, there is no law, ordinance, order, regulation or requirement now in existence, which would require any material expenditure to remediate, remedy, remove, modify or improve any of the Real Property in order to bring it into substantial compliance therewith. The Real Property has adequate direct access to and from completed, dedicated and accepted public roads, and there is no pending or, to the knowledge of Seller, threatened governmental proceeding which would impair or curtail such access. To the knowledge of Seller, there are no material structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the buildings or towers located on the Real Property and, to Seller's knowledge, the roofs of the buildings located on the Real Property are free from leaks and in good condition, ordinary wear and tear excepted.

## 2.8. Contracts.

(a) *Schedule 1.1(d)* lists all agreements relating to properties, undertakings or commitments to or for third parties in the operation and conduct of the Station, except for any of the following:

(i) agreements (other than Tradeout Agreements) for the sale of time on the Station,

(ii) agreements which are cancelable by Seller or its assignee without breach or penalty on not more than thirty (30) days notice,

(iii) any agreement which does not, by its terms, extend for more than twelve (12) months after the date hereof, and in which the remaining payments payable thereunder do not exceed Twenty Thousand Dollars (\$20,000.00), and

(iv) any and all of Seller's loan agreements, other than the Debt being assumed by Buyer and totaling up to \$500,000, if any, and all related agreements, documents and instruments;

(b) Except as indicated on Schedules 1.1(c) and 1.1(d), each of the Station Contracts (including without limitation each of the Real Property Leases) is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, and is not in material default thereunder, and to Seller's knowledge, no other party to any of the Station Contracts is in default thereunder in any material respect, except as set forth on *Schedule 2.8(b)*.

2.9. Environmental. Except as set forth on *Schedule 2.9*, to Seller's knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property included in the Station Assets. Except as set forth on *Schedule 2.9*, to Seller's knowledge, Seller has complied in all material respects with all environmental, health and safety laws applicable to the Station. To the knowledge of Seller, there are no conditions existing currently which would subject any owner or operator to the Real Property to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or which require or are likely to require cleanup, removal, remedial action or other response pursuant to Environmental Laws. To the knowledge of Seller, Seller is not subject, as a result of its interest in the Real Property, to any judgment, order or citation related to or arising out of any Environmental Laws and has not been named or listed, as a result of its interest in the Real Property, as a potentially responsible party by any governmental body or agency in a matter related to or arising out of any Environmental Laws. "Environmental Laws" shall mean the rules and policies of the FCC, the Environmental Protection Agency and any other federal, state or local government authority pertaining to human exposure to RF radiation and all applicable rules and regulations of federal, state and local laws, including statutes, regulations, ordinances, codes, and rules, as amended, relating to the



discharge or removal of air pollutants, water pollutants or process waste water or hazardous or toxic substances, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Occupational Safety and Health Act of 1970, each as amended, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, regulations of the Occupational Safety and Health Administration and regulations of any state department of natural resources or state environmental protection agency, now in effect.

2.10. Intangible Property. *Schedule 1.1(e)* contains a description of the material Intangible Property included in the Station Assets. Except as set forth on *Schedule 2.10*, Seller has received no notice of any claim that its use of the Intangible Property infringes upon any third party rights. Except as set forth on *Schedule 2.10*, Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

2.11. Employees. *Schedule 2.11* is a true and complete list of all of Seller's employees as of the date of this Agreement, which list identifies the name of such employees, and the following compensation information with respect to each of them: (i) current annual base salary; (ii) accrued vacation and sick leave time and; (iii) the dates and amounts of the last increase in compensation. Except as set forth on *Schedule 2.11* hereto, or as otherwise provided by applicable state law, the employment of all employees of the Station is terminable at will by such employer without any penalty or severance obligations incurred by such employer. Except as set forth in *Schedule 2.11*, Seller is not bound by any employment agreement or collective bargaining agreement, and to the knowledge of Seller, there exists no organizational effort presently being made or, threatened by or on behalf of any labor union with respect to employees of the Station. Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining. There is no (i) unfair labor practice charge or complaint against Seller in respect of the Station's business pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, or (ii) strike, dispute, request for representation, slowdown or stoppage pending or, to Seller's knowledge, threatened in respect of the Station business.

