

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "*Agreement*"), is made and entered on \_\_\_\_\_, 2006 (the "*Contract Date*"), by and between McL/McM-Inc. ("*Seller*"), and The St. Pier Group, LLC ("*Buyer*").

### BACKGROUND

Seller is the licensee, owner and operator of radio broadcast Station WGSM(FM), Greensburg, Pennsylvania (Facility Identification Number 72296) (the "*Station*"), pursuant to certain authorizations issued by the Federal Communications Commission (the "*Commission*" or "*FCC*"), and owns certain assets used or held for use solely in connection with the operation of the Station. Seller desires to sell and assign and Buyer desires to purchase and acquire substantially all of the property and assets used or held for use in the operation of the Station (the "*Transaction*") upon the terms set forth in this Agreement. The parties acknowledge that they have entered into a Time Brokerage Agreement ("*TBA*"), as of February 1, 2006, pursuant to which Seller has agreed to provide time exclusively to Buyer and Buyer has agreed to provide a program service using the facilities of the Station. The parties further acknowledge that the authorizations issued by the Commission for the operation of the Station may not be assigned without the prior written consent of the Commission. Accordingly, in consideration of the foregoing and of the mutual promises, covenants, and conditions set forth below, the receipt of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I. ASSETS TO BE CONVEYED

On the Closing Date (as defined below), subject to and in reliance upon the covenants, representations, warranties and agreements set forth herein, and subject to the terms and conditions contained herein, Seller shall sell, assign, transfer and deliver to Buyer and Buyer shall purchase from Seller, all of the assets used or held for use in the operation of the Station, other than Excluded Assets (as defined below), including without limitation, the following (collectively, the "*Assets*"):

1.1\_ Licenses and Authorizations. All licenses, permits, permissions and other authorizations issued to Seller for the operation of the Station by the Commission or any other governmental agencies, including, but not limited to, those listed on *Schedule 1.1* and the right to use the Station's call letters (the "*Station Licenses*"), and all applications for modification, extension or renewal thereof, and any pending applications for any new licenses, permits, permissions or authorizations pending on the Closing Date, including, but not limited to, those listed on *Schedule 1.1* (the "*Station Applications*").

1.2 Station Equipment. All the fixed and tangible personal property used or held for use in the operation of the Station including, but not limited to, the equipment listed on *Schedule 1.2* together with any replacements,, improvements, or addition thereto made between the Contract Date and the Closing Date (the "*Station Equipment*").

1.3 Contracts. All rights of Seller or others for the benefit of the Station including, without limitation, those rights under (a) all agreements, contracts and leases described on *Schedule 1.3 (a)*; and (b) such other contracts, agreements or leases entered into with the written consent of Buyer, which consent shall not be unreasonably withheld, but which consent shall not be required for those contracts, agreements, and leases entered into in the ordinary course of business which are less than one-thousand (\$1000.00) dollars and collectively will not exceed ten-thousand (\$10,000) dollars, between the Contract Date and the Closing Date (the contracts, agreements and leases described in clauses (a) and (b) are collectively referred to as the ("*Contracts*"). Buyer shall receive timely written notice of ALL contracts, agreements, and leases entered into pursuant to subsection (b) of this Paragraph 1.3.

1.4 [This paragraph intentionally left blank]

1.5 Real Property. All right, title and interest in the real property leased by Seller or its affiliates, pertaining to the Station's transmitter site as described in *Schedule 1.5*, and any real property interest acquired for the benefit of the Station by Seller or its affiliates with the written consent of Buyer between the Contract Date and Closing Date (the "*Leased Real Property*").

1.6 Call Signs, Promotional Materials and Intangibles. All of Seller's or its affiliates' rights in the Station's call signs, copyrights, patents, trademarks, trade names, slogans, logos, service marks, computer software, magnetic media, data processing files, systems and programs, business lists, trade secrets, sales and operating plans, all goodwill of the Station and other similar intangible property rights used or held for use in the operation of the Station, including but not limited to the intangible property identified on *Schedule 1.6* (the "*Intangible Property*").

1.7 Records. All Station records, including but not limited to all books of account, customer lists, supplier lists, computer programs and software, employee personnel files, local public inspection file materials, engineering data, logs, programming records, consultants' reports, ratings reports, budgets, marketing and demographic data, financial reports and projections, lists of advertisers, promotional materials, and sales, operating and business plans, relating to or used in the operation of the Station or necessary or desirable to show compliance with any law or regulation applicable to the Station or the operation of the Station and not pertaining solely to Seller's internal corporate affairs or its other stations or interests (the "*Station Records*").

1.8 Excluded Assets. It is understood and agreed that the following assets shall not be among the Assets purchased pursuant to this Agreement:

- (a) Seller's cash on hand as of the Closing Date; Seller's interests in its

bank accounts and all of Seller's other cash, cash equivalents, security funds, securities, investments, deposits, prepayments (including prepaid taxes and insurance), tax refunds and over payments;

(b) Any insurance policies and proceeds thereof, promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposits or other similar items and cash surrender value in regard thereto;

(c) Any pension, profit-sharing, or employee benefit plans, and any collective bargaining agreements;

(d) Any agreements not included among the Contracts, and the Real Property Lease, including, but not limited to, employment agreements;

(e) All tax returns and supporting materials, all original financial statements and supporting materials, all books and records that Seller is required by law to retain, all corporate minutes and records relating to Seller's internal corporate matters, and all records of Seller relating to the sale of the Assets;

(f) Any interest in and to any refunds of federal, state or local franchise, income or other taxes for periods prior to the Closing Date

(g) Any personal or real property asset of Seller listed on Schedule 1.8(g) and not necessary to the operation of the Station as it is now operated.

(h) Any asset of Seller relating to the operation of the Station, but disposed of in the ordinary course of business as permitted herein and not necessary for or utilized in the current operation of the Station. Any asset may be disposed of as part of an improvement to the overall equipment or technology of the Station.

## **ARTICLE II. ASSUMPTION OF LIABILITIES**

Buyer shall not assume or undertake to pay, satisfy or discharge any of Seller's liabilities, obligations, commitments or responsibilities, except for those liabilities arising and accruing after and relating exclusively to, the operation of the Station after the closing on the Transaction (the "Closing") under the Contracts to be assigned to Buyer pursuant to (and as limited by) Section 1.3 above. If any Contract requires the consent of third parties for assignment, but such consent has not been obtained as of the Closing Date, as required by Section 9.2.6, then Buyer shall assume Seller's obligations under such Contract only for the period after Closing during which Buyer receives the benefits to which Seller is currently entitled under such Contract (unless consent is subsequently obtained and such delay has not prejudiced Buyer, and unless the failure of Buyer to receive benefits under such Contract is due to Buyer's failure to perform Seller's obligations thereunder after Closing).

**ARTICLE III.**  
**PURCHASE PRICE AND PAYMENT**

3.1 Purchase Price. The purchase price for the Assets shall be Two Million Two Hundred Thousand (\$2,200,000.00) Dollars (the "Purchase Price"). At Closing, Buyer will pay to Seller by wire transfer of federal funds (pursuant to wire instructions that Seller shall deliver to Buyer five (5) days prior to Closing) the Purchase Price, plus or minus any adjustments, as set forth in Article IV hereof or elsewhere in this Agreement.

3.2 Allocation. The parties shall allocate the Purchase Price to the Assets in accordance with the terms of *Schedule 3.2*. Each of Seller and Buyer agree 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 such allocation without the written consent of the other.

