

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (“Agreement”) is dated as of the 24<sup>th</sup> day of December 2013, by and between O-TOWN COMMUNICATIONS, INC., an Iowa corporation having its principal place of business located at 416 East Main Street, Ottumwa, Iowa, 52501 (“Buyer”) and FMC BROADCASTING, INC., an Iowa corporation, 601 West Second Street, Ottumwa, Iowa, 52501 (“Seller”).

### **RECITALS**

- A. Seller is the FCC licensee of radio stations KLEE(AM), FCC Facility ID Number 21915, and KOTM-FM, FCC Facility ID Number 21916, Ottumwa, Iowa (the “Stations”).
- B. Seller owns all of the tangible and intangible assets used in the operation of the Stations.
- C. Seller desires to sell, and Buyer desires to buy, substantially all the assets that are used or useful in the operation of the Stations for the price and on the terms and conditions set forth in this Agreement.
- D. Prior to Closing Buyer will Broker time on the Stations pursuant to a separate Local Marketing Agreement (“LMA”) that Seller and Buyer are executing contemporaneously with this Agreement.
- E. The consummation of the transactions contemplated by this Agreement is subject to the prior consent of the FCC.

### **AGREEMENT**

In consideration of the above recitals and for other good and valuable consideration including the mutual agreements and covenants contained in this Agreement, Seller and Buyer, intending to be bound legally, agree as follows:

## SECTION 1 - DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings set forth in this Section:

**“Adverse Consequences”** means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys’ fees and expenses.

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

**“Assumed Contracts”** means (i) all Contracts listed in Schedule 3.8 and (ii) any Contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume.

**“Books and Records”** means all employee files and station advertising records for the period covering at least the period January 2011 to the Closing Date; and all files, records, books, and data related to the Stations operations including, but not limited to, all files and records required to be retained by FCC rules and manuals associated with the Assets.

**“Closing”** means the consummation of the purchase and sale of the Assets pursuant to this Agreement in accordance with the provisions of Section 8.

**“Closing Date”** means the date on which the Closing occurs, as determined pursuant to Section 8.

**“Consents”** means the consents, permits, or approvals of government authorities and other third parties necessary to transfer the Assets to Buyer or otherwise to consummate the transactions contemplated by this Agreement.

**“Earnest Money”** shall have the meaning set forth in Section 2.4.

**“Environmental Laws”** shall mean any and all state, federal, and local statutes, regulations and ordinances relating to the protection of human health and the environment.

**“Escrow Agent”** shall mean Miller and Neely, PC.

**“FCC”** means the Federal Communications Commission.

**“FCC Consent”** means action by the FCC granting its consent to the assignment of the FCC Licenses to Buyer as contemplated by this Agreement.

**“FCC Licenses”** means all Licenses (including, but not limited to, construction permits or pending applications, and all modifications, renewals and extensions thereof) issued by the FCC to Seller in connection with the business or operations of the Stations and as more specifically set forth in Schedule 3.4 attached hereto.

**“Final Order”** means an action by the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no requests are pending for administrative or judicial review, reconsideration, appeal, or stay, and the time for filing any such requests and the time for the FCC to set aside the action on its own motion have expired.

**“Hazardous Material”** shall mean any hazardous or toxic substance, material, or waste including, without limitation, those substances, materials, pollutants, contaminants and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), petroleum products (as defined in Title I to the Resource Conservation and Recovery Act, 42 U.S.C. §6991-6991(i)) and their derivatives, and such other substances, materials, pollutants, contaminants and wastes as become regulated or subject to cleanup authority under any Environmental Laws.

**“Liabilities”** means all obligations or liabilities of Seller whether fixed or contingent, arising out of the operation of the Stations prior to the Closing Date, or incurred or arising out of any act done or omitted, or alleged to have been done or omitted, or any state of facts existing prior to the Closing Date, including but not limited to any accounts or trade payables, notes payable, accrued expenses, Federal, state or local tax liabilities due or claimed to be due, liabilities of Seller under any health, welfare, pension, profit-sharing, or other employee benefit plan subject to ERISA, notes or other payables due to

third parties or present or former employees, officers, managers or members of Seller, and any claims or damages related to violations of applicable federal, state or local laws, including, but not limited to, violations of Environmental Laws and regulations.

**“Licenses”** means the FCC Licenses and all licenses, permits, and other authorizations issued by any other federal, state, or local governmental authorities to Seller in connection with the conduct of the business or operations of the Stations, together with any additions thereto between the date of this Agreement and the Closing Date.

**“Personal Property”** means all furniture, fixtures, office equipment, broadcast equipment, hardware, and spare parts, situated at the Stations’ broadcast studios, production facilities, administrative offices and transmitter sites and held as used and useful by Seller in the conduction of the business and operation of the Stations as more particularly described on Schedule 2.1(a), together with any replacements thereof and additions thereto, made between the date hereof and the Closing Date.

**“Purchase Price”** means the purchase price specified in Section 2.3.

## **SECTION 2. PURCHASE AND SALE OF ASSETS**

2.1 Agreement to Sell and Buy. Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, transfer, and deliver to Buyer on the Closing Date, and Buyer agrees to purchase, all of the Assets, as set forth below, together with any additions thereto between the date of this Agreement and the Closing Date, specifically excluding the Excluded Assets, free and clear of any claims, liabilities, security interests, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever (except for those arising pursuant to the terms of the Assumed Contracts or liens for current taxes not yet due and payable). The “Assets” shall include the following:

- (a) The Personal Property;
- (b) The Licenses; and any pending applications associated with same;
- (c) The Assumed Contracts;

(d) Seller's right and interest in and to the real property used as the transmitter site for the Stations, as further described in Schedule 2.1(d), together with any additions thereto between the date hereof and the Closing Date, including but not limited to any easements, rights of ingress and egress, and rights of way associated therewith, and the buildings, towers, and fixtures located thereon ("*Real Property*");

(e) All of Seller's proprietary information, technical information and data, machinery and equipment warranties, maps, computer discs and tapes, plans, diagrams, blueprints, and schematics, including filings with the FCC, relating solely to the items specified in subsections (a) through (f), above; and

(f) All books and records relating solely to the items specified in subsections (a) through (c), above, including executed copies of the Assumed Contracts, and all records required by the FCC to be kept by the Stations, subject to the right of Seller to have such books and records made available to Seller for a reasonable period, not to exceed three (3) years after the Closing Date.

(g) All of Seller's rights in and to all registered and unregistered trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, slogans, licenses, patents, Internet domain names, Internet URLs, Internet web sites, content and databases, user ids, passwords and other or related intangible property rights and interests applied for, issued to or owned by Seller for use in the conduct of the business and operation of the Stations, together with any additions thereto between the date hereof and the Closing Date (the "*Intangible Property*");

2.2 Excluded Assets. The Station Assets shall not include the following (the "*Excluded Assets*");

(a) Seller's books and records pertaining to the organization, existence or capitalization of Seller, and duplicate copies of such records as are necessary to enable Seller to file tax returns and reports;

(b) all cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, treasury bills, and other marketable securities on hand and/or in banks, and any interest in and to any refunds of federal, state or local franchise, income, or other taxes related to periods prior to the Closing;

(c) all insurance policies, except for any rights that may be assigned pursuant to this Agreement, promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposit, or other similar items, and any cash surrender value in regard thereto;

(d) 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.

(e) all accounts receivable and notes receivable arising in connection with the operation of the Station prior to the Closing Date and outstanding and uncollected as of the Closing Date (the "*Receivables*").