2.12. Compliance with Law. Seller has complied in all material respects with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court or of any foreign, federal, state, municipal or other governmental authority which are applicable to the operation of the Station. Except as set forth on *Schedule 2.12* hereto, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station. To Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Station (except those affecting the industry generally).

2.13. No Finder. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

2.14 No Changes. Except as set forth on *Schedule 2.14* or as otherwise contemplated by this Agreement, since December 31, 2003 through the date hereof, there has not been any:

(a) amendment or termination of any Station Contract to which Seller is a party with respect to the Station except in the ordinary course of business;

(b) increase in compensation paid, payable or to become payable by Seller to any of its employees at the Station, except in the ordinary course of business;

(c) extraordinary losses (whether or not covered by insurance) or waiver by Seller of any extraordinary rights of value;

(d) commitment to or liability to any labor organization which represents, or proposes to represent, employees of the Station;

(e) sale, assignment, lease or other transfer or disposition of any of the Station Assets or properties of the Station except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;

(f) period of four (4) consecutive days or more during which the Station was off the air for any reason or a period of fifteen (15) days or more during which the Station operated at substantially reduced power;

(g) change in the financial condition, business, assets or results of operation of the Station which has had a material adverse effect caused by Seller.

## 2.16 Financial Benefit Plans.

*Schedule 2.16* lists each "employee pension benefit plan," as such term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and "employee welfare benefit plan," as such term is defined in Section 3(1) of ERISA, which is or has been entered into, maintained, administered or contributed to by Seller and covers any employee of Seller (all of the foregoing are collectively referred to herein as the "Employee Benefit Plans"). Each Employee Benefit Plan is in all material respects maintained, funded and administered in compliance with ERISA, the Code, and other applicable law. Each Employee Benefit Plan that is an employee pension benefit plan and that is intended to be qualified under Section 401(a) of the Code, if any, has received a favorable determination letter from the Internal Revenue Service stating that it is tax-qualified under Section 401(a) of the Code. With respect to the Station, Seller has never maintained a pension plan subject to Section 412 of the Code or Title IV of ERISA, and has never maintained, contributed to or been required to contribute to any employee benefit plan that is a "multiemployer plan" (as defined in Section 3(37)(A) or (D) of ERISA) as amended by the Multiemployer Pension Plan Amendments Acts of 1980.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer makes the following representations and warranties to Seller:

3.1. Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is or will be by Closing qualified to do business in each jurisdiction in which the Station Assets are located. Buyer has the requisite power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof.

3.2. Authorization. The execution, delivery and performance of this Agreement and the Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Ancillary Agreement when executed and delivered by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3. No Conflicts. Neither the execution and delivery by Buyer of this Agreement and the Ancillary Agreements or the consummation by Buyer of any of the transactions contemplated hereby or thereby nor compliance by Buyer with or fulfillment by Buyer of the terms, conditions and provisions hereof or thereof will conflict with any organizational documents of Buyer or any law, judgment, order, or decree to which Buyer is subject or, require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except the FCC Consent.

3.4. No Finder. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

3.5. Qualification. Buyer is qualified under the Communications Act and the existing rules and policies of the FCC to hold the FCC Licenses.

### **ARTICLE 4: SELLER COVENANTS**

4.1 Access. Buyer and its authorized agents, officers and representatives, upon prior written request, shall have access to the appropriate records of Seller to conduct such examination and investigation as Buyer deems necessary, provided that such examination and investigation shall be at Buyer's sole cost and expense and shall be during Seller's normal

business hours and shall not unreasonably interfere with Seller's operations and activities. Without limiting the foregoing, Seller will give Buyer and its authorized agents, officers and representatives such access to such books and records pertaining to the Station as may reasonably be required in order to perform any audit or other review that Buyer may deem appropriate in connection with any loan application or loan agreement of Buyer.