**ARTICLE IV.**  
**PRORATIONS AND ADJUSTMENTS**

Except as otherwise may be provided in this Agreement and subject to the provisions of the TBA, the operation of the Station and the income and normal operating expenses, including without limitation assumed liabilities and prepaid expenses, attributable thereto through 11:59 p.m. of the day prior to the Closing Date (the "Adjustment Date") shall be for the account of Seller and thereafter for the account of Buyer. Expenses for goods or services received both before and after the Adjustment Date, taxes and assessments, power and utilities charges, copyright fees, the Station's annual regulatory fees required to be paid pursuant to the Commission's Rules, and rents and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Adjustment Date (the "Closing Date Adjustments"). Any special assessments and similar charges or liens imposed against the Real Property Lease and Station Equipment in respect of any period of time through the Adjustment Date, whether payable in installments or otherwise, shall be the responsibility of Seller, and amounts payable with respect to such special assessments, charges or liens in respect of any period of time after the Adjustment Date shall be the responsibility of Buyer, and such charges shall be adjusted as required hereunder. Three (3) days prior to the Closing Date Seller shall estimate all apportionments pursuant to this Article IV and shall deliver a statement of its estimates to Buyer (which statement shall set forth in reasonable detail the basis for those estimates). At the Closing, Buyer shall pay to Seller, or Seller shall pay to Buyer, as the case may be, the net amount due as a result of the estimate apportionments (excluding any item that is in dispute). Within ninety (90) days after the Closing (the "Payment Date"), Buyer shall deliver to Seller a statement of any adjustments to Seller's estimate of the Apportionments, and Buyer shall pay to Seller, or Seller shall pay to Buyer, as the case may be, any amount due as a result of the adjustment (or, if there is any dispute, the undisputed amount). If Seller disputes Buyer's determinations, or if at any time after delivery of Buyer's statement of determinations, either party determines that any item included in the apportionments is inaccurate, or that any additional item should be included in the apportionments, the parties shall confer with regard to the matter and an appropriate adjustment and payment shall be made as agreed upon by the

parties (or, if they are unable to resolve the matter, they shall select a firm of independent certified public accounts to resolve the matter, whose decision on the matter shall be binding and whose fees and expenses shall be borne equally by the parties). All amounts due pursuant to this subsection that are not paid on the Closing Date or the Payment Date shall bear interest until paid at a rate per annum equal to generally prevailing prime interest rate (as reported by The Wall Street Journal) plus one percent.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as otherwise specifically provided, all of which shall be true and correct at Closing.

5.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to own, lease and operate the Assets and to conduct the business and operations of the Station as currently conducted and to enter into and perform its responsibilities specified in this Agreement. The address of Seller's chief executive offices, and the locations of all tangible personal property included in the Assets are listed in *Schedule 5.1*.

5.2 Authorization. The execution and delivery of this Agreement by Seller has been duly authorized by all necessary corporate action on its part. Seller will deliver evidence of such authorization at Closing. This Agreement has been duly executed by Seller and delivered to Buyer and, to Seller's knowledge, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by laws affecting the enforcement of creditors' rights generally or equitable principles.

5.3 No Breach. None of (i) the execution, delivery and performance of this Agreement by Seller, (ii) the consummation of the Transaction, or (iii) Seller's compliance with the terms and conditions hereof will, with or without the giving of notice or the lapse of time or both, conflict with, breach the terms and conditions of, constitute a default under, or violate Seller's organizational documents, or any judgment, decree, order, injunction, agreement, lease or other instrument to which Seller is a party, or of which Seller is aware, or by which Seller is legally bound, or any law, rule or regulation applicable to Seller or the operation of the Station,.

5.4 Station Licenses. The Station Licenses are all of the licenses, permits and other authorizations required by the Communications Act of 1934, as amended (the "FCC Act") and the rules and regulations promulgated thereunder, and required by other governmental entities to operate the Station in the manner and to the full extent as it is now operated. The Station Licenses are issued in the name of Seller. Seller has delivered to Buyer true and complete copies of the Station Licenses, including any and all amendments and other modifications thereto. The Station Licenses are in full force and effect, are unimpaired by any acts or omissions of Seller or any of its affiliates, or the employees, agents, or partners of Seller or any of its affiliates, and are free and clear of any restrictions which might limit the full operation of the Station in the manner and to the full extent as it is now operated (other than restrictions under the terms of the licenses

themselves). There are no applications, proceedings, or complaints pending or, to Seller's knowledge, threatened which may have an adverse effect on the business or operation of the Station (other than rule making proceedings that apply to the radio broadcasting industry generally). The Station's operation is in compliance with the Commission's policy on exposure to radio frequency radiation. Seller knows of no facts which, under the FCC Act, or the existing rules of the Commission, would disqualify Seller from assigning the Station Licenses or from consummating the Transaction within the times contemplated herein. Seller maintains a public inspection file at the Station's studio in accordance with Commission rules. Access to the Station's transmission facilities are restricted in accordance with the Commission's policies.

5.5 Station Applications. The information contained in Station Applications (if any are described on *Schedule 1.1* hereto) pending with the Commission is true, complete and accurate in all material respects.

5.6 Title to Assets. Except as set forth on *Schedule 5.6(a)*, Seller has good and marketable title to the Assets, in the case of owned Assets, and a valid leasehold interest, in the case of leased Assets, in each case, free and clear of all debts, liens, charges, security interests, mortgages, deeds of trust, pledges, judgments, trusts, adverse claims, liabilities, collateral assignments, leases, easements, covenants, encumbrances and other impairments of title ("Liens"), other than as set forth on *Schedule 5.6(a)*. At Closing, Seller shall convey to Buyer good and marketable title to the Assets free and clear of all Liens other than those set forth on *Schedule 5.6(b)* ("Permitted Liens").

5.7 Condition of Equipment. The Station Equipment listed on *Schedule 1.2* constitutes all of the personal property that is used, or held by the Seller or others for use by the Station, or necessary to operate the Station as it is now operated. Except as disclosed in *Schedule 5.7*, to Seller's knowledge, the Station Equipment is in good operating condition and repair (reasonable wear and tear excepted), is maintained in compliance with good engineering practice, is available for use and is otherwise sufficient to permit the Station to operate in accordance with the Station Licenses and applicable rules and regulations of the Commission. All Station Equipment is type-approved or type-accepted where such type-approval or type-acceptance is required.

5.8 Condition of Leased Real Property.

(a) The Leased Real Property listed in *Schedule 1.5* constitutes all the real property owned or leased by Seller or others in connection with the operation of the Station as it is now operated.

(b) The Leased Real Property is leased pursuant to the transmitter site lease agreement described in *Schedule 1.5* (the "Lease Agreement"), which is the sole and complete agreement concerning Seller's use of the leased premises. To Seller's knowledge, the Lease Agreement is legal, valid, binding, enforceable and in full force and effect. Neither Seller nor, to Seller's knowledge, any other party is in default, violation or breach in any respect under the Lease Agreement, and, to Seller's knowledge, no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would constitute a default, violation or

breach thereunder. No amount payable under any Lease Agreement is past due. Seller has not received any notice of a default, offset or counterclaim under the Lease Agreement or any other communication asserting non-compliance with the Lease Agreement. Seller has the right to use and occupy the premises leased under the Lease Agreement. Seller enjoys peaceful and undisturbed possession of the premises leased by Seller under the Lease Agreement. To Seller's knowledge, the Lease Agreement is free and clear of all Liens except for lessor's interests in the Lease. Seller has delivered to Buyer true and complete copies of the Lease Agreement, together, in the case of any subleases or similar occupancy agreements, with copies of all other leases. Except as disclosed in *Schedule 5.8(b)* and subject to any Required Consents, as defined below, Seller has full legal power and authority to assign its rights under the Lease Agreement to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and, to Seller's knowledge, such assignment will not affect the validity, enforce ability and continuity of such Lease.

