

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of February 05, 2013, by and between Grace Community Church of Amarillo, a Texas non-profit corporation ( "Seller"), and OMI Oilfield Investments, LLC, a Texas limited liability company ("Buyer").

### WITNESSETH:

WHEREAS, Seller owns and is the licensee of radio station KBIJ(FM), Guymon, Oklahoma (FIN 164274) (the "Station"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire substantially all of the assets owned or leased by Seller and used or useful in connection with the operation of the Station;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. PURCHASE OF ASSETS

1.1 Transfer of Assets. On the Closing Date, subject to the provisions hereof, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, the assets, properties, interests and rights of Seller of whatsoever kind and nature, real and personal, tangible and intangible, which are used or held for use in connection with the operation of the Station by Seller (collectively, the "Station Assets"), free and clear of all liens, encumbrances, debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, charges, covenants, conditions or restrictions of any kind (collectively, "Liens"), except Permitted Liens (as defined herein). The Station Assets shall include, without limitation, the following (but excluding the assets specified in Section 1.2):

(a) All licenses, permits, rights and other authorizations, including applications with respect thereto, relating to the Station issued to Seller by the FCC or any other governmental authority on or prior to the Closing Date, together with renewals or modifications thereof, including, without limitation, the licenses, permits, rights, authorizations and applications identified on Schedule 1.1(a) attached hereto (the licenses, permits, authorizations issued by the FCC and applications pending before the FCC collectively are referred to herein as the "FCC Licenses");

(b) The equipment, office furniture and fixtures, office materials and supplies, inventory and other tangible personal property, of every kind and description, owned or used by Seller with respect to the Station on the date hereof, together with any additions thereto or replacements thereof in the ordinary course of business made between the date hereof and the

Closing Date, and less any retirements or dispositions in the ordinary course of business thereof made between the date hereof and the Closing Date (provided, however, that any item so retired or disposed of shall be replaced by a substantially similar item of equal or greater functionality and value), specifically identified on Schedule 1.1(b) attached hereto (collectively, the “Tangible Personal Property”), except those specific items of tangible personal property set forth on Schedule 1.2 hereof or otherwise referenced in Section 1.2;

(c) Seller’s right, title and interest in and to all of Seller’s contracts, agreements and operating leases (but excluding any agreement for borrowed money, including any mortgage) written or oral, relating to the operation of the Station and identified on Schedule 1.1(c) hereto, together with all contracts, agreements and operating leases which Buyer agrees in writing to assume at the Closing that Seller enters into or acquires between the date hereof and the Closing Date (collectively, the “Contracts”);

(d) Seller’s right, title and interest in and to all of the real property leased by Seller (the “Leased Real Property” and “Real Property Leases”) in connection with the operation of the Station, and all of Seller’s leasehold rights, in and to any buildings, fixtures, and improvements located thereon, together with any additions thereto between the date hereof and the Closing Date, including but not limited to those described on Schedule 1.1(d) hereto; and

(e) All files, records, and books of account relating to the Station, including, without limitation, programming information and studies, technical information and engineering data, news and advertising studies or consulting reports, marketing and demographic data, sales correspondence, lists of advertisers, promotional materials, customer credit and sales reports, filings with the FCC, copies of all written contracts to be assigned hereunder, logs, the public inspection file and copies of all software programs used at the Station in connection with the operation thereof.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the Station Assets shall not include the following assets, along with all right, title and interest therein (collectively, the “Excluded Assets”):

(a) 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, all prepaid items and deposits, and all donations or other funds generated from broadcasts or other income producing activities by Seller prior to the earlier of the Closing Date;

(b) All contracts or agreements to which Seller is a party that (i) have been terminated in accordance herewith, (ii) have expired prior to the Closing Date in the ordinary course of business and/or according to the terms of said contracts, or (iii) Buyer has not assumed, as further described in Sections 2.1 and 2.2;

(c) Seller’s minute books, limited liability company agreement and other organizational documents, limited liability company interest record books and such other books and records relating to the formation, existence or capitalization of Seller, and duplicate copies of such records conveyed to Buyer as are necessary to enable Seller to file its tax returns and

reports, as well as any other records or materials relating to Seller generally and not involving the Station's operations;

(d) Seller's right, title and interest in and to the call letters of the Station and all trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos and slogans, domain names and web sites used in the conduct of the business and operation of the Station and either owned by Seller or licensed to Seller on the date hereof, together with any associated goodwill and any additions thereto between the date hereof and the Closing Date;

(e) Contracts of insurance and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date;

(f) Any and all claims made by Seller with respect to transactions prior to the Closing Date and the proceeds thereof, except claims with respect to obligations to be assumed by Buyer pursuant to Section 2.1;

(g) All other rights, interests or intangible assets of Seller which are not used in the operation of the Station, as specifically identified on Schedule 1.2 hereof; and

(h) Any books and records relating to any of the foregoing, except to the extent that Buyer wishes to make, at its expense, a duplicate copy of such materials in order to facilitate its operation of the Station and conduct of its business.