4.2 Notice of Certain Events. Pending the Closing, Seller shall give Buyer prompt written notice of the occurrence of any of the following as it gains actual knowledge thereof:

(a) the commencement of any proceeding or litigation at law or in equity or before the FCC or any other commission, agency or administrative or regulatory body or authority which involves any of the FCC Licenses or which could reasonably be expected to have a material adverse effect on the Station, other than proceedings or litigation of general applicability to the television broadcasting industry;

(b) any material violation by Seller, or written notice of any alleged material violation by Seller, of any federal, state or local law, statute, ordinance, rule or regulation;

(c) the failure of any representation or warranty of the Seller set forth herein to be true and correct in all material respects; or

(d) any attempt or actual collective bargaining organizing activity with respect to any employee of the Station.

4.3 Station Operations. Seller covenants and agrees with respect to the Station that, between the date hereof and Closing, except as expressly permitted by this Agreement or with the prior written consent of Buyer, Seller shall:

(a) operate the Station in the ordinary course of business consistent with past practice and in all material respects in accordance with FCC rules and policies and with all other applicable laws, regulations, rules and orders;

(b) maintain the FCC Licenses in full force and effect and shall timely file and prosecute any necessary applications for renewal or extensions of the FCC Licenses;

(c) repair and replace any damaged or lost Station Assets and restore any interrupted transmission and maintain the tangible Station Assets in good working order, ordinary wear and tear and usage excepted;

(d) not sell, lease, mortgage, pledge or otherwise dispose of any of the Station Assets, except in the ordinary course of Seller's business, or permit to exist any Liens upon the Station Assets, except for Permitted Liens;

(e) maintain in full force and effect policies of liability and casualty insurance of substantially the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Station;

(f) not renew, amend or terminate any Station Contract, or enter into any new contract with respect to the Station, in any manner that will be binding upon Buyer or the Station after Closing, except for renewals or replacements in the ordinary course of business on terms no less favorable than the existing Station Contracts.

(g) take all commercially reasonable actions to maintain carriage of the Station's signal on all cable television systems or satellite systems on which it currently is carried; and

(h) except as required by law, not enter into any collective bargaining agreement or modify the employment terms applicable to any employee of the Station.

#### 4.4 Real Estate Matters.

(a) Prior to the Closing, Seller will, at no cost to Seller, cooperate with Buyer so that Buyer may obtain, for the benefit of and at the cost of Buyer, all documents reasonably required (including estoppel certificates, owner's affidavits, indemnities and GAP undertakings) for a final commitment for an ALTA Owners Policy of Title Insurance, as the case may be, Form B-1970, for each parcel of Real Property, issued by a title insurer designated by Buyer (the "Title Insurer"), in such amount as Buyer reasonably determines to be the fair market value thereof, insuring Buyer's interest in such parcel, subject only to the Permitted Liens, and with such other endorsements and other terms and conditions as Buyer may reasonably request.

(b) At Buyer's request, Seller will, at no cost to Seller, cooperate with Buyer so that Buyer may procure for the benefit of and at the cost of Buyer, in preparation for the Closing, current surveys of each parcel of Real Property, prepared by a licensed surveyor and conforming to 1992 ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, and such standards as the Title Insurer may reasonably require as a condition to the removal of any survey exceptions from the commitment for the title insurance policy described in Section 6.10(a), and certified to Buyer, Buyer's lenders and the Title Insurer, in a form sufficient to permit the issuance of the title policies described above in Section 4.4(a). In the event such survey(s) disclose survey defects or encroachments which materially interfere with the current business and operation of the Station (the "Defects"), Seller will use its reasonable best efforts to have such Defects eliminated.

4.5 Release of Liens. Except for the Permitted Liens, at or prior to the Closing, Seller shall obtain the release of all Liens disclosed in the Schedules hereto and any other Liens on the Station Assets and shall duly file releases or terminations of all such Liens in each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed.