(c) To Seller's knowledge, all utilities that are required for the full and complete occupancy and use of the Leased Real Property for the purposes for which such Property is presently being used by Seller, including without limitation electric, water, sewer, telephone and similar services, have been connected and are in good working order. By the Closing Date, Seller will have paid all charges for such utilities, including without limitation any "tie-in" charges or connection fees, except for those charges that will not become due until after the Closing Date and that are to be prorated between Seller and Buyer pursuant to Article IV.

5.9 Contracts. Except as set forth in *Schedule 5.9*, the Contracts are assignable to Buyer on terms and conditions no less favorable than those in effect on the date hereof without consent, or, if consent of the other contracting party to the assignment is required, such consent will be secured at Seller's sole expense prior to the Closing Date. Each Contract is in full force and effect and is unimpaired by any acts or omission of Seller, Seller's employees, agents, or partners. Seller has complied in all material respects with all contracts to be assigned to Buyer hereunder, and, to Seller's knowledge, there has not occurred as to any Contract any default by Seller or, to Seller's knowledge, any event that, with notice or the lapse of time or otherwise, could become a default by Seller. Seller has not granted or been granted any waiver or forbearance with respect to any of the Contracts. To Seller's knowledge, there has not occurred as to any Contract any default by any other party thereto or any event that, with notice or the lapse of time or at the election of any person other than Seller, could become a default by such party. Those Contracts which will not be assumed by Buyer upon commencement of the TBA, as defined below, whose stated duration extends beyond the Closing Date will, at Closing, be in full force and effect and will be unimpaired by any acts or omissions of Seller, Seller's agents, employees or partners. Seller has provided to Buyer true and correct copies of all written Contracts, as modified to date, or true and complete memoranda describing the terms of all oral Contracts, and all liabilities and obligations under such Contracts can be ascertained from such copies or memoranda. The Contracts as amended through the date of this Agreement will not be modified without Buyer's written consent, which consent shall not be unreasonably withheld, except for those contract modifications made in the normal course of business which modifications shall be governed by the limitations and notice requirement of Paragraph 1.3.

5.10 Ownership. The Seller holds and owns assets free and clear of any restrictions on transfer (other than restrictions under national and state securities laws, and Seller's organizational documents, taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands). Seller is not a party to any option, warrant, purchase right, or other contract or commitment that could require it to sell, transfer, or otherwise dispose of the Station's Assets and is not a party to any voting trust, proxy, or other agreement or understanding regarding the Assets.

5.11 Litigation. Except for any FCC rule making procedures generally affecting the broadcast industry and as set forth on *Schedule 5.11*, there is no unsatisfied judgment outstanding and no litigation, proceeding, claim or investigation of any nature pending or, to Seller's knowledge, threatened against Seller or any of the Assets which might adversely affect the continued operation of the Station or impair the value of the Assets or which might adversely affect Seller's ability to perform in accordance with the terms of this Agreement. Seller has no knowledge of any facts that could reasonably result in any such proceedings. With respect to each matter set forth therein, *Schedule 5.11* sets forth a description of the forum for the matter, the parties thereto and the type and amount of relief sought.

5.12 Payment of Taxes. Seller has, or by the Closing Date will have, duly filed all tax returns and forms which are required to be filed in respect of the Station and paid in full or discharged all taxes, assessments, excises, interests, penalties, deficiencies and other levy which relate to the Assets, with the exception of such taxes, assessments, and other levies as will not be due until after the Closing Date and that are to be prorated between Seller and Buyer pursuant to Article IV. To Seller's knowledge, there are no governmental investigations or other legal, administrative or tax proceedings pursuant to which Seller is or could be made liable for taxes, penalties, or interest, the liability for which could extend to Buyer as transferee of the business of the Station, and, to Seller's knowledge, no event has occurred that could impose on Buyer any transferee liability of any taxes, penalties, or interest due or to become due from Seller from any taxing authority.

5.13 Compliance With Laws. To Seller's knowledge, Seller has complied in all material respects with, and is not in violation of applicable federal, state or local laws, regulations or orders (including any applicable statutes, ordinances or codes relating to zoning and land use, health and sanitation, environmental protection, occupational safety, and the use of electrical power) affecting the Assets, the Station's business, or the operation of the Station. Without limiting the generality of the foregoing:

(a) To Seller's knowledge, the Station's transmitting and studio equipment are operating in accordance with the terms and conditions of the Station Licenses and all underlying construction permits, and applicable rules, regulations and policies of the Commission, including without limitation applicable regulations concerning equipment authorization and human exposure to radio frequency radiation. To Seller's knowledge, (i) the Station is not causing interference in violation of Commission rules to the transmission of any other broadcast station or communications facility and has not received any complaints with respect thereto and (ii) no other broadcast station or communications facility is causing interference in violation of Commission rules to the Station's transmissions or the public's reception of such transmissions.

(b) Seller has, in the conduct of the Station's business, complied in all material respects with all applicable laws, rules and regulation relating to the employment of labor, including those concerning wages, hours, equal employment opportunity, collective bargaining, pension and welfare benefit plans, and the payment of Social Security and similar taxes, and Seller is not aware of any arrearages of wages or any tax penalties due to its failure to comply with any of the foregoing.

(c) Seller has received no notification from the Commission that Seller's affirmative action program for the Station or Seller's other employment practices fail to comply with Commission rules and policies.

(d) All FCC ownership reports, employment reports, tax returns and other material documents which are required to be filed by Seller with the Commission or other governmental authorities have been filed. Such items as are required to be placed in the Station's local public inspection files have been placed in such files. All proofs of performance and measurements that are required by the FCC to be made by Seller with respect to the Station's transmission facilities have been completed and filed at the Station. To Seller's knowledge, all information contained in the foregoing documents is true, complete and accurate in all material respects.

(e) To Seller's knowledge, the tower used in the operation of the Station is obstruction marked and lighted to the extent required by, and in accordance with, applicable rules and regulation of the Federal Aviation Administration and the Commission.

5.14 Insolvency Proceedings. Neither Seller nor the Assets are the subject of any pending or, to Seller's knowledge, threatened insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, nor has Seller taken any action in contemplation of or which would constitute a valid basis for the institution of any such insolvency proceedings. .

5.15 Patents, Trademarks, Copyrights. The call signs and all slogans, logos, copyrights, patents, trademarks, trade names, service marks, and other similar intangible property rights, including registrations and applications to register or renew the registrations of any of the foregoing, currently used to promote or identify the Station, or otherwise used in connection with the Station's business, are listed or described on *Schedule 1.6* (the "Promotional Rights"). The Promotional Rights are either owned or validly licensed or contracted for use by Seller, and Schedule 1.5 identifies which Promotional Rights are so owned and which are used pursuant to contract or license, and if licensed, the royalties paid thereon and the parties paid thereunder. Seller does not have any knowledge, nor has Seller received any notice to the effect that its use of any of the Promotional Rights may be or are claimed to infringe on the rights of another. Seller has no knowledge of any infringement or unlawful or unauthorized use of such Promotional Rights, including without limitation the use of any call sign, slogan or logo by any broadcast or cable station in the Greensburg, Pennsylvania area that may be confusingly similar to the call signs, slogans, and logos currently used by the Station. To Seller's knowledge, the operations of the Station does not infringe any copyright, patent, trademark, trade name, service

mark, or other similar right of any third party. Seller has not sold, licensed or otherwise disposed of any Promotional Rights to any person or entity and Seller has not agreed to indemnify any person or entity for any patent, trademark or copyright infringement. *Schedule 1.6b* lists all of Seller's Promotional Rights which have been duly registered with, filed in or issued by, as the case may be, the United States Patent and Trademark Office and United States Copyright Office or other filing offices, domestic or foreign with respect to the operation of the Station.