## **ARTICLE 2. ASSUMPTION OF OBLIGATIONS**

2.1 Assumption of Obligations. Subject to the provisions of Section 2.2 and Section 3.4, on the Closing Date, Buyer shall assume and undertake to pay, satisfy or discharge the liabilities and obligations of Seller arising or to be performed on or after the Closing Date under the Contracts included on Schedule 1.1(c) and the Real Property Leases identified on Schedule 1.1(d) hereof and any other contract, agreement or lease (whether for real or personal property) that Buyer agrees in writing to assume, except obligations which arise after the Closing Date as a result of a default by Seller under any Contract or Real Property Lease prior to the Closing Date. (All of the foregoing assumed liabilities and obligations shall be referred to herein collectively as the "Assumed Liabilities.")

2.2 Retained Liabilities. Except as set forth in Section 2.1, Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liability, obligation, commitment, undertaking, expense or agreement of Seller of any nature whatsoever, including any agreement for borrowed money, whether known or unknown or absolute or contingent. All of such liabilities and obligations shall be referred to herein collectively as the "Retained Liabilities." Without limiting the generality of the foregoing, it is understood and agreed that Buyer is not agreeing to assume, and shall not assume, any liability or obligation of Seller to Seller's former or current employees (unless and to the extent said employees are subsequently employed by Buyer), including

without limitation any such liability or obligation in respect of wages, salaries, bonuses, severance, accrued vacation or sick pay.

### **ARTICLE 3. CONSIDERATION**

3.1 Purchase Price. In consideration for the sale, assignment, transfer and conveyance of the Station Assets, at Closing Buyer shall pay the aggregate sum of Four Hundred Twenty One Thousand Dollars (\$421,000.00) to Seller (the "Purchase Price"), in cash delivered by wire transfer of immediately available funds to an account designated by Seller (plus or minus any adjustment to be made pursuant to Section 3.3).

3.2 Deposit. Concurrently with the execution of this Agreement, Buyer has delivered to WashingtonFirst Bank ("Escrow Agent") the sum of Forty-Two Thousand One Hundred Dollars (\$42,100) to be held as an earnest money deposit (the "Earnest Money Deposit") pursuant to an Escrow Agreement of even date herewith. The Earnest Money Deposit shall be paid to Seller as partial payment of the cash Purchase Price due at Closing to Seller, or shall otherwise be made available to Seller or released to Buyer in accordance with the provisions of this Agreement.

3.3 Allocation of Purchase Price. Buyer and Seller shall exercise commercially reasonable efforts to determine a mutually agreeable allocation of the Purchase Price prior to Closing, and such allocation shall be attached as Schedule 3.33-2 hereto. In the event that Buyer and Seller shall be unable to mutually agree upon the allocation by Closing, Buyer and Seller shall negotiate in good faith for a period of twenty (20) days, and if such negotiations do not resolve the allocation matters, the parties shall select an independent certified public accountant with experience in the broadcast industry (the "CPA") within twenty (20) days after the Closing who shall make a determination of the allocation within sixty (60) days after his or her selection. Buyer and Seller agree that the allocation determined by their mutual agreement or otherwise by the independent certified public accountant, as the case may be, shall be conclusive and binding on Buyer and Seller for all purposes, including without limitation, reporting and disclosure requirements of the Internal Revenue Service.

#### 3.4 Proration of Income and Expenses.

(a) Except as otherwise provided herein, all expenses arising from Seller's ownership of the Station Assets to be conveyed hereunder that are customarily prorated shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 12:01 a.m., Eastern time, on the Closing Date (the "Adjustment Time"), on the basis that all expenses which accrue prior to the Adjustment Time are for the account of Seller, and all expenses which accrue after the Adjustment Time are for the account of Buyer. Such prorations shall include, without limitation, all real property, ad valorem, and other property taxes (but excluding taxes arising by reason of the transfer of the Station Assets as contemplated hereby, which shall be paid as set forth in ARTICLE 11), Contract payments, utility charges, business, programming, music and other license fees currently paid by Seller, FCC annual regulatory fees, deposits, and similar prepaid and deferred items attributable to the ownership of the Station or the Station Assets. Salaries, wages, sales commissions, fringe benefit accruals and termination

or severance pay for Seller's employees through the date of their termination by Seller shall not be pro-rated but shall be the sole responsibility of Seller.

(b) The prorations and adjustments contemplated by this Section, to the extent practicable, shall be made on the Closing Date to the Purchase Price. As to those prorations and adjustments not capable of being ascertained on the Closing Date, an adjustment and proration shall be made within sixty (60) days following the Closing Date, with payment made by wire transfer of immediately available funds to an account designated by the party who is to receive such payment. In the event of any disputes between the parties as to such adjustments, the amounts not in dispute shall nonetheless be paid at such time and such disputes shall be resolved by the CPA, and the fees and expenses of such CPA shall be paid one-half by Seller and one-half by Buyer. The decision of such CPA shall be rendered within one hundred eighty (180) days after the Closing and shall be conclusive and binding on the parties.

#### **ARTICLE 4. GOVERNMENTAL CONSENTS**

4.1 FCC Consent. The transactions contemplated hereby are expressly conditioned on and subject to the prior consent and approval of the FCC ("FCC Consent") without the imposition of any conditions on the assignment of the FCC Licenses which would reasonably have a material adverse effect on the results of operations of Buyer or the Station.