(f) the studio and office building located at 601 W. Second Street, Ottumwa.

(g) the contents of Thomas Palen's office at the studio building, including, but not limited to the furniture and computer located there .

(h) the 2008 Suburu automobile used by Thomas Palen.

2.3 Purchase Price. The Purchase Price for the Assets shall be Seven Hundred Ninety-Four Thousand and 00/100 Dollars (\$794,000.00) paid and adjusted as provided below:

(a) Cash Purchase. Buyer shall pay to the Seller the entire Purchase Price in cash in the manner set forth in Section 2.5, below (less a credit for the Earnest Money deposit paid to Seller by

the Escrow Agent under Section 2.4 below and any advance payment credit due pursuant to the terms of the LMA).

(b) Prorations. The Purchase Price shall be increased or decreased as required to effectuate the proration of expenses. All expenses arising from the use of the Assets, including business and license fees, utility charges, rent, real and personal property taxes and assessments levied against the Assets, property and equipment rentals, applicable copyright or other fees, sales and service charges, taxes (except for taxes arising from the transfer of the Assets under this Agreement), FCC annual regulatory fees, and similar prepaid and deferred items, shall be prorated between Buyer and Seller in accordance with the principle that Seller shall be responsible for all expenses, costs, and liabilities allocable to the period prior to the Closing Date, and Buyer shall be responsible for all expenses, costs, and obligations allocable to the period on and after the Closing Date. Notwithstanding the preceding sentence, there shall be no adjustment for, and Seller shall remain solely liable with respect to, any Contracts not included in the Assumed Contracts and any other obligation or liability not being assumed by Buyer in accordance with Section 2.5.

(c) Manner of Determining Adjustments. Any adjustments will, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment by the appropriate party occurring no later than ninety (90) days after the Closing Date or such other date as the parties shall mutually agree upon.

(d) Other Adjustments. Any adjustments provided for in Exhibit A, paragraph 6, of the LMA, and any other financial adjustments or pro rations necessary to reconcile the amounts due to the respective parties under the LMA as of the Closing Date.

#### 2.4 Earnest Money.

(a) Upon execution and delivery by the parties of this Agreement and the LMA, Buyer shall deposit Forty Thousand and 00/100 Dollars (\$40,000) (the "Earnest Money") with the Escrow

Agent who shall hold the Earnest Money in an IOLTA under the terms of the Escrow Agreement in form and substance as Exhibit A attached hereto, in trust for the benefit of the parties hereto.

(b) Subject to the provisions of Section 9.3, if the Closing does not occur, the Earnest Money shall be returned to Buyer. If Closing does occur, the Earnest Money shall be applied to payment of the Purchase Price at Closing as provided in Section 2.3.

2.5 Delivery of Purchase Price. The Purchase Price, as adjusted, shall be paid by Buyer to Seller at Closing by cash wire transfer of same-day funds pursuant to wire instructions which shall be delivered by Seller to Buyer at Closing.

2.6 Buyer's Assumption of Liabilities. As of the Closing Date, Buyer shall assume and undertake to pay, discharge, and perform all obligations and liabilities of Seller under the Licenses and the Assumed Contracts insofar as they relate to the time on and after the Closing Date or arise out of events occurring on and after the Closing Date. Buyer shall not assume any other obligations or liabilities of Seller, including, but not limited to, (i) any obligations or liabilities under any Contract not included in the Assumed Contracts, (ii) any obligations or liabilities under the Assumed Contracts relating to the period prior to the Closing Date, (iii) any claims or pending litigation or proceedings relating to the operation of the Stations prior to the Closing, (iv) any obligations or liabilities of Seller arising under capitalized leases or other financing agreements, (v) any obligations or liabilities of Seller under any employee pension, retirement, health and welfare or other benefit plans or collective bargaining agreements, or (vi) any obligation to any employee of Seller for severance benefits, vacation time, or sick leave accrued prior to the Closing Date, and all such obligations and liabilities shall remain and be the obligations and liabilities solely of Seller.

2.7 Allocation of Purchase Price. At Closing Purchase Price shall be allocated among the Assets using the from provided in Schedule 2.7 (the "Allocation"). Seller will provide a draft of the Allocation to Buyer no later than five (5) business days prior to the Closing Date and the parties will complete initial the Allocation on or before the Closing Date. If the Allocation is not agreed to before the



Closing Date the parties will select an independent certified public accountant who will resolve any differences between the parties with respect to the Allocation within thirty (30) days after Closing. The parties will share the costs of engaging the CPA. Thereafter, each of Seller and Buyer agree (i) to jointly complete and separately file Form 8594 with its federal income tax return for the tax year in which the Closing occurs and (ii) that neither Seller nor Buyer will take a position on any income, transfer or gains tax return before any governmental agency charged with the collection of any such tax or in any judicial proceeding that is in any manner inconsistent with the terms of any the Allocation without the written consent of the other.

2.8 Acquisition of the Assets. Seller and Buyer understand, acknowledge and agree that the Buyer's acquisition of the Assets may be made through an assignee or designee of Buyer; provided such assignment or designation shall not relieve or release Buyer of its obligations herein.

### **SECTION 3 – SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Buyer as follows:

3.1 Organization. Seller is a corporation duly organized under the laws of the State of Iowa. Seller has all requisite power and authority (i) to own, lease, and use the Assets as now owned, leased, and used, (ii) to conduct the business and operations of the Stations as now conducted, and (iii) to execute and deliver this Agreement, the Escrow Agreement and the documents contemplated hereby and thereby, and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder and thereunder.

3.2 Authorization. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary actions on the part of Seller and its shareholders. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against it in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

3.3 No Conflict. Subject to obtaining the Consents, the execution, delivery, and performance by Seller of this Agreement, the Escrow Agreement and the documents contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with any provision of the Articles of Incorporation or Bylaws of Seller; (iii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, ordinance, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Seller is a party or by which Seller may be bound.

3.4 Licenses. Schedule 3.4 includes a true and complete list of the Licenses. The Licenses have been validly issued, and Seller is the authorized legal holder thereof. The Licenses listed on Schedule 3.4 comprise all of the licenses, permits, and other authorizations required from any governmental or regulatory authority for the lawful conduct of the business and operations of the Stations in the manner and to the full extent they are now conducted, and none of the Licenses is subject to any restriction or condition that would limit the full operation of the Stations as now operated. The Licenses are in full force and effect.

3.5 [Reserved]

3.6 Assumed Contracts. All Assumed Contracts are listed on Schedule 3.6. To the extent provided for or stated therein, the Assumed Contracts constitute valid and binding obligations of Seller and of all other parties thereto, and are in full force and effect as of the date hereof. To its knowledge, Seller is not in material default under any of the Assumed Contracts and, to the best of Seller's knowledge, the other parties to such Assumed Contracts are not in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto, and no event has occurred which with notice or lapse of time or both would constitute a material breach or

default thereunder. Seller has all requisite power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and such assignment will not affect the validity, enforceability or continuity of any such Assumed Contracts. To the extent the Assumed Contracts are not cancelled by Buyer or Seller prior to Closing, Seller will cooperate with Seller to obtain consents to assignment of such Assumed Contracts to Buyer.