5.16 Sufficient of Assets. The Assets are sufficient to operate the Station as it is now operated.

5.17 No Misleading Statements. To Seller's knowledge, no statement made by Seller to Buyer and no information provided or to be provided by Seller to Buyer pursuant to this Agreement or in connection with the negotiations covering the Transaction contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary in order to make such statements or information not misleading.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer makes the following representations and warranties, all of which have been relied upon by Seller in entering into this Agreement and, except as otherwise specifically provided, all of which shall be true and correct as of Closing.

6.1 Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of its state of incorporation, is duly qualified to do business in the Commonwealth of Pennsylvania, has full power and authority to acquire the Station Assets, to conduct the business and operation of the Station, and to enter into and perform its responsibilities specified in this Agreement.

6.2 Authorization. The execution and delivery of this Agreement by Buyer has been duly authorized by all necessary corporate action on the part of Buyer. Evidence of such authorizations shall be delivered to Seller at Closing. This Agreement has been duly executed by Buyer and delivered to Seller and, to Buyer's knowledge, constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

6.3 No Breach. None of (i) the execution, delivery and performance of this Agreement by Buyer, (ii) the consummation of the Transaction, or (iii) Buyer's compliance with the terms and conditions hereof will, with or without the giving of notice or the lapse of time or both, conflict with, breach the terms and conditions of, constitute a default under, or violate Buyer's articles of incorporation, bylaws, or any judgment, decree, order, agreement, lease or other instrument to which Buyer is a party or of which Buyer is aware, or by which Buyer is legally bound, or any law, rule or regulation applicable to Buyer, of which Buyer is aware.

6.4 Litigation. There is no unsatisfied judgment outstanding and no action, suit, investigation or other proceedings of any nature pending or, to Buyer's 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.

6.5 No Misleading Statements. To Buyer's knowledge, no statement made by Buyer to Seller and no information provided or to be provided by Buyer to Seller pursuant to this Agreement or in connection with the negotiations covering the Transaction contains or will contain any untrue statement of a material fact or omits or will omit a material fact necessary in order to make such statements or information not misleading.

6.6 Qualification as Broadcast Licensee. Buyer knows of no fact that would, under the FCC Act and the rules, regulations and policies of the FCC, disqualify Buyer from becoming the licensee of the Station. To Buyer's knowledge, there are no proceedings, complaints, notices of forfeiture, claims, investigations pending or threatened against any or in respect of any of the broadcast stations licensed to Buyer or its affiliates that would materially impair the qualifications of Buyer to become a licensee of the Station.

6.7 Insolvency Proceedings. Buyer is not the subject of any pending, nor, to Buyer's knowledge, any threatened insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or assignment with creditors, nor has Buyer taken any action in contemplation of, or which would constitute a valid basis for, the institution of any such insolvency proceedings. Buyer will have sufficient funds to carry out its obligations under the terms of this Agreement at the time of Closing.

## **ARTICLE VII. ENVIRONMENTAL MATTERS**

7.1 Definitions. "Hazardous Materials" means any substance, material, liquid or gas defined or descriptive as hazardous or toxic or by any similar term, under any Environmental Law (as defined below), including petroleum or petroleum producers and friable materials containing more than one percent (1%) asbestos by weight.

7.1.2 "Environmental Law" means any federal, state, or local law, statute, ordinance, order, rule, or regulation relating to contamination, pollution, protection of workers, the public, or the environment, or relating to actual or threatened releases, discharges, or emissions into the environment.

7.1.3 "Environmental Condition" means any contamination or damage to the environment caused by or relating to the use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injection, escaping, leaching, disposal, dumping, or threatened release of Hazardous Materials by Seller. With respect to claims by employees, Environmental Condition also includes the exposure or persons to Hazardous Materials at a workplace of Seller.

7.1.4 "Environmental Noncompliance" means any violation of any Environmental Law.

7.2 Seller's Environmental Representations and Warranties. Without limiting Seller's indemnification obligations pursuant to this Article VII, the matters set forth in this Section constitute representations and warranties of Seller which shall be true and accurate as of the Closing Date. In the event that, during the period between the execution of this Agreement and the Closing Date, Seller learns, or has reason to believe, that any of the following representations and warranties may cease to be true, Seller hereby covenants to give notice thereof to Buyer. Seller hereby represents and warrants that:

7.2.1 No Proceedings. To Seller's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings or any other proceedings against Seller based on Environmental Conditions or Environmental Noncompliance at the Leased Real Property, or at any part thereof, or otherwise arising from Seller's activities at the Leased Real Property involving Hazardous Materials, including but not limited to Seller's transportation, treatment, storage, recycling or disposal of Hazardous Materials;

7.2.2 Environmental Compliance. To Seller's knowledge, Seller's improvements upon and Seller's use of the Leased Real Property conform in all material respects to applicable Environmental Laws pertaining to environmental contamination, clean-up or disclosure of Environmental Hazards; Seller has no knowledge of any asbestos in buildings or any underground fuel tanks on the Leased Real Property; and Seller has no knowledge of any conditions, facilities, procedures or any other facts or circumstances at the Leased Real Property which constitute Environmental Noncompliance;

7.2.3 Hazardous Materials. The Seller does not use Hazardous Materials or equipment containing polychlorinated biphenyls on either the Leased Real Property or any structure, improvements, equipment, fixtures, activities or facilities thereon; and

7.2.4 Releases. The Seller is not involved in any processes, facilities, operations, equipment or any other activities on the Leased Real Property which currently result in the release or threatened release of Hazardous Materials into the environment, or which otherwise contribute to Environmental Conditions, except to the extent that such releases or threatened releases, do not constitute a condition of Environmental Noncompliance.

## **ARTICLE VIII. PRE-CLOSING OBLIGATIONS**

The parties covenant and agree as follows with respect to the period prior to the Closing Date:

8.1 Application for Commission Consent. Within twenty (20) days after the date of this Agreement, Seller and Buyer shall join in and file an application or applications requesting the Commission's written consent to the assignment of the Station Licenses from Seller to Buyer (the "*Assignment Application*"), and they will diligently take all steps necessary or desirable and proper to prosecute expeditiously the Assignment Application and to obtain the Commission's determination that approval of the Assignment Application will serve the public interest,

convenience, and necessity, including, without limitation, compliance with the public notice requirements of the FCC Act. The failure by either party to timely file or diligently prosecute its portion of the Assignment Application or any amendment thereto shall be deemed a material breach of this Agreement. Each party shall bear its own expenses in connection with the preparation, filing and prosecution of the Assignment Application.

8.2 Hart-Scott-Rodino Act. If applicable, within thirty (30) business days after the date of this Agreement, each party shall submit to the United States Department of Justice and the United States Federal Trade Commission all forms and information applicable to the transaction required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules promulgated thereunder (the "*HSR Act*"), and shall furnish to the other party all information that the other reasonably requests in connection with such filings.

8.3 Other Governmental Consents. Promptly following the execution of this Agreement, Seller and Buyer shall proceed to prepare and file with the appropriate governmental authorities (other than the Commission) such requests, if any, for approval or waiver as may be required from such governmental authorities in connection with the Transaction, and shall jointly, diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

8.4 Consents. Seller shall use its best efforts to obtain the consents of the other contracting parties to the assignment of the Contracts requiring such consent (collectively "*Required Consents*"). The delivery of Required Consents to the assignment of Contracts shall be a condition to Buyer's obligation to close under Section 9.2.6.

8.5 Confidentiality. Each party agrees that any and all information learned or obtained by it from the other (and that is not otherwise public or known in the radio broadcast industry) shall be confidential and agrees not to disclose any such information to any person whatsoever other than as is necessary for the purpose of effecting the Transaction or as otherwise required by law.