4.2 FCC Application. After execution of this Agreement, each party shall prepare and load into the FCC's electronic files its respective portion of an application for assignment of the FCC Licenses ("FCC Application") from Seller to Buyer and Buyer's counsel shall promptly file the completed FCC Application with the FCC and shall tender the necessary filing fees. The FCC Application shall be completed and submitted by a date mutually acceptable to the parties, but in any event within ten (10) business days of the date hereof. The parties shall thereafter prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as practicable (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect on the results of operations of a party or any affiliated entity). If the FCC Consent imposes any condition on a party hereto, such party shall use commercially reasonable efforts to comply with such condition; *provided, however*, that no party shall be required hereunder to comply with any condition that would have a material adverse effect on the results of operations of such party, its affiliates, or the Station. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; *provided, however*, such party shall not be required to take any action which would have a material adverse effect on the results of operations of such party, its affiliates, or the Station. Nothing in this Section 4.2 shall be construed to limit a party's right to terminate this Agreement pursuant to ARTICLE 13.

4.3 Renewal Application. Buyer and Seller acknowledge that a renewal application must be filed for the FCC Licenses of the Station on or before February 1, 2013, with a grant to be issued in the ordinary course before the FCC License would expire on June 1, 2013, and that the FCC may not grant the FCC Consent while such renewal application is pending. Seller shall, at its own expense, timely file and diligently prosecute such renewal application.

## **ARTICLE 5. CLOSING**

5.1 Closing Date. Except as otherwise mutually agreed upon by Seller and Buyer, the consummation of the transactions contemplated herein (the “Closing”) shall occur within ten (10) business days after the grant of FCC Consent issued by the FCC becomes Final (as hereinafter defined), on a date to be designated by Seller in a notice given in writing to Buyer at least three (3) business days before such Closing is to occur, but subject to satisfaction or waiver of the conditions to Closing set forth in ARTICLE 9. All actions taken at the Closing will be considered as having been taken simultaneously and no such actions will be considered to be completed until all such actions have been completed. For purposes of this Agreement, the term “Final” shall mean that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

5.2 Closing Place. The Closing shall be held at 10:00 AM on the Closing Date at the offices of Sciarrino & Shubert, PLLC, or such other time or place as the parties hereto may agree, or by mail, electronic mail or facsimile.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in Seller’s disclosure schedules attached to this Agreement (it being understood that each representation and warranty contained in this ARTICLE 6 is qualified by the disclosures made on such schedules and this ARTICLE 6 and such schedules shall be read together as an integrated provision), Seller represents and warrants to Buyer as follows:

6.1 Organization and Qualification. Seller is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Texas, and duly authorized to transact business in Oklahoma. Seller has all necessary corporate power to carry on its business as it is now being conducted.

### 6.2 Authority.

(a) Seller has all necessary limited liability company power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Seller (this Agreement and such other agreements, documents, certificates and instruments are referred to herein collectively as the “Seller Documents”), to perform its obligations thereunder, and to consummate the transactions contemplated thereby. The execution and delivery of the Seller Documents by Seller and the consummation by Seller of the transactions contemplated thereby have been, or will be prior to the Closing, as the case may be, duly authorized by all necessary company action on the part of Seller. Each of the Seller Documents has been, or at or prior to the Closing will be, as the case may be, duly executed and

delivered by Seller and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms.

(b) The execution and delivery by Seller of the Seller Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of the Articles of Incorporation or the Bylaws of Seller; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any Contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; (iii) create any Lien upon any of the Station Assets; (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Seller or any of its properties or assets, or (v) require the consent of any third party, except with respect to landlord's consent to assignment of Leased Real Property, or violate the rights of any third party in any material respect.

(c) Except for the FCC Consent, no consent, approval, order or authorization of, notice to, or registration, declaration or filing with, any governmental entity is necessary in connection with the execution and delivery of the Seller Documents by Seller or the consummation of the transactions contemplated thereby by Seller, except for filing of required documents with the FCC.

### 6.3 FCC Licenses.

(a) Schedule 1.1(a) hereto contains a true and complete list of the FCC Licenses of the Station. Seller is the authorized legal holder of the FCC Licenses. The FCC Licenses are in full force and effect, unimpaired by any act or omission of Seller. Except as disclosed on Schedule 1.1(a), no proceedings are pending or, to the best of Seller's knowledge (as defined below), threatened (other than proceedings applicable to the radio industry as a whole) nor do any facts exist which may result in the revocation, adverse modification, non-renewal or suspension of any of the FCC Licenses.

(b) The FCC Licenses are all of the licenses, permits or other authorizations from the FCC necessary to the operation of the Station in the manner and to the full extent as such operations are currently conducted. There are no conditions upon the FCC Licenses except those conditions stated on the face thereof or conditions applicable to stations of such class generally under the Communications Act of 1934, as amended (the "Act") and the rules, regulations and published policies of the FCC (the "FCC Rules"). Except as disclosed on Schedule 1.1(a), no proceedings are pending or, to the best of Seller's knowledge, threatened (other than proceedings applicable to the radio industry as a whole) which may be reasonably expected to result in the issuance of any cease and desist order or the imposition of any administrative actions by the FCC with respect to the FCC Licenses, including any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller with respect to the Station, or which may affect Buyer's ability to operate the Station in accordance with the FCC Licenses, the Act and the FCC Rules.

(c) Except as disclosed on Schedule 1.1(a), the Station and their transmission facilities are operating in material compliance with the FCC Licenses, the Act and the FCC Rules, and to Seller's knowledge the Station's tower facilities possess all necessary lighting and markings to comply with applicable FCC Rules. Seller has complied in all material respects with all requirements of the FCC and the Federal Aviation Administration ("FAA") with respect to the registration, construction and/or alteration of Seller's antenna structures, and "no hazard" determinations for each antenna structure have been obtained, where required.