4.6 Tax Returns and Payments. All tax returns, estimates and reports with respect to the Station Assets or operation of the Station that are required to be filed by Seller prior to the Closing Date or relating to periods prior to the Closing Date will be timely filed when due with the appropriate governmental agencies or extensions will have been granted. All taxes pertaining

to ownership of the Station Assets or operation of the Station prior to the Closing Date will be paid by Seller when due and payable unless protested in good faith.

4.7 Nonsolicit. Seller agrees that neither Seller nor its Affiliate will, directly or indirectly, for a period of one (1) year from and after the Closing Date, contact, approach or solicit for the purpose of offering employment to or hiring (whether as an employee, consultant, agent, independent contractor or otherwise) or actually hire any person who is employed in the operation of the Station on the date hereof (other than those employees Buyer notifies Seller it does not intend to hire as described in Section 10.7).

## **ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree that between the date hereof and Closing:

### **5.1. Confidentiality.**

(a) Subject to the requirements of applicable law, Buyer and Seller shall each keep confidential all information obtained by it with respect to the other parties hereto in connection with this Agreement and the negotiations preceding this Agreement ("Confidential Information"); provided that, the parties hereto may furnish such Confidential Information to its employees, agents and representatives who need to know such Confidential Information (including its financial and legal advisers, its banks and other lenders) (collectively, "Representatives"); provided however, the disclosing party shall be responsible for all actions or omissions of such Representatives with regard to Representatives' breach of this Section 5.1. Each party hereto shall, and shall cause each of such party's Representatives to, use the Confidential Information solely in connection with the transactions contemplated by this Agreement, and not for any competitive purpose or advantage detrimental to the other party hereto or any of its affiliates; provided that following the Closing the Buyer may use the Confidential Information in the conduct of the Station's business. If the transactions contemplated hereby are not consummated for any reason, each party shall (i) return to such other party hereto, without retaining a copy thereof, any schedules, documents or other written information (and any derivative work product) obtained from such other party in connection with this Agreement and the transactions contemplated hereby, and (ii) provide, upon request, a written confirmation that all Confidential Information (and derivative work product) has been returned to the other party, and that the Confidential Information was used solely in connection with the transactions contemplated by this Agreement. Notwithstanding anything herein to the contrary, at the earliest of the date of the first public announcement of the discussions relating to the transaction, the date of the public announcement of the transaction, or the date of the execution of the definitive agreements relating to the transaction, each party to the transaction (and each employee, representative, agent and advisor of each such party) may disclose to any and all persons, without limitations of any kind, the U.S. tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analysis) that are provided to the party relating to such U.S. tax treatment and tax structure. In addition, no party shall be subject to any restriction concerning its consulting with its tax advisor regarding the tax treatment or tax structure of the transaction at any time.

(b) Notwithstanding anything to the contrary in this Agreement, no party shall be required to keep confidential or return any Confidential Information which: (a) is known or available through other lawful sources, not bound by a confidentiality agreement with the disclosing party; (b) is or becomes publicly known through no fault of the receiving party or its agents; (c) is required to be disclosed pursuant to an order or request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of the disclosure); or (d) is developed by the receiving party independently of the disclosure by the disclosing party.

5.2. Cooperation. Each party (i) shall use commercially reasonable efforts to obtain any governmental or third party consents necessary to accomplish the transactions contemplated by this Agreement, and to satisfy the conditions to Closing set forth herein, and (ii) shall not take any action that conflicts with its obligations hereunder or that causes its representations and warranties to become untrue in any material respect.

5.3. Control of Stations. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing, except as specified in the TBA. Consistent with FCC rules, control, supervision and direction of Station operations prior to Closing shall remain the responsibility of Seller.

5.4. Consents to Assignment. The parties shall use commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Station Contract (which shall not require any payment to any such third party) and to obtain any customary estoppel certificates requested by either party. To the extent that any such contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant hereto shall not constitute an assignment thereof, but to the extent permitted by law shall constitute an equitable assignment and assumption of rights and obligations under the applicable contract, with the conveying party making available to the acquiring party the benefits thereof and the acquiring party performing the obligations thereunder on the conveying party's behalf.