8.6 Access. Between the date hereof and the Closing Date, Seller shall give, upon prior notice, Buyer or representatives of Buyer (including underwriters, lenders, consultants and investors) reasonable access to the Assets and to the books and records of Seller relating to the business and operation of the Station. It is expressly understood that, pursuant to this Section, Buyer, at its sole expense, shall be entitled to make such engineering inspections of the Station as Buyer may desire and such audits of the Station's financial records as Buyer may reasonably request, so long as the same do not unreasonably interfere with Seller's operation of the Station.

8.7 Employees.

(a) Nothing in this Agreement shall obligate Buyer to hire any employee of Seller.

(b) Nothing contained in this Agreement shall confer upon any employee of

Seller any right with respect to continued employment by Buyer.

8.8 Operations Prior to Closing. Except as otherwise provided in the TBA, between the date of this Agreement and the Closing Date:

(a) Seller shall operate the Station consistent with the rules, regulations, and policies of the Commission, and shall conduct the Station's business only in the ordinary course.

(b) Seller shall: (i) subject to Section 13.3, maintain the Assets in their present condition (reasonable wear and tear in normal use excepted); and (ii) maintain all inventories of supplies, tubes, and spare parts at levels consistent with the Station's prior practices.

(c) Seller shall maintain Station's books and records in the usual and ordinary manner, on a basis consistent with prior practices.

(d) Seller shall comply with all laws, rules, ordinances and regulations applicable to it, to the Assets and to the business and operation of the Station.

(e) Seller shall perform all Contracts without material default; *provided, however, that* Seller may dispute, in good faith, any alleged obligation of Seller.

(f) Seller shall not, without the express written consent of Buyer which shall not be unreasonably withheld, and which shall be deemed given in the event Buyer has not responded to a written request within ten (10) days: (i) sell or agree to sell or otherwise dispose of any of the Assets (A) other than in the ordinary course of business, and (B) unless such Assets are replaced prior to Closing by assets of equal or greater worth, quality and utility; (ii) acquiesce to any infringement, unauthorized use or impairment of the Intangible Property or change the Station's call signs; (iii) enter into any employment contract on behalf of the Station unless the same is terminable at will and without penalty; or (iv) enter into any other contract, lease or agreement that will be binding on Buyer after Closing, other than in the ordinary course of business.

8.9 Adverse Developments. Seller shall promptly notify Buyer of any unusual or materially adverse developments that occur prior to Closing with respect to the Assets or the operation of the Station; *provided, however, that* Seller's compliance with the disclosure requirements of this Section 8.9 shall not relieve Seller of any obligation with respect to any representation, warranty or covenant of Seller in this Agreement or waive any condition to Buyer's obligations under this Agreement.

8.10 Administrative Violations. If Seller receives any finding, order, complaint, citation or notice prior to the Closing Date which states that any aspect of the Station's operations violates any rule or regulation of the Commission or of any other governmental authority (an "*Administrative Violation*"), including without limitation any rule or regulation concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall promptly notify Buyer of the Administrative Violation, remove or

correct the Administrative Violation, and be responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed. Notwithstanding the foregoing, if any such Administrative Violation relates to any act or omission of Buyer, its officers, directors, employees or agents in connection with the Station's operations under the TBA, Buyer shall be solely responsible for the payment of all costs associated with the removal and correction of the Administrative Violation. Nothing in this Section 8.10 shall prevent a party hereto from disputing, in accordance with the procedures of the Commission or other applicable governmental authority, any Administrative Violation which that party believes, in good faith is not justified.

8.11 Bulk Sales Act. Seller agrees to indemnify, defend, and hold Buyer harmless against any claims, liabilities, costs, or expenses, including reasonable attorneys' fees, that Buyer may incur as a result of the failure to comply with applicable bulk sales provisions, if any, of the Uniform Commercial Code or similar laws.

8.12 Control of Station. This Agreement shall not be consummated until after the Commission has given its written consent thereto, and notwithstanding anything herein to the contrary or anything obtained in the parties' TBA, this Agreement shall not give to Buyer the right to complete control of the programming, finances or employees at the Station prior to the Closing Date. Between the date of this Agreement and the Closing Date, Seller shall have ultimate control over the programming and the operation of the Station.

## **ARTICLE IX CONDITIONS PRECEDENT**

9.1 Mutual Conditions. The obligation of both Seller and Buyer to consummate this Agreement is subject to the satisfaction of each of the following conditions:

9.1.1 Governmental Consents. The Commission shall have granted its consent to the Assignment Application (the "*FCC Consent*"). Any applicable waiting period under the HSR Act shall have expired or been earlier terminated without receipt of any objection or the commencement or threat of any litigation by any governmental authority of competent jurisdiction to restrain the consummation of the Transaction.

9.1.2 Absence of Litigation. As of the Closing Date, no action, claim, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the Commission, or any other governmental authority; *provided, however*, that this condition may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

9.2 Conditions to Buyer's Obligation. In addition to satisfaction of the mutual conditions contained in Section 9.1, the obligation of Buyer to consummate this Agreement is subject to the satisfaction of each of the following conditions:

9.2.1 Representations and Warranties. The representations and warranties of

Seller to Buyer shall be true, complete, and correct on all material respects as of the Closing Date with the same force and effect as if then made.

9.2.2 Compliance with Conditions. All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been timely complied with and performed in all material respects.

9.2.3 No Material Adverse Development. No material adverse development shall have occurred with respect to the Station that results in a significant impairment to the ability of the Station to operate as it is currently operated or that represents a substantial impairment of the aggregate value of the Station or Assets being conveyed.

9.2.4 Validity of Station Licenses. On the Closing Date, Seller shall be the holder of the Station Licenses to the extent that such authorizations can be held by Seller under the FCC Act; the Station Licenses shall be in unconditional full force and effect; and the Station Licenses shall be unimpaired by any acts or omissions of Seller or Seller's employees, agents, or partners.

9.2.5 Closing Documents. Seller shall deliver to Buyer all of the closing documents specified in Section 10.2.1, all of which documents shall be dated as of the Closing Date, duly executed, and in a form customary in Pennsylvania, and in transactions of this type, and reasonably acceptable to Buyer.

9.2.6 Third Party Consents. As required, Seller shall have obtained all Required Consents, such that Buyer will enjoy all of the rights and privileges of Seller under the Contracts subject only to the same material obligations as are binding on Seller thereunder, pursuant to the present terms thereof.

9.2.7 Settlement of Claims. Seller shall have settled any and all claims against Seller that affect or concern the Assets.

9.2.8 Finality. The FCC Consent shall have become a Final Order. "*Final Order*" means an order or action of the Commission that, by reason of expiration of time or exhaustion of remedies, is no longer subject to administrative or judicial reconsideration or review.

9.3 Conditions to Seller's Obligation. In addition to satisfaction of the mutual conditions contained in Section 9.1, the obligation of Seller to consummate this Agreement is subject to satisfaction of each of the following conditions:

9.3.1 Representations and Warranties. The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

9.3.2 Compliance with Conditions. All of the terms, conditions and covenants

to be complied with or performed by Buyer on or before the Closing Date shall have been timely complied with and performed in all material respects.

9.3.3 Payment. Buyer shall pay Seller the Purchase Price as provided in Article III..

9.3.4 Closing Documents. Buyer shall deliver to Seller all the closing documents specified in Section 10.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form customary in transactions of this type and reasonably acceptable to Seller.