3.7 Personal Property. The Personal Property listed on Schedule 2.1(a) comprises all material items currently used to conduct the business and operations of the Stations as now conducted. Except as described in Schedule 3.7, Seller owns and has good title to each item of Personal Property, and none of the Personal Property is subject to any security interest, mortgage, pledge, conditional sales agreement, or other lien or encumbrance, except for (i) liens for current taxes not yet due and payable, and (ii) the liens described on Schedule 3.7. Each item of Personal Property is available for immediate use in the business and operations of the Stations. All items of transmitting equipment included in the Personal Property are in operating condition consistent with recognized standards of good broadcast engineering practice.

3.8 [Reserved]

3.9 Consents. Except for the FCC Consent provided for in Section 6.3, and the Consents described in Schedule 3.9, no consent, approval, permit, or authorization of, or declaration to or filing with any governmental or regulatory authority, or any other third party is required (i) to consummate this Agreement and the transactions contemplated hereby, (ii) to permit Seller to assign or transfer the Assets to Buyer, or (iii) to enable Buyer to conduct the business and operations of the Stations in essentially the same manner as such business and operations are now conducted. Buyer shall cooperate with Seller in obtaining any Consent described in Schedule 3.9, including but not limited to furnishing any third party with information necessary for that third party to furnish such Consent.

3.10 Intangible Property. Section 2.1(g) contains a description of the material Intangible Property included in the Station Assets. To Seller's knowledge (i) Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect, (ii) no material Intangible Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use, (iii) Seller has not received any written notice that its use of any material Intangible Property is unauthorized or infringes upon the rights of any other person; and Seller owns or has the right to use the Intangible Property free and clear of Liens other than Permitted Liens.

3.11 Reports and Statements; Regulatory Fees. All reports and statements that the Stations are currently required to file with the FCC or with any other governmental agency have been filed and all reporting requirements of the FCC and other governmental authorities having jurisdiction over Seller and the Stations have been complied with. All of such reports and statements are substantially complete and correct as filed. Seller has paid to the FCC all annual regulatory fees payable with respect to the FCC Licenses required to be paid by Seller. As of the Closing Date Seller will have satisfied any then-outstanding obligations to ASCAP, BMI and SESAC.

3.12 Environmental Matters.

(a) Seller represents and warrants that Seller does not have any knowledge of:

(i) Any action that has been commenced or threatened regarding Seller's compliance with Environmental Laws related to the Real Property;

(ii) Any tanks used for storage of any Hazardous Material above or below ground on or about any portion of the premises that are the subject of the Leases or the Real Property;

(iii) Any action that has been commenced or threatened regarding the presence of any Hazardous Material on or about any portion of the Real Property;

(iv) Any Hazardous Materials that are present in any medium in the operations of the Stations on the Real Property in such a manner which may require an investigation or remediation under any applicable law;

(v) Any polychlorinated biphenyls or substances containing polychlorinated biphenyls are present on the Real Property; and

(vi) No friable asbestos is present in the operations of the Stations and/or on the Real Property.

(b) Seller represents and warrants that it has not received any notice or violation of any Environmental laws related to the Real Property.

(c) Seller has not and will not release or waive the liability of any owner or previous owner or lessee of the Real Property or any party who may be potentially responsible for the presence or removal of Hazardous Material on or about the Real Property. Seller has no indemnification obligation regarding Hazardous Material to any party related to the Stations or the Real Property.

3.13 UCC Financing Statements. All of the Station Assets are and have been located in the State of Iowa since the Station Assets were acquired by Seller and except as disclosed in Schedule 3.7, no party has filed a deed of trust, mortgage or UCC financing statement with respect to the Station Assets.

3.14 Insurance. The business, properties (including the Station Assets) and employees of the Station are insured against loss, damage, or injury in amounts customary in the broadcast industry, as set forth on Schedule 3.14 hereto. There are no pending claims as to which any insurer has denied liability or declined coverage or which have not been properly and timely submitted to the appropriate insurers.

3.15 No Untrue Statements. No representation or warranty made by Seller in this Agreement or in any certificate, document, or other instrument furnished or to be furnished by Seller pursuant hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact and required to make any statement made herein or therein not misleading.

3.16 Compliance with Law. Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC rules and regulations applicable to the operation of the Station, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Station, and 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.

3.17 Litigation. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that might subject Buyer to liability or which might affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which might have a material adverse effect on the condition of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

3.18 Title to and Condition of Real Property.

(a) Schedule 1.2(d) contains descriptions of all of Seller's interests, including leasehold interests, easements and rights in and agreements with respect to the Real Property. The Real Property listed on Schedule 1.2(d) is all of the Real Property interests necessary to conduct the business and operate the Station as conducted and operated by Seller on the date hereof. The Real Property and the use thereof by Seller comply in all respects with all applicable laws, statutes, ordinances, rules and regulations of federal, state and local governmental authorities, including, without limitation, those relating to zoning. Any improvements upon the Real Property and the present use thereof comply or conform in all material respects with all deed restrictions, restrictive covenants, building codes, and federal, state and local laws, regulations and ordinances, and no permits, licenses or certificates pertaining to ownership or operation of the Real Property, other than those that are transferable with the Real

Property, are required by any federal, state or local government, agency, board or other governmental authority having jurisdiction over the Real Property. All such improvements are in good working condition and repair, are insurable at standard rates, and are in compliance with the rules and regulations of the FCC and all other applicable federal, state and local statutes, ordinances, rules and regulations. There are no structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the improvements on the Real Property. There are no modifications or improvements to the Real Property required to bring it into compliance with any law, notwithstanding that Seller's current operations on the Real Property may be grandfathered or otherwise subject to an exception, exemption or waiver. Seller has paid, or shall have paid prior to Closing all amounts owed to any contractor, architect or subcontractor for labor or materials performed, rendered or supplied in connection with the Real Property.

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

(c) On the Closing Date Seller will have good and marketable fee simple title, or valid and subsisting leasehold interests, insurable at standard rates, to the Real Property, which shall at the Closing be free and clear of all Liens, of any nature whatsoever, including the Liens described in Schedule 3.7, and without any reservation or exclusion of any mineral, timber, or other rights or interests, except as may appear on the Abstract of Title and which are reasonably acceptable to Buyer.

(d) All towers, guy anchors, and buildings and other improvements included in the Station Assets are located entirely on the Real Property.

(e) Seller has delivered to Buyer true and complete copies of all deeds, leases and easements held by Seller pertaining to the Real Property and copies of all title policies and surveys in its possession pertaining to the Real Property.

(f) Seller has full legal and practical access to the Real Property, including to the towers located upon the Real Property, and all easements, rights-of-way, and real property licenses included in the Real Property have been properly recorded in the appropriate public recording offices.

3.19 Environmental Studies. Buyer may, at its election and sole expense, obtain a Phase I environmental audit report (the "Phase I Report") regarding the Real Property, which Phase I Report shall be reasonably satisfactory to Buyer in all respects. Buyer agrees to notify Seller of any adverse environmental findings included in the Phase I Report within sixty (60) days after the date of this Agreement. To the extent Buyer does not notify Seller within such sixty (60)-day period, Buyer hereby waives any right to refuse to consummate this Agreement or to terminate this Agreement as a result of any noncompliance with Environmental Laws disclosed in the Phase I Report. If, in Buyer's reasonable judgment, a Phase II environmental audit report ("Phase II Report") is necessary in light of the contents of the Phase I Report and Buyer has timely notified Seller of adverse environmental findings in the Phase I Report, Buyer shall obtain such Phase II Report within thirty (30) days following Buyer's notification of Seller of such adverse findings also at Buyer's sole expense. In the event that a Phase I Report and/or a Phase II report discloses an environmental condition or matter which is reasonably unsatisfactory to Buyer and to which Buyer objects on a timely basis, Seller shall have sixty (60) days from Seller's receipt of notice to remediate and eliminate such condition or matter and bring the Real Property into compliance with all Environmental Laws. If the environmental condition or matter is not remediated and eliminated by Seller within the prescribed 60 day period, Buyer may terminate this Agreement, without any further liability hereunder.