#### 6.4 Tangible Personal Property.

(a) Schedule 1.1(b) lists the Tangible Personal Property included in the Station Assets. The Tangible Personal Property which is leased is identified as such on Schedule 1.1(b). The Tangible Personal Property is all of the tangible personal property necessary to operate the Station in the manner in which they are presently operated in all material respects. Seller (i) is the lawful owner of all of the Tangible Personal Property it purports to own, (ii) has valid leasehold interests in the Tangible Personal Property it purports to lease, and (iii) has valid license rights (whether as a licensor or licensee) in the Tangible Personal Property it purports to license, in all cases free and clear of any Liens, except for Liens disclosed in Schedule 1.1(b) attached hereto, which shall be discharged at Closing as to all owned Tangible Personal Property, and except for Permitted Liens. Seller has delivered to Buyer a true, accurate and complete copy of each lease, license or sublicense regarding any Tangible Personal Property leased, licensed or sublicensed by Seller.

(b) Except as set forth on Schedule 1.1(b), as of the date hereof, each item of Tangible Personal Property valued at \$1000 or more and owned by Seller is in operating condition, ordinary wear and tear excepted, and is available for immediate use in the business and operations of the Station.

6.5 Contracts. Schedule 1.1(c) hereto contains a true and complete list of all Contracts existing on the date hereof that are to be conveyed to Buyer at the Closing. To its knowledge, Seller is not in violation or breach of, nor has Seller received in writing any claim or threat that it has breached any of the terms and conditions of, any Contract in any material respect. Neither Seller nor, to Seller's knowledge, any other party to any Contract is in material default thereunder or material breach thereof. Seller has delivered to Buyer a true, accurate and complete copy of each Contract, including all amendments, supplements or modifications thereto or waivers thereunder. Except as set forth on Schedule 1.1(c) attached hereto, neither the execution and delivery by Seller of this Agreement nor the consummation by Seller of the transactions contemplated under this Agreement requires the consent of any party to a material Contract or any other material agreement or obligation of Seller, whether or not such agreement or obligation is to be assigned to or assumed by Buyer, and any material Contract requiring consent to assignment by a third party is identified on Schedule 1.1(c) with an asterisk.

6.6 Compliance With Law. The Station Assets and the operation of the Station are in material compliance with all applicable material statutes, laws, ordinances, regulations, rules or orders of any federal, state or local government, department or agency, including, without limitation, energy, environmental, public utility, zoning, building code, health, and employee safety agencies.

6.7 Brokers. Other than Roger Rafson of CMS Station Brokerage, Inc., Pittsburgh, Pennsylvania, whose commission, fees and/or costs will be wholly borne by Seller, no business chance brokers or other agents or intermediaries were involved in this transaction who would be entitled to a commission, percentage or brokerage fee. There is no broker or finder or other person who would have any valid claim for a commission or brokerage payable by Buyer in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Seller.

6.8 Litigation. Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting the Station or Station Assets. There is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller with respect to the Station in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes which might have a material adverse effect upon the business, assets or condition, financial or otherwise, of the Station or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

6.9 Real Properties.

(a) Seller has valid leasehold interests in each of the Real Property Leases pursuant to which Seller holds a leasehold estate in, or is granted the right to use or occupy the Leased Real Property (assuming proper authorization and execution of such Real Property Lease by the other parties thereto and subject to the application of general principles of bankruptcy or other creditors' rights laws), free and clear of all Liens, except for (i) Liens for taxes not yet due and payable, mechanics' liens and similar liens incurred in the ordinary course of business which do not interfere in any material respect with the operation of the Station, (ii) such easements, covenants and non-monetary encumbrances granted in the ordinary course of business which do not interfere in any material respect with the operation of the Station, and covenants, conditions and restrictions set forth in the Contracts (collectively, "Permitted Liens"); (iii) rights of sublessees which are identified on Schedule 1.1(d), and (iv) other Liens described in Schedule 1.1(d) attached hereto; any Liens with respect to indebtedness for borrowed money shall be discharged at Closing. Seller enjoys peaceful and undisturbed possession under the Real Property Leases. To the knowledge of Seller, no other party to a Real Property Lease is in default thereunder or breach thereof, or is subject to a pending bankruptcy proceeding; Seller has no knowledge of any defect in the proper execution and authorization of the Real Property Lease; and the Real Property Lease is in full force and effect.

(b) To Seller's knowledge, none of the Leased Real Property lies in an area which is, or, will be, subject to zoning, use, or building code restrictions which would prohibit the continued use of such Leased Real Property in the radio broadcasting business. No Leased Real Property lacks access from a public right of way or to necessary utilities.

(c) To Seller's knowledge, any and all buildings, structures, fixtures, or other improvements located on the Leased Real Property and used in the operation of the Station: (i) are in operating condition; and (ii) are equipped with all necessary mechanical, electrical and sanitary facilities, which are in operating condition.

6.10                    Environmental Matters

(a) “Environmental Law” shall mean any federal, state, or local law, ordinance, order, rule, or regulation relating to pollution, protection of the environment, or actual or threatened releases, discharges, or emissions into the environment.