## **ARTICLE X. CLOSING**

10.1 Closing Date. The Closing hereunder shall occur on the next business day following that date which is twenty (20) days after the date on which the Commission's action granting its consent to the Assignment Application (the "*FCC Consent*") has become a Final Order or on such other date after the FCC Consent as the parties may mutually agree (the "*Closing Date*"). The Closing shall be effective as of 11:59 p.m. of the day prior to the Closing Date. The Closing shall take place at the offices of John A. Renda, 900 Parish Street, Fourth Floor, Pittsburgh, PA 15220, commencing at 10:00 a.m. on the Closing Date; or at such other time or location as the parties may designate; or, at the parties' option, the Closing may be completed through an exchange of documents through facsimile transmission and overnight courier. If, as of the Closing Date, any condition precedent described in Article IX has not been satisfied, the party that is entitled to require that such condition be satisfied may (in its sole discretion) notify the other party of the absence of such condition precedent at or before the Closing and simultaneously therewith postpone the closing until a date ten (10) days after all such conditions have been (or are able to be) performed, and such postponed date shall constitute the new Closing Date for all purposes hereunder. Each of the parties shall use its reasonable best efforts to obtain any FCC authority necessary to schedule the Closing Date as contemplated in this Section.

10.2 Performance at Closing. The following documents shall be executed and delivered at Closing:

10.2.1 Seller shall deliver to Buyer:

(a) A certificate executed by Seller attesting to Seller's compliance with the matters set forth in Sections 9.2.1 and 9.2.2 together with certified copies of (i) the certificate of formation of Seller and (ii) any necessary resolutions or corporate approval evidencing Seller's authorization to enter into and consummate this Agreement.

(b) One or more assignments transferring to Buyer all of the interests of Seller

in and to the Station Licenses, the Station Applications, and all other licenses, permits and authorizations issued by any other governmental authorities that are used in or necessary for the lawful operation of the Station.

(c) One or more bills of sale conveying to Buyer the Station Equipment.

(d) One or more assignments, together with all required consents, assigning to Buyer all of the Station's Contracts, the Real Property Lease Agreement, the Station records and the Station's Intangible Property.

(e) An opinion of Seller's counsel, in form and content reasonably acceptable to Buyer's counsel.

(f) At least five (5) days prior to the Closing, Seller shall provide to Buyer, if needed, wire instructions for the payment of the Purchase Price due on the Closing Date.

(g) The Schedules no later than September 1, 2006.

10.2.2 Buyer shall deliver to Seller:

(a) A certificate executed by Buyer attesting to Buyer's compliance with the matters set forth in Sections 9.3.1 and 9.3.2, together with certified copies of (i) the certificate of formation of Buyer and (ii) any necessary resolutions or corporate approval evidencing Buyer's authorization to enter into and consummate this Agreement.

(b) The Purchase Price.

(c) Such assumption agreements and other instruments and documents as are required to make, confirm, and evidence Buyer's assumption of and obligation to pay, perform, and discharge Seller's obligations under the Contracts to the extent the same are to be assumed by Buyer pursuant to the terms of this Agreement.

(d) An opinion of Buyer's counsel, in form and content reasonably acceptable to Seller's counsel.

10.2.3 Other Documents and Acts. The parties will also execute such other documents and perform such other acts, before and after the Closing Date, as may be necessary for the complete implementation and consummation of this Agreement.

## **ARTICLE XI. POST-CLOSING OBLIGATIONS**

The parties covenant and agree as follows with respect to the period subsequent to the Closing Date:

## 11.1 Indemnification.

11.1.1 Buyer's Right to Indemnification. Seller undertakes and agrees to indemnify, defend by counsel reasonably acceptable to Buyer, and hold harmless Buyer, its parent, subsidiaries, affiliates, successors and permitted assigns and their respective directors, officers, and shareholders (hereinafter referred to collectively as "*Buyer Indemnitees*") from and against and in respect of any and all losses, costs, liabilities, claims, obligations, diminution in value and expenses, including reasonable attorneys' fees, incurred or suffered by a Buyer Indemnatee arising from (i) the claims of third parties with respect to the operation of the Station prior to the commencement of the TBA or ownership of the Assets prior to Closing not expressly assumed by Buyer pursuant to this Agreement or otherwise consented to by Buyer in writing, (ii) a breach, misrepresentation, or other violation of any of Seller's covenants, warranties or representations contained in this Agreement; (iii) all liabilities of Seller or the Station not expressly assumed by Buyer pursuant to this Agreement or the TBA or otherwise consented to by Buyer in writing; (iv) all liens, charges, or encumbrances on any of the Assets which are not expressly permitted by this Agreement or otherwise consented to by Buyer in writing; (v) all Administrative Violations and alleged Administrative Violations occurring prior to Closing except as otherwise provided in Section 8.10; (vi) any breach or default by Seller prior to Closing under any Contract not assumed by Buyer pursuant to the TBA; and (vii) any breach or default by Seller prior to the commencement of the TBA under any Contract assumed by Buyer pursuant to the TBA. The foregoing indemnity is intended by Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, diminution in value, costs, and expenses with respect to any and all of the specific matters in this indemnity set forth.

11.1.2 Seller's Right to Indemnification. Buyer undertakes and agrees to indemnify, defend by counsel reasonably acceptable to Seller, and hold harmless Seller, its parent, subsidiaries, affiliates, successors and permitted assigns and their respective directors, officers, and shareholders (hereinafter referred to collectively as "*Seller Indemnitees*") from and against and in respect of any and all losses, costs, liabilities, claims, obligations, diminution in value and expenses, including reasonable attorneys' fees, incurred or suffered by a Seller Indemnatee arising from (i) the claims of third parties or any action or omission of Buyer under the TBA which affects the operation of the Station or ownership of the Assets from and after the commencement of the TBA; (ii) a breach, misrepresentation, or other violation of any of Buyer's covenants, warranties and representations contained in this Agreement; (iii) all liabilities of Buyer to the extent specifically assumed by Buyer pursuant to this Agreement or the TBA or otherwise consented to by Buyer in writing; and (iv) any breach or default by Buyer under any Contract after Closing. The foregoing indemnity is intended by Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, costs, and expenses with respect to any and all of the specific matters in this indemnity set forth.

11.1.3 Conduct of Proceedings. If any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise, the party who seeks indemnification (the "*Indemnified Party*") shall give written notice thereof to the other party (the "*Indemnitor*") promptly after the Indemnified Party learns of the existence of such claim or proceeding; *provided, however*, that the Indemnified Party's failure to give the Indemnitor prompt notice shall not bar the Indemnified Party's right to indemnification unless such failure

has materially prejudiced the Indemnitor's ability to defend the claim or proceeding. The Indemnitor shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor; provided that the Indemnitor shall not have the right to control the defense of any such claim or proceeding unless it has acknowledged in writing its obligation to indemnify the Indemnified Party fully from all liabilities incurred as a result of such claim or proceeding and then and periodically thereafter provides the Indemnified Party with reasonably sufficient evidence of the ability of the Indemnitor to satisfy any such liabilities. The parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Indemnified party (or such shorter time specified in the notice as the circumstances of the matter may dictate), the Indemnified Party shall be free to dispose of the matter, at the expense of the Indemnitor, in any way in which the Indemnified Party deems to be its best interest.

11.1.4 Indemnification Not Sole Remedy. The right to indemnification hereunder shall not be the exclusive remedy of any party in connection with any breach by another party of its representations, warranties, or covenants, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which any party may otherwise be entitled as a result of any such breach.

11.1.5 Right of Offset. Each of Buyer and Seller shall have the right to offset against amounts owing to the other any amounts owing to such party pursuant to this Article XI.

11.1.6 Limits on and Conditions of Indemnification; Threshold and Cap. Notwithstanding any other provision hereof, no Indemnified Party shall be entitled to make a claim against an Indemnitor in respect of any breach of this Agreement except to the extent that the aggregate amount of such damages exceeds the amount of Three Thousand Dollars (\$3,000); *provided, however*, that once such aggregate has been exceeded, such Indemnitor shall be liable for the full amount of such damages. Notwithstanding any other provision of the Agreement, neither the indemnity obligation of Seller nor the indemnity obligation of Buyer shall exceed the purchase price of the Station (\$2,200,000).