5.5. Public Announcements. Between the date hereof and the Closing Date, the parties shall consult and cooperate with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such public statement without the consent of the other party, which consent shall not be unreasonably withheld, provided, however, that a party may, without the consent of the other party, issue such press release or make such public statements as may be required by law or any listing agreement with a national securities exchange to which either Seller or Buyer is a party. Notwithstanding the foregoing, Seller shall publish and broadcast a public notice concerning the filing of the application for assignment of the FCC Licenses in accordance with the requirements of Section 73.3580 of the FCC's rules.

5.6. During the initial term of the Time Brokerage Agreement by and between Seller, Seller agrees to provide Buyer with up to 3 MHz of space on Galaxy 10R at a price of \$6,500 per month with a price increase of five percent (5%) beginning January 1, 2005 and annual five percent (5%) increases thereafter. After the closing of Contract for Purchase and Sale, Buyer

and Seller shall use reasonable commercial efforts to assist Buyer in obtaining space on G-10R at the above referenced rate and to enter into a satellite carriage agreement with each other.



## **ARTICLE 6: SELLER CLOSING CONDITIONS**

The obligations of Seller hereunder are, at its option, subject to satisfaction, at or prior to Closing, of each of the following conditions:

6.1. Representations, Warranties and Covenants. Each of the representations and warranties of Buyer contained in this Agreement shall be deemed to be made again on and as of the Closing Date and shall then be true and correct in all material respects except to the extent changes are permitted or contemplated pursuant to this Agreement. Buyer shall have performed and complied in all material respects with the covenants and agreements required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer, to the effect that the conditions set forth in this Section have been satisfied.

6.2. FCC Consent. The FCC Consent shall have been granted.

6.3. Deliveries. Buyer shall have made or simultaneously make the deliveries set forth in Section 8.2.

6.4. Legal Proceedings. No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits the transactions contemplated by this Agreement; and no material adverse action or proceeding by any governmental authority shall have been instituted or threatened in writing (and not subsequently dismissed, settled or otherwise terminated) which would be reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

## **ARTICLE 7: BUYER CLOSING CONDITIONS**

The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to Closing, of each of the following conditions:

7.1. Representations, Warranties and Covenants. Each of the representations and warranties of Seller contained in this Agreement shall have been true and correct as of the date hereof and shall be deemed to be made again on and as of the Closing Date and shall then be true and correct in all material respects, except to the extent changes are permitted or contemplated pursuant to this Agreement. Seller shall have performed and complied in all material respects with the covenants and agreements required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Buyer shall have received a certificate dated as of the Closing Date from Seller, executed by an authorized officer of Seller to the effect that the conditions set forth in this Section have been satisfied.

7.2. FCC Consent. The FCC Consent shall have been granted.

7.3. Deliveries. Seller shall have made or simultaneously make the deliveries set forth in Section 8.1.

7.4. Legal Proceedings. No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits the transactions contemplated by this Agreement; and no material adverse action or proceeding before or by any court, governmental authority, arbitrator or other entity shall have been instituted or threatened in writing (and not subsequently dismissed, settled or otherwise terminated) which would be reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

7.5 Licenses. Seller shall be the holder of the FCC Licenses and there shall not have been any modification of any of such FCC Licenses which has had or could reasonably be expected to have a material adverse effect on the Station. The Station shall be operating in material compliance with the Communications Act and The FCC's rules and policies; and, except for governmental proceedings relating to the television broadcast industry generally, no proceeding shall be pending or, to the knowledge of Seller, threatened, the effect of which would be to revoke, cancel, fail to renew, suspend or modify materially and adversely any of the FCC Licenses.

7.7 Release of Liens. All Liens (other than Permitted Liens) on the Station Assets shall be released as provided in Section 4.5.

7.8 Real Estate Matters. The Buyer shall have received the title insurance and surveys described in Section 4.4 at Buyer's expense.