(b) To Seller’s knowledge, there are no investigations, inquiries, administrative proceedings, actions, suits, claims, legal proceedings or any other proceedings pending or, threatened against Seller that involve, or relate to, noncompliance with Environmental Law by Seller.

(c) To Seller’s knowledge, Seller has not released, stored, used or otherwise held any hazardous materials on, under or about the Leased Real Property in violation of Environmental Law.

6.11    Taxes.

(a) Seller has paid all Taxes (as hereinafter defined) required to be paid by Seller, if any.

(b) There are no pending or, to the best knowledge of Seller, threatened, investigations or claims against Seller for or relating to any liability in respect of Taxes.

(c) All Taxes required to be withheld by Seller on or before the date hereof have been withheld and paid (or will be paid) when due to the appropriate agency or authority.

(d) For the purposes of this Agreement, “Taxes” and “Tax” shall mean all taxes and any tax, including without limitation, all foreign, federal, state, county and local income, sales, employment, profit, payroll, use, trade, capital, occupation, property, excise, value added, unitary, withholding, stamp, transfer, registration, recordation and license tax, taxes measured on or imposed by net worth, and other taxes, levies, imposts, duties, deficiencies and assessments, together with all interest, penalties and additions imposed with respect thereto, including any transferee liability for taxes.

6.12    Insurance. Seller maintains insurance with reputable insurers in amounts and with scope and coverage customary for comparable broadcast industry properties.

6.13    No Other Agreements to Sell the Station. Seller has no legal obligation, absolute or contingent, to any other person or firm to sell, assign, or transfer the Station Assets (whether through a merger, reorganization or sale of stock or otherwise) or to enter into any agreement with respect thereto, including, without limitation, any valid right of first refusal or option held by a third party.

6.14    Disclaimer of Other Express and Implied Warranties. Except for the representations and warranties set forth above in this ARTICLE 6, Seller makes no other representations or warranties, express or implied.

**ARTICLE 7.  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

7.1 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and is duly authorized to transact business in Oklahoma. Buyer has all necessary limited liability company power to carry on its business as it is now being conducted and as it is currently contemplated to be conducted as of and immediately following the Closing.

7.2 Authority.

(a) Buyer has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Buyer (this Agreement and such other agreements, documents, certificates and instruments are referred to herein collectively as the “Buyer Documents”), to perform its obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery of the Buyer Documents by Buyer and the consummation by Buyer of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of Buyer. Each of the Buyer Documents has been, or will be at or prior to the Closing, as the case may be, duly executed and delivered by Buyer and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms.

(b) The execution and delivery by Buyer of the Buyer Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of the organizational documents of Buyer; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any material contract, agreement, indenture, covenant, instrument, license or permit by which Buyer is bound; (iii) create any Lien upon any of Buyer’s assets; or (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Buyer.

(c) Except for the FCC Consent, no consent, approval, order or authorization of, notice to, or registration, declaration or filing with, any governmental entity is necessary in connection with the execution and delivery of any of the Buyer Documents by Buyer or the consummation by Buyer of the transactions contemplated thereby, except for filings with the FCC.

7.3 Litigation. There is no third party claim, litigation, proceeding or investigation pending or, to the best of Buyer’s knowledge, threatened against Buyer in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes which might have a material adverse effect upon the business, assets or condition,

financial or otherwise, of Buyer, or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

7.4 Qualification. Buyer is qualified to be the assignee of the Station's FCC Licenses under the Act and the FCC Rules. To Buyer's knowledge, there are no matters with respect to Buyer which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application. Buyer is financially qualified to complete the transactions contemplated by this Agreement.

7.5 Brokers. Other than Roger Rafson of CMS Station Brokerage, Inc., Pittsburgh, Pennsylvania, whose commission, fees and/or costs will be wholly borne by Seller, no business chance brokers or other agents or intermediaries were involved in this transaction who would be entitled to a commission, percentage or brokerage fee. There is no broker or finder or other person who would have any valid claim for a commission or brokerage payable by Seller in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Buyer.

7.6 Disclosure. This Agreement and the documents made pursuant hereto do not and will not contain any untrue statement of material fact by Buyer or omit to state a material fact required to be made in order to make the statements of Buyer herein and therein not misleading in light of the circumstances in which they are made.

7.7 Disclaimer of Other Express and Implied Warranties. Except for the representations and warranties set forth above in this [ARTICLE 6](#)~~ARTICLE 7~~, Buyer makes no other representations or warranties, express or implied.

## **ARTICLE 8. COVENANTS**

8.1 Operation of Business. Between the date of this Agreement and the Closing Date, Seller shall:

(a) use commercially reasonable efforts to preserve and protect all of the Station Assets in good repair and condition, normal wear and tear excepted, and maintain such Station Assets according to industry standards, good engineering practices and all applicable FCC Rules;

(b) without Buyer's consent, not enter into any material agreement with respect to the Station, the Station Assets or Seller, including any option or agreement to sell, assign or transfer the Station or control of Seller to any other party;

(c) not take or, to the extent in Seller's control, permit any other action inconsistent with Seller's obligations hereunder and the consummation of the transactions contemplated hereby;

(d) maintain the current insurance policies in full force and effect, with policy limits and scope of coverage not less than is currently provided;

(e) maintain and preserve Seller's rights under the FCC Licenses, operate the Station in accordance with the Act, the FCC Rules and the FCC Licenses, timely file and prosecute any required extensions of outstanding construction permits, applications or authorizations which may expire prior to the Closing Date; and

(f) conduct the Station's business in the ordinary course consistent with Seller's practices on the date of this Agreement or as otherwise required by this Agreement.