3.20 Abstract of Title. Within thirty days prior to Closing, Seller shall obtain at its own expense and provide to Buyer an abstract of title prepared by Truitt Abstract Company, Ottumwa, Iowa, supported by a lawyer's title opinion, and a commitment from Iowa Title Guaranty for an ALTA title insurance policy related to the Real Property reasonably acceptable to Buyer (the "Abstract and Commitment"). Buyer agrees to notify Seller of any objection to the contents of the Abstract and Commitment within ten



(10) days after Buyer's receipt of such materials. In the event that the Abstract and Commitment are reasonably unsatisfactory to Buyer and Buyer has timely objected thereto, Seller shall have sixty (60) days from Seller's receipt of notice to eliminate such condition or matter. If the condition or matter is not eliminated by Seller within the prescribed 60 day period, Buyer may terminate this Agreement, without any further liability hereunder.

3.21 Title to and Condition of Personal Property. Schedule 2.1(a) lists all material items of Personal Property used or held for use in conducting the business and operations of the Station as now conducted. Seller is the sole owner of the Personal Property and has good and marketable title to all Personal Property free and clear of all Liens. Except for certain tower-related defects reported by Buyer, for which an adjustment to the Purchase Price has been made and is acknowledged by Buyer, all of the items of tangible personal property and facilities included in the Station Assets are in operating condition consistent with recognized standards of good engineering practice and comply in all material respects with applicable rules and regulations of the FCC, the terms of the Station Licenses, and with other applicable federal, state and local statutes, ordinances, rules and regulations, and are available for immediate use in the operation of the Station. Seller has no knowledge of any defect in the condition or operation of any item of Personal Property which is reasonably likely to have a material adverse effect on the operations of the Station.

3.22 Employment of Station Employees. Provisions relating to Station employees are included in Section 8 of the LMA.

## **SECTION 4 – BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Seller as follows:

4.1 Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Iowa. Buyer has all requisite power and authority to execute and deliver this Agreement and the Escrow Agreement and the documents contemplated hereby and thereby,

and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Buyer hereunder and thereunder.

4.2 Authority. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

4.3 No Conflict. Subject to obtaining the Consents, the execution, delivery, and performance by Buyer of this Agreement, the Escrow Agreement and the documents contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with the Articles of Incorporation or Bylaws of Buyer; (iii) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality; or (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire or operate the Assets.

4.4 Brokerage. Neither Buyer nor any person acting on Buyer's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement for which Seller could become liable. Neither Buyer nor any person acting on Buyer's behalf has engaged or hired any broker or discussed the contemplated transactions with any broker.

4.5 No Untrue Statements. No representation or warranty made by Buyer in this Agreement or in any certificate, document, or other instrument furnished or to be furnished by Buyer pursuant hereto

contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact and required to make any statement made herein or therein not misleading.

4.6 Litigation. There is no action, suit, investigation or other proceedings pending, or, to Buyer's best knowledge, threatened which may adversely affect Buyer's ability to perform in accordance with the terms of this Agreement, and Buyer is unaware of any facts which could reasonably result in any such proceeding.

4.7 Financial Capacity. Buyer has the financial capacity to satisfy all of Buyer's obligations under this Agreement and the documents to be executed and exchanged at the Closing, and to perform all of Buyer's obligations at the Closing.

## **SECTION 5 - SELLER'S COVENANTS**

5.1 Operation. Seller agrees that, between the date of this Agreement and the Closing Date, subject to the terms of the LMA, Seller shall operate the Stations diligently in the ordinary course of business in accordance with its past practices (except where such conduct would conflict with the following covenants or with Seller's other obligations under this Agreement), and in accordance with the other covenants in this Section 5.

5.2 Contracts. Without the consent of Buyer, which will not be unreasonably withheld, Seller will not enter into any contract or commitment relating to the Stations or the Assets, or amend or terminate any Assumed Contract (or waive any material right thereunder), or incur any obligation (including obligations relating to the borrowing of money or the guaranteeing of indebtedness) that will be binding on Buyer after Closing. Notwithstanding the foregoing, Seller, without Buyer's consent, may enter into Contracts in the normal course of business that do not involve annual expenditures of more than \$5,000.00

5.3 Assignment of Assets. Seller shall not sell, assign, lease, or otherwise transfer or dispose of any of the Assets, except in the ordinary course of Seller's business, where no longer used or

useful in the business or operations of the Stations or in connection with the acquisition of replacement property of equivalent kind and value.

5.4 Inconsistent Actions. Seller shall not take any action that is inconsistent with its obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement.

5.5 Maintenance of Assets. Seller shall use their best efforts to maintain all of the Assets in their current condition and use, operate, and maintain all of the Assets in a reasonable manner and in material accordance with the terms of the FCC Licenses, all rules and regulations of the FCC and generally accepted standards of good engineering practice.

5.6 Obtaining Consents. Seller shall use their best efforts to obtain the Consents without any change in the terms or conditions of any Contract or License that could be less advantageous to the Stations than those pertaining under the Contract or License as in effect on the date of this Agreement. Seller shall promptly advise Buyer of any difficulties experienced in obtaining any of the Consents and of any conditions proposed, considered, or requested for any of the Consents.

5.7 FCC Permits. If requested by Buyer prior to Closing, Sellers shall use their best efforts to make applications for and obtain such FCC permits, including construction permits, as reasonably requested by Buyer for the Stations. Notwithstanding the foregoing, Buyer shall be required to prepare and file, at its sole cost and expense, the applications for such FCC permits, including, but not limited to, filing fees and engineering fees. Seller's sole obligation under this Section shall be to sign the applications for FCC permits and perform such actions as appropriate as the licensee of the FCC License with respect thereto. In no event shall Seller be obligated to expend any funds for filing or preparing the FCC permit applications request by Buyer under this Section.

## **SECTION 6 - PRIOR TO CLOSING**

6.1 Compliance. Between the date hereof and the Closing, in the event that Buyer discovers that the Stations are not operating within the parameters of the FCC Licenses or a condition materially adversely changing the current operation of the Stations are placed on the FCC Licenses or otherwise on the operation of the Stations, Seller shall be obligated to cure such non-compliance or have removed such adverse condition on the FCC Licenses.

6.2 Conduct of Stations Pending Closing.

6.2.1 Stations' Operations. Seller shall maintain the books and records related to the Stations in the usual and ordinary course, on a basis consistent with past practices. Seller shall comply in all material respects with all agreements now or hereafter existing which are material, individually or in the aggregate, to the operation or financial condition of the Stations and the Acquired Assets. Seller shall promptly notify Buyer of any material default, or claim of default, against any party under any agreements which are material, individually or in the aggregate, to the operation or financial condition of the Stations or the Acquired Assets, and any event or condition which with or without notice or lapse of time or both would constitute an event of default under such agreements. Seller shall not introduce any material change with respect to the operation of the Stations including, without limitation, any material changes in the broadcast hours or in the percentage of the types of programming broadcast by the Stations or any other material change in the Stations' programming and policies, except such changes as in the sole discretion of Seller, exercised in good faith, after consultation with Buyer, are required by the public interest or that may otherwise result from the conduct by Seller of its "effects" bargaining obligations under applicable law. Without Buyer's advance written permission, Seller shall not enter into any new Trade Agreements which are not cancelable by Buyer on or before Closing.