If any of the conditions set forth in this Article VII have not been satisfied prior to or at the Closing, Buyer may (without waiving any other right or remedy under this Agreement) in its sole discretion waive any such condition (other than as set forth in Section 7.2) and elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE 8: CLOSING DELIVERIES**

8.1. Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) certified copies of resolutions authorizing its execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(ii) the certificate described in Section 7.1; and

(iii) such bills of sale, assignments, special warranty deeds, documents of title and other instruments of conveyance, assignment and transfer as may be necessary or advisable to convey, transfer and assign the Station Assets to Buyer, free and clear of Liens, except for Permitted Liens.

8.2. Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

(i) the certified copies of resolutions authorizing its execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(ii) the certificate described in Section 6.1;

(iii) such documents and instruments of assumption as may be necessary to assume the Assumed Obligations; and

(iv) The remainder of the Purchase Price

## **ARTICLE 9: SURVIVAL; INDEMNIFICATION**

9.1. Survival. The representations and warranties in this Agreement shall survive Closing (regardless of any investigation or inquiry of any party and even if the damaged party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) for period of 12 months from the Closing Date whereupon they shall expire and be of no further force or effect; provided, however, that (i) the representations and warranties contained in Sections 2.5, 2.9 and 2.16 shall survive for a period expiring the first day after the expiration of the applicable statutes of limitation or, if there is no applicable statute of limitations, 12 months from the Closing, and (iii) the representations and warranties contained in Sections 2.2 and 2.13 shall continue in full force and effect forever. Any claim with respect to a breach of a representation or warranty under Section 9.2 must be asserted in writing with reasonable particularity by the party making such claim within the applicable survival period, in which case such representation and warranty shall survive until such claim is finally resolved.

### 9.2. Indemnification.

(a) Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or resulting from: (i) any breach of the representations and warranties of Seller in this Agreement; (ii) any failure by Seller to comply with the covenants and agreements of Seller under this Agreement; (iii) the Retained Liabilities, or (iv) the Station's operation, during the period of Station's ownership by Seller, out of compliance with the FCC Licenses including with respect to any notice of violation, notice of apparent liability of forfeiture or notice of forfeiture with respect thereto; provided, however, that (i) Seller shall have no liability to Buyer for a breach of representations and warranties hereunder until, and only to the extent that, Buyer's aggregate Damages exceed the basket amount set forth as *Exhibit A* attached hereto and (ii) the maximum liability of Seller for a breach of representations and warranties hereunder shall be the cap amount set forth on *Exhibit A* attached hereto.

(b) Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from: (i) any breach of the representations and warranties of Buyer in this Agreement; (ii) any failure by Buyer to comply

with the covenants and agreements of Buyer under this Agreement; (iii) the Assumed Obligations; (iv) the Station's operation by Buyer after Closing; or (v) any litigation, arbitration or claims against Buyer relating to the Station, where Seller is named or has to participate.

9.3. Procedures. The indemnified party shall give prompt written notice to the indemnifying party of any written demand, suit, claim or assertion of liability by third parties or other circumstances that could give rise to an indemnification obligation hereunder against the indemnifying party (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's right to indemnification and the indemnifying party's obligation to indemnify as set forth in this Agreement, except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced. The obligations and liabilities of the parties with respect to any Claim shall be subject to the following additional terms and conditions:

(a) The indemnifying party shall have the right to undertake, by counsel of its own choosing, the defense or opposition to such Claim; provided that prior to the indemnifying party's assuming control of such defense, the indemnifying party must first furnish the indemnified party with evidence which, in the indemnified party's reasonable judgment, establishes that the indemnifying party is and will be able to satisfy any such liability. Furthermore the indemnifying party will not be entitled to assume control of such defense if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation against the indemnified party, or (B) the indemnified party reasonably concludes in good faith that, in light of any actual or potential conflict of interest, it would be inappropriate for legal counsel selected by the indemnifying party to represent the indemnified party, in which case the parties hereto shall mutually agree upon appropriate defense counsel.