By way of amplification and not limitation, without the prior written consent of Buyer, which shall not be unreasonably withheld, between the date of this Agreement and the Closing Date, Seller shall not:

- (i) enter into any agreement, contract or lease with an aggregate liability of more than \$10,000, unless cancelable without penalty prior to the Closing Date;
- (ii) place or allow to be placed on any of the Station Assets any Lien other than a Permitted Lien;
- (iii) sell or otherwise dispose of any Station Asset except in accordance with Section 1.1;
- (iv) commit any act or omit to do any act which will cause a breach of any material Contract or Real Property Lease in Seller's name, or terminate or fail to renew any material Contract or Real Property Lease;
- (v) violate in any material respect any law, statute, rule, governmental regulation or order of any court or governmental or regulatory authority (whether Federal, State or local); or
- (vi) cause or permit by any act, or failure to act, any of the FCC Licenses to expire, be surrendered, adversely modified, or otherwise terminated, or the FCC to institute any proceedings for the suspension, revocation or adverse modification of any of the FCC Licenses, or fail to prosecute with due diligence any pending applications to the FCC.

8.2 No Other Bids. From the date hereof to the earlier of the Closing Date and the termination of this Agreement, Seller shall not, and shall not authorize or permit any officer, director or employee of Seller, or any investment banker, attorney, accountant or other advisor or representative retained by Seller to, solicit, initiate, encourage (including by way of furnishing information), endorse or enter into any agreement with respect to, or take any other action to facilitate, any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any proposal to purchase, directly or indirectly, the Station. Upon a violation of this Section, in addition to any other remedies available hereunder or at law, Buyer shall be entitled to injunctive relief.

8.3 Access to Information. From the date hereof to the earlier of the Closing Date and the termination of this Agreement, Seller shall afford, and shall cause its respective officers, directors, employees and agents to afford, to Buyer and the officers, employees and agents of Buyer commercially reasonable access during normal business hours, and in a manner so as not to interfere with the normal business operations of Seller, to Seller's officers, employees, independent contractors, agents, properties, facilities, books, records and contracts related to the Station, and shall furnish Buyer all existing financial, operating and other data and information as Buyer, through its respective officers, employees or agents, may reasonably request.

8.4 Confidentiality.

(a) Each party shall hold, and shall cause its officers, employees, agents and representatives, including, without limitation, its attorneys, accountants, consultants and financial advisors who obtain such information to hold, in confidence, and shall not disclose to any third party or use for any purpose other than completing the transactions contemplated by this Agreement or enforcing such party's rights hereunder, any confidential information of the other party obtained in connection with the transactions contemplated hereby, which for the purposes hereof shall not include any information which (i) is or becomes generally available to the public other than as a result of disclosure in contravention of this Section, (ii) becomes available to a party on a nonconfidential basis from a source, other than the party which alleges the information is confidential or its affiliates, which has represented that such source is entitled to disclose it, or (iii) was known to a party on a nonconfidential basis prior to its disclosure to such party hereunder. If this Agreement is terminated, each party shall deliver, and cause its officers, employees, agents, and representatives, including, without limitation, attorneys, accountants, consultants and financial advisors who obtain confidential information of another party pursuant to investigations permitted hereunder to deliver to such other party all such confidential information that is written (including copies or extracts thereof), whether such confidential information was obtained before or after the execution hereof. Notwithstanding any other provision of this Agreement, the obligations set forth herein shall survive the Closing or termination of this Agreement for the full period of the statute of limitations applicable to this Agreement.

(b) If a party or a person to whom a party transmits confidential information of another party is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, criminal or civil investigative demand or similar process) to disclose any of such confidential information, such party or person will, to the extent permitted by the legal authority compelling disclosure, provide the other applicable party with prompt written notice so that such party may seek a protective order or other appropriate remedy or waive compliance with Section 8.4(a). If such protective order or other remedy is not obtained, or if the applicable party waives compliance with Section 8.4(a), the party subject to the request will furnish only that portion of such confidential information which is legally required and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded such confidential information.

(c) The provisions of this Section 8.4 shall survive a termination of this Agreement pursuant to Section 13.1.

8.5 Consents and Approvals. Seller shall use commercially reasonable efforts to obtain, at Seller's expense, any and all consents, transfers, authorizations, or approvals required for the consummation of the transactions contemplated by this Agreement. Buyer will use commercially reasonable efforts to cooperate with Seller in obtaining and providing all information necessary to obtain such consents, including, without limitation, by providing all credit or other financial information required in order to obtain such consents.

8.6 Employees. Buyer shall be under no obligation to hire any employee of Seller, but shall have the reasonable opportunity to interview all such employees. Buyer will assume no liability for any of Seller's employees, and Seller will fully discharge any obligation to any present or past employee of the Stations for retirement, pension, bonus, termination, severance vacation, sick leave or other pay, or for life or other insurance or other employee benefits arising from any period of employment prior to the Closing.

8.7 Control of Station. Buyer shall not, directly or indirectly at any time prior to the Closing Date, control, supervise or direct the operation of the Station. Subject to the covenants of Seller contained herein, such operation, including complete control and supervision of all Station programs, employees and policies, shall be the sole responsibility of Seller.