6.2.2 Compliance with Rules and Regulations. Seller shall operate the Stations accordance with the terms or conditions of its FCC Licenses, the Communications Act and all of the rules and regulations, statutes, ordinances and orders of all governmental authorities having jurisdiction over any aspect of the operation of the Stations, except if the failure to so operate the Stations would not have a

material adverse effect on the business, operations or financial condition of the Stations or the ability of Seller to consummate the transactions contemplated hereby. Seller shall continue to file, on a current basis until the Date of Closing, all reports and documents required to be filed with the FCC or other government agency applicable to the Stations, and shall pay all regulatory and other fees applicable to the Stations. Copies of each report and document filed and evidence of each fee payment by the Seller between the date hereof and the Date of Closing shall be furnished to Buyer concurrently with its filing.

**6.3 FCC Approval; Prosecution of Application.**

(a) The assignment of the FCC Licenses in connection with the purchase and sale of the Assets pursuant to this Agreement shall be subject to the prior consent and approval of the FCC.

(b) Seller and Buyer shall promptly prepare an appropriate application for the FCC Consent and shall file the application with the FCC within five (5) business days of the execution of this Agreement. The parties shall prosecute the application with all reasonable diligence and otherwise use their best efforts to obtain a grant of the application as expeditiously as practicable and shall oppose any objections to the grant of the application for the FCC Consent, and shall oppose any subsequent petitions for reconsideration or applications for review of the FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC Consent, except that no party shall be required to comply with a condition if (1) the condition was imposed on it as the result of a circumstance the existence of which does not constitute a breach by the party of any of its representations, warranties, or covenants under this Agreement, and (2) compliance with the condition would have a material adverse effect upon it. If the Closing shall not have occurred for any reason within the original effective period of the FCC Consent, and neither party shall have terminated this Agreement under Section 9, the parties shall jointly request an extension of the effective period of the FCC Consent. No extension of the FCC Consent shall limit the exercise by either party of its rights under Section 9.

**6.4 Control of Stations.** Subject to the terms of the LMA, Buyer shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct, the operations of the

Stations prior to Closing; such operations, including complete control and supervision of all of the Stations' programs, employees, and policies, shall be the sole responsibility of Seller until the Closing.

6.5 Risk of Loss; Damage or Destruction.

(a) The risk of any loss, damage, impairment, confiscation, or condemnation of any of the Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing.

(b) If any damage or destruction of the Assets or any other event occurs which prevents signal transmission by the Stations in the normal and usual manner and Seller cannot restore or replace the Assets so that such conditions are cured and normal and usual transmission is resumed before the Closing Date, the Closing Date shall be postponed, at Buyer's option, for a period of up to ninety (90) days, to permit the repair or replacement of the damage or loss.

(c) In the event of any damage or destruction of the Assets described above, if such Assets have not been restored or replaced and the Stations' normal and usual transmission resumed within the ninety (90) day period specified above, Buyer may terminate this Agreement forthwith without any further obligation hereunder by written notice to Seller. Alternatively, Buyer may, at its sole option, proceed to close this Agreement and complete the restoration and replacement of such damaged Assets at Buyer's expense after the Closing Date, in which event Seller promptly shall deliver to Buyer following receipt thereof insurance proceeds received prior to or after Closing in connection with such damage or destruction of the Assets in an amount not to exceed the Buyer's costs and expense in connection with such restoration and replacement.

6.6 Confidentiality. Except as necessary for the consummation of the transaction contemplated by this Agreement and except as and to the extent required by law, including, without limitation, disclosure requirements of federal or state securities laws and the rules and regulations of securities markets, each party will keep confidential any information obtained from the other party in connection with the transactions contemplated by this Agreement. If this Agreement is terminated, each

party will return to the other party all information obtained by such party from the other party in connection with the transactions contemplated by this Agreement.

6.7 Cooperation. Buyer, Seller shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and Buyer, Seller shall execute such other documents as may be reasonably necessary and desirable to the implementation and consummation of this Agreement, and otherwise use their best efforts to consummate the transaction contemplated hereby and to fulfill their obligations under this Agreement.

6.8 Indemnifications.

(a) Indemnification by Seller. Seller shall indemnify, hold harmless and defend Buyer from and against any and all costs, claims, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, which Buyer may suffer or incur on account of (i) the Excluded Liabilities, including without limitation liabilities relating to litigation or actions pending or threatened against Seller or brought against Buyer and relating to Seller's acts or omissions prior to the Closing Date or any liabilities or obligations arising directly or indirectly from Seller's operation of the Stations prior to the Closing Date; (ii) the failure of Seller to perform any covenant or agreement made hereunder; (iii) the breach of any warranty or representation made by Seller hereunder; (iv) or Seller's or Buyer's failure or alleged failure to comply with the provisions of any applicable bulk sales law (Uniform Commercial Code - Article 6), including, but not limited to, the Bulk Transfer Law contained in the Iowa Uniform Commercial Code, or, on or over the Real Property Indemnification by Buyer. Buyer shall indemnify, hold harmless and defend Seller from and against any and all costs, claims, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, which Seller may suffer or incur on account of (i) Buyer's failure to perform any covenant or agreement made by Buyer hereunder; (ii) Buyer's breach of any warranty or representation may be Buyer hereunder; (iii) litigation or actions pending or threatened against Buyer or brought against Seller and relating to Buyer's acts or omissions on or after the Closing



Date or the liabilities or obligations arising directly or indirectly from Buyer's operation of the Stations on or after the Closing Date (including, without limitation, any liabilities Buyer may have as a "successor" employer under applicable labor law); (iv) any liabilities or obligations (including, but not limited to, actual or consequential damages) arising directly or indirectly from Buyer's violation of Environmental Laws.

(i) Notice Procedures; Limitations on Indemnification.

(j) A party claiming indemnification (the "Indemnified Party") shall give notice to the party liable for indemnification (the "Indemnifying Party") of any matters hereunder which may give rise to a claim for indemnification as promptly as practicable after it has actual knowledge of the facts which may give rise to such claim, and the Indemnified Party shall specify in such notice all facts known to the Indemnified Party relating to such potential indemnification right together with the amount or an estimate of the amount of the potential liability arising therefrom.

(ii) If the facts which give rise to any such potential indemnification claim involve any actual or threatened claim or demand by any third party against the Indemnified Party, the Indemnifying Party shall be entitled (without prejudice to the right of the Indemnified Party to jointly defend) to defend such claim (and jointly to prosecute any possible related claim by the Indemnified Party against any third party) at the Indemnifying Party's expense through counsel of the Indemnifying Party's own choosing, provided that the Indemnifying Party gives notice of its intention to do so to the Indemnified Party within fifteen (15) days after receipt of the notice of claim. In all instances in which the Indemnifying Party chooses to defend claims against the Indemnified Party as provided hereunder, it is agreed that counsel for the Indemnifying Party shall act as lead counsel even if the Indemnified Party chooses to participate in said defense. It is further agreed that whenever the Indemnifying Party chooses to defend a claim and the Indemnified Party chooses not to participate actively in such defense, the

Indemnified Party will nonetheless fully and actively cooperate with and assist the Indemnifying Party in defending the matter by, among other things, assisting in the procurement of documentary evidence and witnesses and enforcing rights against third parties.