11.2 Post-Closing Access. Each party agrees that it will cooperate with and make available to the other party, during normal business hours and upon reasonable notice, all books and records which are necessary or useful in connection with any tax inquiry, audit, investigation or dispute, any litigation or any other matter requiring any such books and records, information or employees for any reasonable business purpose. The party requesting any such books and records, information or employees shall bear all of the out-of-pocket costs and expenses reasonably incurred in connection with providing such books and records, information or employees. All information received pursuant to this Section 11.2 shall be kept confidential by the party receiving it. If Buyer or Seller is required by law to disclose any confidential information, it shall provide the other party with prompt written notice of such request so that such other party may seek an appropriate protective order.

**ARTICLE XII.  
DEFAULT AND REMEDIES**

12.1 Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Station abandoned, if Seller is not then in material default, upon written notice to Buyer, in accordance with the provisions of Article XIII herein or upon the occurrence of any of the following:

- (a) If on the date that would otherwise be the Closing Date (subject to the right of Buyer to cure provided in Section 12.3 hereof) any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied in all material respects, unless such conditions have been waived in writing by Seller.
- (b) 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) If the Closing shall not have occurred by January 31, 2007 (the "Upset Date").
- (d) If the TBA is terminated by Seller due to the material breach of the TBA by Buyer; or if the TBA is otherwise terminated by mutual consent of the parties thereto, due to an order or decree of an administrative agency or a court, or due to a material change in or clarification of FCC rules or policies that would cause the TBA to be in violation thereof, all pursuant to the provisions of Article XIV of the TBA.

12.2 Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Station abandoned, if Buyer is not then in material default, upon written notice to Seller, in accordance with the provisions of Article XIII herein, or upon the occurrence of any of the following:

- (a) If on the date that would otherwise be the Closing Date (subject to the right of Seller to cure provided in Section 12.3 hereof) any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied in all material respects, unless such conditions have been waived in writing by Buyer.
- (b) 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) If the Closing shall not have occurred by the Upset Date.
- (d) If the TBA is terminated by Buyer due to the material breach of the TBA by Seller; or if the TBA is otherwise terminated by mutual consent of the parties thereto, due to an order or decree of an administrative agency or a court, or due to a material change in or

clarification of FCC rules or policies that would cause the TBA to be in violation thereof, all pursuant to the provisions of Article XIV of the TBA.

12.3 Breach and Opportunity to Cure. If either party believes the other to be in default hereunder, the non-defaulting party shall provide the defaulting party with written notice specifying in reasonable detail the nature of such default. If such default has not been cured by the earlier of: (i) the Closing Date, or (ii) within thirty (30) days after delivery of such notice (except in the case of Buyer's breach for nonpayment of the Purchase Price on the Closing Date, the cure period shall be five (5) days after delivery of such notice), then the party giving such notice may (x) terminate this Agreement, (y) extend the Closing Date under Section 10.1 (but no such extension shall constitute a waiver of such non-defaulting party's right to terminate as a result of such default), and/or (z) exercise the remedies available to such party pursuant to Section 12.5 or 12.6, subject to the right of the other party to contest such action through appropriate proceedings.

12.4 [This section left intentionally blank].

12.5 Seller's Remedies. Buyer recognizes that if the Transaction is not consummated as a result of Buyer's default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that (i) if this Agreement is not consummated due to the default of Buyer and (ii) Seller is not then in default, Seller shall be entitled to (a) receive as "Liquidated Damages" a Two Hundred Thousand Dollar (\$200,000.00) "Non-Performance Fee" which payment shall be secured by the personal guarantee of Anthony F. Renda, Sr., the sole member and sole owner of Buyer, in the form of a guarantee agreement set forth in Exhibit A hereto, and (b) recoup from Buyer such reasonable legal fees and costs expended by Seller for any legal actions Seller has had to undertake involving Buyer's wrongful failure to consummate hereunder. Receiving such Liquidated Damages and recouping such reasonable legal fees and expenses shall be Seller's sole and exclusive remedies and shall be in lieu of any other remedies at law or in equity to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Transaction. Buyer and Seller each acknowledge and agree that Seller receiving Liquidated Damages is reasonable in light of the anticipated harm which would be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the Transaction. The parties agree that the Liquidated Damages provided in this Section is intended to limit the claims that Seller may have against Buyer in the circumstances described herein. Buyer and Seller further acknowledge and agree that in the event this Agreement is not consummated solely because of Buyer's default, Seller shall be entitled to, in addition to the other remedies specified in this Section 12.5, the return to Seller, at Buyer's sole expense, of the Station's Assets utilized by Buyer during the term of the TBA, in as good or better condition than when Buyer initiated its responsibilities under the TBA.

12.6 Buyer's Remedies. Seller agrees that the Station's Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in

any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. The Buyer shall recoup such reasonable legal fees and costs expended in an action in which Buyer has prevailed pursuant to this Paragraph 12.6. In the alternative, in the event Buyer elects to terminate this Agreement as a result of Seller's default in lieu of seeking specific performance (or if Buyer is denied the remedy of specific performance of Seller's obligations under this Agreement), Buyer shall be entitled to reimbursement to Buyer by Seller of all improvement costs (if any) expended by Buyer pursuant to the TBA.

### **ARTICLE XIII. TERMINATION**

13.1 **Absence of Commission Consent.** This Agreement may be terminated at the option of either party upon notice to the other if the Closing has not occurred by December 31, 2007; *provided, however*, that neither party may terminate this Agreement if such party is in material default hereunder, or if a delay in any decision or determination by the Commission respecting the Assignment Application has been caused or materially contributed to by such party's action or inaction with respect to the Assignment Application. In the event of termination pursuant to this Section, the parties shall be released and discharged from any further obligation hereunder, unless the termination is due to Buyer's default and Seller is not in material default and has otherwise complied with its obligations under this Agreement, in which case, Seller shall be entitled to the remedies provided in Section 12.5 hereinabove .

#### **13.3 Damage.**

13.3.1 **Risk of Loss.** The risk of loss or damage to the Assets from any cause other than the negligence of Buyer in its use of the Assets pursuant to the TBA shall be upon Seller at all times prior to the Closing. Except to the extent provided to the contrary in the TBA, in the event of loss or damage Seller shall promptly notify Buyer thereof and shall use commercially reasonable efforts to repair, replace and restore the lost or damaged property to its former condition as soon as possible. If such repair, replacement and restoration has not been completed prior to the Closing Date, Buyer may, at its option:

(a) Elect to terminate this Agreement, but only if the failure to repair, replace and restore the lost or damaged property continues for a period in excess of sixty (60) days from the Closing Date without consideration of this Section 13.3;

(b) Elect to consummate the Transaction on the Closing Date and, at Buyer's option, complete the restoration and replacement of the Assets at Buyer's expense after the Closing Date, in which event Seller shall either assign to Buyer all of Seller's rights under any applicable insurance policies or promptly deliver to Buyer following receipt thereof all such insurance proceeds received prior to or after the Closing in connection with such loss or damage to the Assets; or

(c) Elect to postpone the Closing Date, with the prior consent of the Commission if necessary, which consent both parties will use their reasonable best efforts to

obtain, until a date within fifteen (15) business days after Seller gives written notice to Buyer of completion of the repair, replacement and restoration of such lost or damaged property. If, after the expiration of that extension period, the lost or damaged property has not been adequately repaired, replaced or restored, Buyer may terminate this Agreement, and the parties shall be released and discharged from any further obligation hereunder.