8.8 News Releases. Prior to the Closing Date, and except as required by law, any news releases pertaining to the transactions contemplated hereby shall be reviewed and approved by Buyer and Seller, or their respective representatives, and shall be acceptable to them prior to the dissemination thereof.

## **ARTICLE 9. CONDITIONS**

9.1 Conditions Precedent to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Buyer shall have waived in writing satisfaction of such condition:

(a) The representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date.

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

(c) No action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced, and no investigation by any governmental or regulatory authority shall have been commenced, seeking to restrain, enjoin, rescind, prevent or change the transactions contemplated hereby or questioning the validity or legality of any of such transactions or seeking damages in connection with any of such transactions.

(d) Seller shall have delivered to Buyer all of the documents required by Section 10.1.

(e) The FCC Consent shall have been issued and become Final.

(f) Seller shall have obtained and delivered to Buyer all required third-party consents to the assignment of all material Contracts (as identified on Schedule 1.1(c)) and customary written consent and estoppel certificates (the “Estoppel Certificates”) duly executed by the lessors under the Real Property Leases (as identified on Schedule 1.1(d) hereto) to be conveyed, which consents and Estoppel Certificates shall not have as a condition thereof any modifications to the terms thereof or any payment by Buyer to consummate the assignment without Buyer’s prior approval, and Seller shall have exercised commercially reasonable efforts to obtain any consent to assignment required by Contracts which are not material.

(g) There shall not be any Liens on the Station Assets (other than Permitted Liens) or any financing statements of record with respect to Seller or the Station Assets except those to be released at the Closing, and Buyer shall have obtained lien search reports (the “Lien Search”), in form and substance satisfactory to Buyer and dated no earlier than ten (10) days prior to the Closing, reflecting the results of UCC, tax and judgment lien searches conducted at Secretary of State office of the State of Delaware or in the jurisdictions where the Station is located, provided, that the cost of such Lien Search shall be paid by Buyer.

9.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Seller shall have waived in writing satisfaction of such condition:

(a) The representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date.

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

(c) No action, suit or proceeding before any court or any governmental or regulatory authority shall have been commenced, no investigation by any governmental or regulatory authority shall have been commenced, seeking to restrain, enjoin, rescind, prevent or change the transactions contemplated hereby or questioning the validity or legality of any such transactions or seeking damages in connection with any of such transactions.

(d) The FCC Consent shall have been issued.

(e) Buyer shall have delivered to Seller the Purchase Price and all of the documents required by Section 10.2.

## **ARTICLE 10. CLOSING DELIVERIES**

10.1 Seller’s Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

- (a)
  - (i) a Bill of Sale for the Tangible Personal Property, in form and substance reasonably satisfactory to Buyer and Seller;
  - (ii) an Assignment and Assumption of the FCC Licenses, in form and substance reasonably satisfactory to Buyer and Seller;
  - (iii) an Assignment and Assumption of Contracts, in form and substance reasonably satisfactory to Buyer and Seller;
  - (iv) executed third party written consents to assignment of each material Contract to be assumed by Buyer for which such consent is required thereunder, and such other consents as Seller has obtained;
  - (v) an Assignment and Assumption of each Real Property Lease in form and substance reasonably satisfactory to Buyer and Seller; and
  - (vi) written consents or pay off letters from any party that is a Secured Party identified on any UCC-1 Financing Statement of record with respect to Seller, the Station or Station Assets, agreeing to amendment or termination of the Liens evidenced thereby upon conditions set forth in such consent; and such instruments of amendment, termination or release of Liens (other than Permitted Liens), all in form and substance reasonably satisfactory to counsel for Buyer, as are necessary to vest in Buyer good and marketable title in and to the Station Assets.

(b) A certificate, executed by an officer of Seller certifying to the fulfillment or satisfaction of the conditions set forth in Sections 9.1(a) and 9.1(b). The delivery of such certificate shall constitute a representation and warranty of Seller as to the statements set forth therein as of the Closing Date.

(c) Updated Schedules to the Agreement reflecting any changes necessary to render the certification contained in such certificate true and accurate on the Closing Date.

(d) Resolutions of the governing board of Seller authorizing the execution, delivery and performance of the Seller Documents by Seller, certified by an officer of Seller, and a certificate of good standing from the Secretary of State of Texas.

(e) Originals or copies of all program, operations, transmissions, or maintenance logs and any other records required to be maintained by the FCC with respect to the Station, including the Station's public file, that are located at the Station shall be left at the Station and thereby delivered to Buyer.

10.2 Buyer's Deliveries. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

- (a) The Purchase Price required under Section 3.1.
- (b) The Assignment and Assumption of FCC Licenses.
- (c) The Assignment and Assumption of Contracts.
- (d) The Assignment and Assumption of Leases, for each Real Property Lease.

(e) A certificate, executed by an officer of Buyer, certifying to the fulfillment or satisfaction by Buyer of the conditions set forth in Sections 9.2(a) and 9.2(b). The delivery of such certificate shall constitute a representation and warranty of Buyer as to the statements set forth therein as of the Closing Date.

(f) Resolutions of Buyer's members or manager authorizing the execution, delivery and performance of the Buyer Documents by Buyer, certified by the manager or an officer of Buyer, and a certificate of good standing from the Secretary of State of Texas.