(iii) The Indemnified Party shall promptly notify the Indemnifying Party of any firm settlement offer it receives, setting forth in such notification the terms of such offer and the Indemnified Party's views as to whether or not it wishes to accept the offer. Any acceptance or rejection of a settlement offer on the part of the Indemnifying Party shall be submitted to the Indemnified Party within ten days after the Indemnifying Party's receipt from the Indemnified Party of the terms of such offer. Failure of the Indemnifying Party to so notify the Indemnified Party within said ten days shall constitute a rejection of such settlement offer by the Indemnifying Party.

(iv) Notwithstanding any other provision of this Section 6.8, no claim for indemnification may be asserted until the aggregate amount of such claim exceeds Ten Thousand Dollars (\$10,000.00). Once this threshold is reached such claim may include the entire amount of the alleged damages or liability. No claim or aggregation of claims for indemnification under this Section 6.8 may be brought for an amount or amounts exceeding Five Hundred Thousand Dollars (\$500,000.00).

6.9 Survival. The representations, covenants and warranties of Seller and Buyer as set forth in this Agreement shall survive the Closing Date for two year ("Survival Period"), except for claims arising under the Environmental Laws which shall be subject applicable statutes of limitation. (i) Seller shall within a reasonable time advise Buyer in writing of any matter arising or discovered by Seller during the three (3) year period after the Closing Date which would have been required to have been set forth or described herein or disclosed to Buyer at or prior to the Closing Date if such matter arose prior to the Closing Date, to the extent such matter is related to the Stations or Assets. (ii) Buyer shall within a reasonable time advise Seller in writing of any matter arising or discovered by Buyer during the three (3)

year period after the Closing Date which would have been required to have been set forth or described herein or disclosed to Seller at or prior to the Closing Date if such matter arose prior to the Closing Date.

## **SECTION 7 OBLIGATIONS AT CLOSING**

7.1. Conditions to Buyer's Obligations. All obligations of Buyer at the Closing are subject at Buyer's option to the fulfillment prior to or at the Closing Date of each of the following conditions:

(a) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time, except for changes contemplated by this Agreement.

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

(c) Consents. All Consents for the Assumed Contracts on Schedule 3.8 shall have been obtained and delivered to Buyer without any adverse change in the terms or conditions of any agreement or any governmental license, permit, or other authorization.

(d) FCC Consent. The FCC Consent shall have been granted without the imposition on Buyer of any adverse material conditions and the FCC Consent shall have become a Final Order. However, Final Order may be waived in Buyer's sole discretion.

(e) Governmental Authorizations. Seller shall be the holder of all Licenses and there shall not have been any modification of any License that could have a materially adverse effect on the Stations or the conduct of its business and operations. No proceeding shall be pending or threatened the effect of which could be to revoke, cancel, fail to renew, suspend, or modify adversely any License.

(f) Deliveries. Seller shall have made or stand willing to make all the deliveries to Buyer set forth in Section 8.2.

(g) Damage, Destruction or Loss. Between the date of this Agreement and the Closing Date, there shall have been no material damage, destruction, or loss affecting any of the Assets.

(h) Covenant Not to Compete. Seller shall execute and deliver to Buyer the covenant not to compete (the "Covenant") for itself and each stockholder of Seller and their spouses in the form attached hereto as Exhibit B. The parties agree that the consideration for execution of the Covenant by Thomas A. Palen and Seller is as stated in the Covenant and is acknowledged by Seller to provide full value for the Covenant.

7.2. Conditions to Seller's Obligations. All obligations of Seller at the Closing are subject at Seller's option to the fulfillment prior to or at the Closing Date of each of the following conditions:

(a) Representations and Warranties. All representations and warranties of Buyer contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time, except for changes contemplated by this Agreement.

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

(c) Deliveries. Buyer shall have made or stand willing to make all the deliveries set forth in Section 8.3.

(d) FCC Consent. The FCC Consent shall have been granted without the imposition on Seller of any material adverse conditions.

## **SECTION 8 - CLOSING PROCEDURES**

### **8.1. Closing Terms.**

(a) Closing Date. The Closing shall take place at 10:00 a.m. on a date, to be set by Buyer on at least five (5) business days' written notice to Seller, that is (1) not earlier than the first (1<sup>st</sup>) business day after the FCC Consent is granted, and (2) not later than ten (10) business days following the date upon which the FCC Consent has become a Final Order, subject to satisfaction or waiver of all other

conditions precedent to the holding of the Closing. If Buyer fails to specify the date for Closing prior to the fifth (5<sup>th</sup>) business day after the date upon which the FCC Consent becomes a Final Order, the Closing shall take place on the tenth (10<sup>th</sup>) business day after the date upon which the FCC Consent becomes a Final Order.

(b) Closing Place. It is anticipated that Closing shall be effected by the exchange of electronic signatures and wire transfer of funds. In the alternative, the Closing may be held at 416 E Main Street, Ottumwa, IA, or such other location as Buyer and Seller may mutually agree.

(c) Procedure. Prior to Closing the parties will agree to a closing agenda which lists all of the documents to be exchanged at Closing. The distribution of funds at Closing shall be memorialized in a closing statement executed by Buyer and Seller.

8.2. Seller's Deliveries. Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

(a) Transfer Documents. Duly executed bills of sale and other transfer documents which shall be sufficient to vest good and marketable title to the Assets in the name of Buyer, free and clear of all claims, liabilities, security interests, mortgages, liens, pledges, conditions, charges or encumbrances, except for those arising pursuant to the terms of the Assumed Contracts or for liens for current taxes not yet due and payable, including, but limited to:

(i) Bill of Sale in a form usual and customary in the State of Iowa and reasonably satisfactory to Buyer's counsel, conveying to Buyer all of the Personal Property and the Intangible Property, in form and substance as set forth in Exhibit C attached hereto;

(ii) a general warranty deed in a form usual and customary in the State of Iowa and reasonably satisfactory to Buyer's counsel, conveying to Buyer all of the Real Property;

(iii) An assignment transferring all of the interests of Seller in and to the Licenses in form and substance as set forth in Exhibit D attached hereto; and

(iv) One or more Assignment and Assumption Agreements conveying the Assumed Contracts, to be assumed by Buyer hereunder, in form and substance as set forth in Exhibit E attached hereto.

(b) Required Consents. An executed copy of any instrument evidencing receipt of any Required Consent;

(c) Officer's Certificate. A certificate, dated as of the Closing Date, executed on behalf of Seller by an officer of Seller certifying (1) that the representations and warranties of Seller contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date; and (2) that Seller has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date;

(d) Licenses, Contracts, Business Records, Etc. Copies of all Licenses, Assumed Contracts, blueprints, schematics, working drawings, plans, projections, engineering records, and all Books and Records used by Seller in connection with the use of the Assets in connection with the operation of the Stations;

(e) Resolutions. Certified resolutions of Seller's board of directors as to Seller's action described in Section 3.2; and

(f) Certificate of Good Standing. A certificate of good standing from the Secretary of State of Iowa with respect to Seller dated within fifteen (15) days of the Closing Date.

(g) Covenant not to compete. Buyer shall execute the Covenant not to compete in the form attached here to as Exhibit B.