(b) If the indemnifying party is not able to, or does not elect to, undertake such defense or opposition, or, within twenty (20) days after written notice (which shall include sufficient description of background information explaining the basis for such Claim) of any such Claim from the indemnified party, the indemnifying party shall fail to undertake to defend or oppose, the indemnified party (upon further written notice to the indemnifying party) shall have the right to undertake the defense, opposition, compromise or settlement of such Claim, by counsel or other representatives of its own choosing, on behalf of and for the account and risk of the indemnifying party (subject to the right of the indemnifying party to assume defense of such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim; and (iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel or other representatives concerning such Claim and

the indemnifying party and the indemnified party and their respective counsel or other representatives shall cooperate in good faith with respect to such Claim.

(d) All Claims not disputed shall be paid by the indemnifying party within thirty (30) days after receiving notice of the Claim. "Disputed Claims" shall mean claims for Damages by an indemnified party which the indemnifying party objects to in writing within thirty (30) days after receiving notice of the Claim. In the event there is a Disputed Claim with respect to any Damages, the indemnifying party shall be required to pay the indemnified party the amount of such Damages for which the indemnifying party has, pursuant to a final determination, been found liable within ten (10) days after there is a final determination with respect to such Disputed Claim. A final determination of a Disputed Claim shall be (i) a judgment of any court determining the validity of a Disputed Claim, if no appeal is pending from such judgment and if the time to appeal therefrom has elapsed; (ii) an award of any arbitration determining the validity of such disputed claim, if there is not pending any motion to set aside such award and if the time within which to move to set aside such award has elapsed; (iii) a written termination of the dispute with respect to such claim signed by the parties thereto or their attorneys; (iv) a written acknowledgment of the indemnifying party that it no longer disputes the validity of such claim; or (v) such other evidence of final determination of a disputed claim as shall be acceptable to the parties.

9.4 Survival. This Article IX shall survive any termination of this Agreement.

#### **ARTICLE 10: MISCELLANEOUS PROVISIONS**

10.1. Termination. This Agreement may be terminated at any time prior to Closing: (a) by the mutual consent of Buyer and Seller; (b) by any party hereto, by written notice to the other party, if the FCC has denied the approvals contemplated by this Agreement in an order which has become Final; (c) at any time after the Closing Date, by Seller, by written notice to Buyer, if each condition set forth in Article VII has been satisfied (or will be satisfied by the delivery of documents by the parties prior to the Closing) or waived in writing on such date and Buyer has nonetheless failed to consummate the transactions contemplated hereby; (d) at any time after the Closing Date, by Buyer, by written notice to Seller, if each condition set forth in Article VI has been satisfied (or will be satisfied by the delivery of documents by the Parties prior to the Closing) or waived in writing on such date and Seller has nonetheless failed to consummate the transactions contemplated hereby; (e) by any party hereto, by written notice to the other party, if the Closing has not taken place within four (4) years after the date of this Agreement (provided the party seeking to terminate this Agreement is not in material breach of this Agreement); (f) by Seller, by written notice to Buyer, if on the Closing Date Buyer has failed to satisfy the conditions set forth in Section 6.1 or 6.3 (and such conditions would not be satisfied by the delivery of documents at the Closing); (g) by Seller, by written notice to Buyer, if Buyer has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within thirty (30) calendar days after it receives notice from Seller of such breach; (h) by Buyer, by written notice to Seller, if on the Closing Date Seller has failed to satisfy the conditions set forth in Section 7.1, 7.3 or 7.4 (and such conditions would not be satisfied by the delivery of documents at the Closing); or (i) by Buyer, by written notice to

Seller, if Seller has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within thirty (30) calendar days after it receives notice from Buyer of such breach. A termination pursuant to this Section 10.1 shall not relieve any party of any liability it would otherwise have for a breach of this Agreement. Notwithstanding any termination pursuant to this Section 10.1, the TBA shall remain in effect in accordance with its terms.

10.2. Specific Performance. In the event of a breach or threatened breach by either party of any representation, warranty, covenant or agreement under this Agreement, at the non-breaching party's election, in addition to any other remedy available to it, the non-breaching party shall be entitled to an injunction restraining any such breach or threatened breach and, subject to obtaining any requisite approval of the FCC, to enforcement of this Agreement by a decree of specific performance requiring the breaching party to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required.