13.3.2 Failure of Broadcast Transmission. Seller shall give prompt written notice to Buyer if either of the following (a "*Specified Event*") shall occur: (i) the regular broadcast transmissions of the Station in the normal and usual manner are interrupted or discontinued; or (ii) the Station is operated at less than its authorized antenna height above average terrain or at less than ninety percent (90%) of its authorized effective radiated power. If any Specified Event persists for more than seventy-two (72) hours (or, in the event of force majeure or utility failure affecting generally the market served by the Station, ninety six (96) hours), whether or not consecutive, during any period of thirty (30) consecutive days, then Buyer may, at its option: (i) terminate this Agreement by written notice given to Seller not more than ten (10) days after expiration of such thirty (30) day period, or (ii) proceed in the manner set forth in Section 13.3.1. In the event of termination of this Agreement by Buyer pursuant to this Section, the parties shall be released and discharged from any further obligation hereunder.

13.3.3 Resolution of Disagreements. If the parties are unable to agree upon the extent of any loss or damage, the cost to repair, replace or restore any lost or damaged property, the adequacy of any repair, replacement, or restoration of any lost or damaged property, or any other matter arising under this Section 13.3, the disagreement shall be referred to a qualified consulting communications engineer mutually acceptable to Seller and Buyer who is a member of the Association of Federal Communications Consulting Engineers, whose decision shall be final, binding upon and non-appealable by the parties, and whose fees and expenses shall be paid one-half by Seller and one-half by Buyer.

13.4 Legal Actions. If, prior to the Closing Date, any action, suit, or proceeding shall have been instituted by or before any court or other governmental authority (other than the Commission) to enjoin, restrain, or prohibit the consummation of the Transaction, the Closing Date may be extended at the option of either party, with prior consent of the Commission if necessary, which consent both parties will use their reasonable best efforts to obtain, for a period of up to ninety (90) days, and if, at the end of such ninety (90)-day period, the action, suit, or proceeding shall not have been resolved, either party may, by written notice to the other, terminate this Agreement; *provided, however*, that if such action, suit, or proceeding shall have been initiated or encouraged by, or instituted as a result of any act or omission of, Seller or Buyer, then such party shall not have the right to extend the Closing Date or to terminate this Agreement pursuant to this Section. In the event of termination pursuant to this Section, the parties shall be released and discharged from any further obligation hereunder, unless termination is by Seller and the subject action, suit or proceeding was solicited or encouraged by, or instituted as a result of an action or omission of Buyer, in which case Section 12.5 will apply and Seller shall receive the Liquidated Damages and Improvements pursuant to that Section.

13.5 Mutual Consent. This Agreement may be terminated by the mutual consent of both parties hereto.

**ARTICLE XIV.  
GENERAL PROVISIONS**

14.1 Brokerage. Except as to Media Services Group, Inc., whose brokerage fee shall be paid solely by Seller, Seller and Buyer represent and warrant to each other that neither is responsible for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

14.2 Expenses. Except as otherwise provided herein, all expenses involved in the preparation and consummation of this Agreement shall be borne by the party incurring the same whether or not the Transaction is consummated. All Commission filing fees for the Assignment Applications shall be shared equally by Buyer and Seller. If applicable, all filing fees required to be paid under the HSR Act shall be shared equally by Buyer and Seller.

14.3 Notices. All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by Federal Express or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage prepaid, addressed as follows:

(a) If to Seller:

Ronald R. Davenport, Jr.  
McL/McM, Inc  
960 Penn Avenue, Suite 200  
Pittsburgh, Pennsylvania 15222-3811

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

Susan A. Marshall, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

(b) If to Buyer:

Mr. Anthony Renda, Sr.  
The St. Pier Group, LLC  
900 Parish Street, 4<sup>th</sup> Floor  
Pittsburgh, Pennsylvania, 15220

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

John A. Renda, Esquire

900 Parish Street, 4<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15220

Any party may change its address for notices by notice to the others given pursuant to this Section.

14.4 Attorneys' Fees. If either party initiates any litigation against the other party involving this Agreement, the prevailing party in such action shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in that proceeding.

14.5 Survival of Representations, Warranties and Indemnification Rights. The several representations and warranties of the parties contained herein, and the parties respective indemnification rights pursuant to Section 11.1, shall survive the Closing for a period of eighteen (18) months, at which time the same shall expire (except for claims asserted during such eighteen (18)-month period).

14.6 Exclusive Dealings. For so long as this Agreement remains in effect, neither Seller, its officers, directors, employees, nor any person acting on Seller's behalf, shall, directly or indirectly, solicit or initiate any offer from, or conduct any negotiations with, any person other than Buyer or Buyer's permitted assignee(s) concerning the acquisition of the Station.

14.7 Waiver. Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by any other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by any other shall be valid unless in writing and acknowledged by an authorized representative of the non-defaulting party, and no such waiver shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by any party for the performance of any obligation or act by any other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

14.8 Assignment. No party may assign its rights or obligations hereunder without the prior written consent of the other party except: (i) Buyer may assign its rights and obligations to a corporation, partnership or other business entity that controls, is controlled by, or is under common control with Buyer, and (ii) Buyer may make a collateral assignment of its rights under this Agreement to any lender that provides funds to Buyer for the acquisition or operation of the Station, as permitted by the rules of the Commission. Seller agrees to execute acknowledgments of any assignment(s) and collateral assignment(s) pursuant to this Section 14.8 in such forms as Buyer or Buyer's lender(s) may from time to time request. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assignees. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person or entity, other than the

parties hereto and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities made by reason of this Agreement.

14.9 Entire Agreement. This Agreement and the Exhibits and Schedules hereto (which are incorporated by reference herein) constitute the entire agreement between the parties with respect to the subject matter hereof and referenced herein, supersede and terminate any prior agreements between the parties (written or oral). This Agreement may not be altered or amended except by an instrument in writing signed by the party against whom enforcement of any such change is sought.

14.10 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures on each such counterpart were on the same instrument.

14.11 Construction. The Section headings of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of the Agreement. As used herein, the neuter gender shall also denote the masculine and feminine, and the masculine gender shall also denote the neuter and feminine, where the context so permits.

14.12 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are a material part of this Agreement.

14.13 Severability. If any one or more of the provisions contained in this Agreement should be found invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

14.14 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the choice of law rules utilized in that jurisdiction.

14.15 Counsel. Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

14.16 Public Statements. Neither Seller nor Buyer shall, without the prior written approval of the other party, make any press release or other public announcement concerning the transactions contemplated by this Agreement except (i) Seller and Buyer shall issue a mutually agreeable public announcement press release promptly after the signing of this Agreement; and (ii) to the extent that either party shall be so obligated by law, in which case the other party shall

be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a respective duly authorized officer as of the date first written above.

SELLER:

McL/M&M-INC.

By: 

Name: Ronald R. Davenport, Jr., President

BUYER:

THE ST. PIER GROUP, LLC

By: 

Name: Anthony F. Renda, Sr., Managing Member

## **SCHEDULES AND EXHIBIT**

- 1.1 Licenses/Applications
- 1.2 Station Equipment
- 1.3(a) Existing Contracts and Agreements
- 1.3(b) New Contracts and Agreements
- 1.5 Real Property
- 1.6 Intangibles/Promotional Rights
- 1.8(g) Excluded Assets
- 3.2 Allocations
- 5.1 Seller's Business & Asset Locations
- 5.6(a) Liens
- 5.6(b) Permitted Liens
- 5.7 Condition of Equipment
- 5.8 Non-Assignable Contracts and Agreements
- 5.8(b) Transmitter Site Lease Agreement
- 5.11 Outstanding Litigation

## **EXHIBIT**

- Exhibit A Guarantee Agreement