8.3. Buyer Deliveries. Prior to or on the Closing Date, Buyer shall deliver to Seller the following, in form and substance reasonably satisfactory to Seller and their counsel:

(a) Purchase Price. The Purchase Price as adjusted pursuant to Section 2.3;

(b) Assumption Agreements. Counterparts of the Assignment and Assumption Agreements provided for in Section 8.2(a)(iv); and

(c) Officer's Certificate. A certificate, dated as of the Closing Date, executed on behalf of Buyer by an officer of Buyer, certifying (1) that the representations and warranties of Buyer contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date, and (2) that Buyer has in all material respects performed and complied with all of its obligations, covenants, and agreements set forth in this Agreement to be performed and complied with on or prior to the Closing Date;

## **SECTION 9 - TERMINATION**

9.1 Seller's Right to Terminate. This Agreement may be terminated by Seller and the purchase and sale of the Stations abandoned, if Seller is not then in default, upon written notice to Buyer, upon the occurrence of any of the following:

(a) Conditions. If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Seller.

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing.

(c) Breach. Without limiting Seller's rights under the other provisions of this Section 9.1, if Buyer has failed to cure or commenced to cure any breach of any of its representations, warranties or covenants under this Agreement or the LMA within fifteen (15) days after Buyer received written notice of such breach from Seller. Notwithstanding the foregoing, such notice and cure deadline with respect to a default by Buyer in making any payment required of it under this Agreement or the LMA shall be five (5) days.

(d) Upset Date. If the Closing shall not have occurred by June 1, 2014.

9.2 Buyer's Right to Terminate. This Agreement may be terminated by Buyer and the purchase and sale of the Stations abandoned, if Buyer is not then in default, upon written notice to Seller, upon the occurrence of any of the following:

(a) Conditions. If on the date that would otherwise be the Closing Date any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any litigation, lis pendens, judgment, decree, or order that would prevent or make unlawful the Closing.

(c) Upset Date. If the Closing shall not have occurred by June 1, 2014.

(d) Interruption of Service. If any event within the control of Seller shall have occurred that prevented signal transmission of the Stations as specified in Section 6 hereof.

(e) Breach. Without limiting Buyer's rights under the other provisions of this Section 9.2, if Seller has failed to cure or commenced to cure any breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) days after Seller received written notice of such breach from Buyer.

9.3 Earnest Money.

(a) If this Agreement is terminated by Seller pursuant to Section 9.1 hereof due to Buyer's breach of this Agreement, and Seller are not in breach of any provision of this Agreement, Seller shall be entitled to receipt of the Earnest Money from the Escrow Agent, and Buyer and Seller will jointly instruct the Escrow Agent to disburse the Earnest Money to Seller.

(b) If this Agreement terminates due to the breach of this Agreement by Seller and Buyer is not in breach of any provision of this Agreement, the Earnest Money shall be returned to Buyer, and Buyer and Seller will jointly instruct the Escrow Agent to disburse the Earnest Money to Buyer.



9.4 Rights on Termination. If this Agreement is terminated pursuant to Section 9.1 or 9.2 and neither party is in breach of any provision of this Agreement, the parties hereto shall not have any further liability to each other with respect to the purchase and sale of the Assets and the parties will jointly instruct the Escrow Agent to return the Earnest Money to Buyer. If this Agreement is terminated by Seller due to Buyer's breach of this Agreement and Seller are not in breach of any provision of this Agreement, then the retention of the Earnest Money by Seller pursuant to Section 9.3(b) hereof shall be liquidated damages and shall constitute full payment and the exclusive remedy for any damages suffered by Seller by reason of Buyer's breach of this Agreement. Seller and Buyer agree in advance that actual damages would be difficult to ascertain and that the amount of the Escrow Deposit, together with any interest or other proceeds from the investment of that amount, is a fair and equitable amount to reimburse Seller for damages sustained due to Buyer's breach of this Agreement. Except in the event of termination under Section 9.1(d), if this Agreement is terminated by Seller and Buyer is not in breach of any provision of this Agreement, Buyer shall have all rights and remedies available at law or equity, including the right to seek specific performance of this Agreement.

## **SECTION 10 – NOTICES, MISCELLANEOUS**

10.1 Taxes and Fees. Any federal, state, or local sales or transfer tax arising in connection with the conveyance of the Assets by Seller to Buyer pursuant to this Agreement shall be allocated between the parties as is customary in closings of this type occurring in the State of Iowa. Buyer and Seller shall each pay one-half (1/2) of all filing fees required by the FCC in connection with the FCC Consent. Except as otherwise provided in this Agreement, each party shall pay its own expenses incurred in connection with the authorization, preparation, execution, and performance of this Agreement, including all fees and expenses of counsel, accountants, agents, and representatives.

10.2 Receivables. Seller's accounts receivable will be managed and distributed under Section 9 of the LMA.

10.3 Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial delivery service or registered or certified mail, return receipt requested, (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

If to Buyer: Greg List, President  
O-Town Communications, Inc.  
416 E. Main Street  
Ottumwa, IL 52501

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

John Neely, Esq.  
Miller and Neely, PC  
Suite 203  
3750 University Blvd., West  
Kensington, MD 20815  
Telephone: 301-933-6304  
Fax 301-933-6306  
[johnsneely@yahoo.com](mailto:johnsneely@yahoo.com)

If to Seller: Thomas Palen  
FMC Broadcasting, Inc.  
601 W. Second Street  
Ottumwa, IA 52501

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

Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
(703) 812-0415  
[martin@fhhlaw.com](mailto:martin@fhhlaw.com)

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 10.2.

10.4 Assignment. Neither party hereto may assign this Agreement without the prior written consent of the other party hereto; provided, however, that Buyer may assign its rights and obligations

under this Agreement, in whole or in part, to one or more subsidiaries or commonly controlled affiliates of Buyer without seeking or obtaining Seller's prior approval, provided such assignment does not materially delay the prosecution of the FCC application. Notwithstanding any such assignment, Buyer shall remain fully liable with respect to all obligations undertaken under this Agreement, without any right or entitlement to set-off, mitigation, or delay in performance. Upon any permitted assignment by Buyer or Seller in accordance with this Section 10.4, , all references to "Buyer" herein shall be deemed to be references to Buyer's assignee and all references to "Seller" herein shall be deemed to be references to Seller's assignee, as the case may be. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

10.5 Further Assurances. The parties shall take any reasonable actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement, including, in the case of Seller, any additional bills of sale, deeds, or other transfer documents that, in the reasonable opinion of Buyer, may be necessary to ensure, complete, and evidence the full and effective transfer of the Assets to Buyer pursuant to this Agreement.

10.6 Choice of Law. This Agreement shall be governed, construed, and enforced in accordance the laws of the State of Iowa (without regard to the choice of law provisions thereof). Any litigation arising out of this Agreement shall be filed in a state court of competent jurisdiction in Iowa.

10.7 Fees and Expenses. Buyer and Seller shall be equally responsible for all FCC related filing fees associated with this Transaction. All other expenses incurred in the preparation and consummation of this Agreement, except as provided to the contrary herein or in such other agreement into which the parties may enter, shall be borne by the party incurring such expenses.

10.8 Headings. The headings in this Agreement are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

10.9 Gender, Number. Words used in this Agreement, regardless of the gender and number specifically used, shall be deemed and construed to include any other gender, masculine, feminine, or neuter, and any other number, singular or plural, as the context requires.

10.10 Entire Agreement. This Agreement, the schedules, hereto, and all documents, certificates, and other documents to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer, Seller with respect to the subject matter hereof. This Agreement supersedes all prior negotiations between the parties and cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.