10.3. Application for FCC Consent. As soon as possible (but in no event later than five (5) calendar days after the date of this Agreement), Seller and Buyer shall prepare and file-with the FCC all requisite applications and other necessary instruments and documents (the "Application") requesting the FCC's written consent to the assignment of the FCC Licenses to Buyer. Seller and Buyer shall diligently take all steps that are necessary, proper or desirable to expedite the prosecution of the Application to a favorable conclusion. Seller and Buyer shall promptly provide the other party with a copy of any pleading, order or other document served on such party relating to the Application. Seller and Buyer shall furnish all information required by the FCC and shall be represented at all meetings or hearings scheduled to consider the Application. The FCC's initial written consent to the Application is referred to herein as the "FCC Consent." In the event that Closing occurs hereunder prior to the receipt of a Final FCC Consent, then Seller's obligations under this Section 10.3 shall survive the Closing. For purposes of this Agreement, the term "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

10.4. Extension of Agreement. Notwithstanding the provisions of Section 10.1, if the FCC denies the Application or, on the second anniversary of this Agreement has not granted on the Application, then Buyer may find another purchaser for the Station Assets and Seller will cooperate with Buyer in seeking FCC approval for the new buyer to replace Buyer under this Agreement and purchase the Station Assets.

10.5. Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement, except that (i) all taxes (and any other governmental fees and charges) applicable to the transfer of the Station Assets to Buyer hereunder at Closing (including

without limitation any real estate transfer taxes), shall be paid equally by Buyer and Seller, and (ii) all FCC filing fees in connection with the FCC Application shall be paid equally by Buyer and Seller.

10.6. Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may be reasonably necessary to complete the sale of assets contemplated by this Agreement and otherwise

10.7. Employees. Buyer shall, effective as of the Closing Date, employ and hire such employees of Seller employed in the operation of the Station as it desires; provided that Buyer shall give Seller reasonable notice prior to the Closing Date with respect to employees it intends not to hire. Immediately prior to the Closing Seller shall terminate all of its employees, and Seller shall be responsible for and shall pay any and all severance obligations and earned and accrued vacation owed to such terminated employees. Any notification required by any federal, state or local law governing mass layoffs or terminations, including without limitation the federal Worker Adjustment and Retraining Notification Act of 1988, shall be given by Seller. Compliance with all such laws shall be Sellers' sole responsibility and liability. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, claims and causes of action (including, without limitation, reasonable attorney fees and other legal costs and expenses) arising out of the violation, or alleged violation, of any such laws, any other laws or otherwise arising out of any such termination of any of the employees.

## **ARTICLE 11: GENERAL PROVISIONS**

11.1. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto; provided, however, that Buyer may, without such consent, (a) prior to the Closing, (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates, or to another buyer pursuant to Section 10.4, (ii) designate one or more of its Affiliates to perform its obligations hereunder. No assignment shall relieve a party of its obligations or liability under this Agreement. All covenants, agreements, statements, representations, warranties and indemnities in this Agreement by and on behalf of any of the parties hereto shall bind and inure to the benefit of their respective successors and any permitted assigns of the parties hereto.

11.2. 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 both parties.

11.3. Headings. The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

11.4. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Wyoming without giving effect to the choice of law provisions thereof.

11.5. Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile, and shall be deemed to have been received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery or when delivered by facsimile transmission, and shall be addressed as set forth on *Exhibit A* attached hereto (or to such other address as any party may request by written notice).

11.6. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

11.7. Severability. If one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, then, so long as it does not deprive a party of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

11.8. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter hereof.

[SIGNATURE PAGE FOLLOWS]



SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

SELLER:

WYOMING CHANNEL 2, INC.

By: Lon Withrow  
Name: Lon Withrow  
Title: Secretary

BUYER:

K-TWO TV OF WYOMING, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

SELLER:

WYOMING CHANNEL 2, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BUYER:

K-TWO TV OF WYOMING, INC.

By: Cheryl Kaupp  
Name: Cheryl Kaupp  
Title: President