10.11 Waiver. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 11.10.

10.12 Confidentiality. Neither party shall publish any press release, make any other public announcement or otherwise communicate with any news media concerning this Agreement or the transactions contemplated hereby or thereby without the prior written consent of the other party; provided, however, that nothing contained herein shall prevent either party from promptly making all filings with governmental authorities as may, in its judgment be required or advisable in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

10.13 No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

10.14 Counterparts. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

10.15 Post-Closing Matters. For a period of time not to exceed sixty (60) consecutive days from the date of Closing, Seller shall provide Buyer access to the Stations' studios and offices located 601 W. Second Street, Ottumwa, IA, for the purposes of removing the Books and Records and Personal Property from the premises. However, it is agreed that Buyer will be responsible for paying the utilities for the building for the period of time until such materials are removed from the premises.

*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement as of the day and year first above written.

O-TOWN COMMUNICATIONS, INC.

By: 

Name: Gregory H. List

Title: President

FMC BROADCASTING, INC.

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

Name: Thomas A Palen

Title: President

IN WITNESS WHEREOF, the parties hereto have duly executed this Asset Purchase Agreement as of the day and year first above written.

O-TOWN COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Name: Gregory H. List  
Title: President

FMC BROADCASTING, INC.

By: Thomas A. Palen  
Name: Thomas A Palen  
Title: President

Exhibit B

COVENANT NOT TO COMPETE

AGREEMENT made and entered this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between FMC Broadcasting, Inc., ("FMC") Thomas A. Palen, ("Palen") and O-Town Communications, Inc., ("O-Town").

O-Town is in the business of radio broadcasting ("Business"). In consideration of O-Town paying to FMC the sum which is included in the Purchase Price set out in that certain Asset Purchase Agreement between O-Town and FMC dated \_\_\_\_\_ 2013, it is agreed that FMC and Palen will execute this Covenant Not to Compete.

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

For a period of five (5) years from the date hereof, and within the geographic area encompassed within the 2 mV/m signal service contour of radio station KLEE(AM), FCC Facility ID Number 21915, and within the 1 mV/m signal service contour of radio station KOTM-FM, FCC Facility ID Number 21916, Ottumwa, Iowa, FMC and Palen shall not:

- (1) Compete with O-Town in the Business, directly or indirectly, through any person or entity, or in any capacity, including, without limitation, agent, lender, trustee, consultant, shareholder, director, officer, employee, or partner;
- (2) Be employed by, or perform any services as employee, consultant, or otherwise, for any person, firm, partnership, joint venture, corporation or other entity that competes with O-Town in the Business;
- (3) Employ, solicit for employment, or advise or recommend to any other person that such person employ, or solicit for employment, any employee of O-Town or any corporation owned directly or indirectly by O-Town engaged in the Business;
- (4) Deal with, invest in, lend money to, guarantee loans of, make gifts to, advise, or by any other means assist any other person or entity to so compete with O-Town or any entity owned directly or indirectly by O-Town in the Business;
- (5) Disclose to anyone other than O-Town any trade secrets or information about the Business or affairs of O-Town or any corporation owned directly or indirectly by O-Town not generally available to the public, including, without limitation, information relating to the actual and potential customers of the Business and their needs and requirements for products or services supplied by the Business.

O-Town and FMC and Palen agree that the period of time and the restricted area applicable to the covenants herein are reasonable, in view of the receipt of the payments made to FMC and Palen, directly or indirectly, as described above, the geographic scope and nature of the Business in which O-Town is and will be engaged and FMC and Palen's knowledge of the Business. If for



any reason any court of competent jurisdiction shall find the provisions of this Agreement unreasonable in duration or in geographic scope, the prohibitions herein shall be restricted to such time and geographic areas as such court determines to be reasonable.

FMC and Palen recognize that any breach of this Agreement by any of them is likely to result in irreparable injury to O-Town and agree that O-Town shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages for any breach of this Agreement by FMC and Palen or to enjoin FMC and Palen from activities in violation of this Agreement. The parties agree that damages will be difficult to calculate and in view of that, agree that the sum of \$500.00 per day as damages would be reasonable and not punitive. The rights and remedies provided in this section in favor of O-Town shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other rights and remedies available to O-Town under this Agreement, the instruments and agreements delivered pursuant to this Agreement, any statute, or at law or in equity. O-Town will also be entitled to reasonable attorney's fees in enforcing its rights under this covenant not to compete.

Notwithstanding the foregoing, nothing in this section shall prevent any person from owning shares of a corporation having a class of stock which is (i) traded on a stock exchange registered with the Securities and Exchange Commission, or (ii) traded on the over-the-counter market and quoted in the automated quotation system of the NASD, so long as such ownership is less than five percent (5%) of the outstanding stock of any such competing corporation.

Neither this Covenant nor any term or condition hereof may be waived or modified in whole or in part as against FMC and Palen except by written instrument executed by or on behalf of the party other than the party seeking such waiver or modification, expressly stating that it is intended to operate as a waiver or modification of this Covenant or the applicable term or condition hereof.

If any provision of this Covenant shall be held or deemed to be invalid, inoperative or unenforceable in any jurisdiction or jurisdictions, because of conflicts with any constitution, statute, rule or public policy or for any other reason, such circumstance shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provisions herein contained unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Covenant shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative, or unenforceable provision had never been contained herein and such provision reformed so that it would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

FMC and Palen acknowledge the consideration provided by O-Town, is full and adequate and that the consideration has been received by FMC and Palen. FMC and Palen acknowledges that this consideration consists of the assumption by O-Town of contracts by FMC and Palen, and includes the other promises and premises set out in the other agreements executed in conjunction herewith.

This Covenant shall be governed by and construed and enforce in accordance with the laws of

Iowa which apply to contracts executed and performed solely in Iowa. O-Town and FMC and Palen hereby consent to the jurisdiction of any state or federal court located within Wapello County, Iowa. Neither party to this Agreement may assign any of its rights or delegate any of its responsibilities under this Agreement except that Buyer may assign this agreement to any person that succeeds to all or substantially all of the business of Buyer through a purchase of assets, merger or otherwise.

This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties hereto by their duly authorized agents or representatives have caused this Agreement to be executed in duplicate as of the date first above written.

By: \_\_\_\_\_  
Name: Gregory H. List, President  
For: O-Town Communications, Inc.

By: \_\_\_\_\_  
Name: Thomas A Palen  
For: Himself and FMC Broadcasting, Inc.

**EXHIBIT C**  
**BILL OF SALE**

Pursuant and subject to that certain "Asset Purchase Agreement," dated \_\_\_\_\_, 2013 (the "Agreement"), by and between O-TOWN COMMUNICATIONS, INC., an Iowa corporation (referred to herein as "Buyer"), and FMC BROADCASTING, INC., an Iowa corporation, (referred to herein as "Seller"), for value received as provided in the Agreement, Seller does hereby grant, bargain, sell, assign, transfer and convey to Buyer, its successors and assigns, without limitation, the equipment used or useful in the operation of radio stations KLEE(AM), FCC Facility ID Number 21915, and KOTM-FM, FCC Facility ID Number 21916, Ottumwa, Iowa, listed on Schedule A (the "Tangible Property") and Schedule B (the "Intangible Property") attached hereto .

Seller warrants that Seller has good and marketable title to all the Tangible Property and the Intangible Property, none of which is subject to any security interest, mortgage, pledge, lien, conditional sales agreement or other encumbrance or change of any nature whatsoever. The undersigned hereby represents she, in her respective representative capacity, has the authority to execute this Bill of Sale on behalf of the Seller.

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SELLER:

FMC BROADCASTING, INC.

By: \_\_\_\_\_  
Name: Thomas A. Palen  
Title: President