## **ARTICLE 11. TRANSFER TAXES, FEES AND EXPENSES**

11.1 Expenses. The parties shall each pay one-half (1/2) of the legal fees of Sciarrino & Shubert, PLLC in connection with this Agreement and the transactions contemplated hereby. The parties shall each pay one-half (1/2) of any fees charged by the Escrow Agent pursuant to the Escrow Agreement. Except for the foregoing, or as set forth in Sections 11.2 and 11.3, each party hereto shall be solely responsible for all costs and expense incurred by it in connection with the negotiation and preparation of the Agreement and the transactions contemplated hereby.

11.2 Transfer Taxes and Similar Charges. Buyer shall pay all fees for recordation, transfer and documentary taxes, and any excise, sales or use taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with or imposed by reason of the consummation of the transactions contemplated by this Agreement. Buyer will, at its own expense, file all necessary tax returns and other documentation with respect to all such taxes, fees and charges, and, if required by applicable law, Seller will join in the execution of any such tax returns and other documentation.

11.3 Governmental Filing or Grant Fees. The FCC Application fee and any other filing or grant fees imposed by any governmental authority the consent of which is required to the transactions contemplated hereby shall be paid equally by Buyer and Seller.

## **ARTICLE 12. INDEMNIFICATION**

12.1 Survival of Representations and Warranties. All representations and warranties made in this Agreement shall survive the Closing for a period of twelve (12) months from the Closing Date. The right of any party to recover Damages (as defined in Section 12.2) on any claim shall not be affected by the termination of any representations and warranties as set forth above provided that notice of the existence of such claim (and describing in reasonable detail

such claim) has been given by the Indemnified Party (as hereinafter defined) to the Indemnifying Party (as hereinafter defined) prior to such termination.

12.2 Indemnification of Buyer by Seller. From and after the Closing, Seller shall indemnify and hold Buyer and its attorneys, affiliates, representatives, agents, partners, successors or permitted assigns (collectively, the “Buyer Indemnified Parties”) harmless from and against any liability, loss, cost, expense, judgment, order, settlement, obligation, deficiency, claim, suit, proceeding (whether formal or informal), investigation, Lien or other damage, including, without limitation, attorney’s fees and expenses, (all of the foregoing items for purposes of this Agreement are referred to as “Damages” and are not limited to matters asserted by third-parties against a party, but includes Damages incurred or sustained by a party caused by breach or default by the other party), resulting from, arising out of or incurred with respect to:

(a) A breach of any representation, warranty, covenant or agreement of Seller contained herein, subject to notice of a claim being given before the expiration of the applicable period specified in Section 12.1 with respect to the representations or warranties by Seller contained herein; *provided, however*, that (A) Seller shall not have any obligation to indemnify the Buyer Indemnified Parties from and against any Damages resulting from, arising out of, relating to, in the nature of, or caused by the breach of any representation or warranty of Seller contained in this Agreement until the Buyer Indemnified Parties have suffered Damages by reason of all such breaches for any Station in excess of a Forty Two Thousand Dollar (\$42,000.00) threshold (after which point Seller will be obligated to indemnify the Buyer Indemnified Parties only for the amount of such Damages at that Station in excess of such threshold amount) and (B) there will be a Four Hundred Twenty Thousand Dollar (\$420,000) aggregate ceiling on the obligation of Seller to indemnify the Buyer Indemnified Parties from and against Damages resulting from, arising out of, relating to, in the nature of, or caused by breaches of the representations and warranties of Seller contained in this Agreement, after which point Seller will have no obligation to indemnify the Buyer Indemnified Parties from and against further such Damages; and

(b) Liability arising with respect to the operation of the Station before the Closing Date, provided that Buyer shall perform all obligations arising after the Closing Date under the Assumed Liabilities: and

(c) the Retained Liabilities.

12.3 Indemnification of Seller by Buyer. From and after the Closing, Buyer shall indemnify and hold Seller and its respective attorneys, affiliates, representatives, agents, officers, directors, successors or assigns (the “Seller Indemnified Parties”), harmless from and against any Damages resulting from, arising out of, or incurred with respect to:

(a) A breach of any representation, warranty, covenant or agreement of Buyer contained herein, subject to notice of a claim being given before the expiration of the applicable period specified in Section 12.1 with respect to the representations and warranties made by Buyer herein, *provided, however*, that, in the event of a claim for indemnification other than for the failure to pay obligations due on liabilities assumed from Seller under the terms of this Agreement or for claims which arise after the Closing Date unrelated to the operations of the

Station prior to the Closing Date, in which cases the indemnity shall apply for all claims with no limitations on Buyer's liability hereunder (A) Buyer shall not have any obligation to indemnify the Seller Indemnified Parties from and against any Damages resulting from, arising out of, relating to, in the nature of, or caused by the breach of any representation or warranty of Buyer contained in this Agreement until the Seller Indemnified Parties have suffered Damages by reason of all such breaches in excess of a Forty Two Thousand Dollar (\$42,000.00) threshold (after which point Buyer will be obligated to indemnify the Seller Indemnified Parties only for the amount of such Damages at that Station in excess of such threshold amount) and (B) there will be a Four Hundred Twenty Thousand Dollar (\$420,000) aggregate ceiling on the obligation of Buyer to indemnify the Seller Indemnified Parties from and against Damages resulting from, arising out of, relating to, in the nature of, or caused by breaches of the representations and warranties of Buyer contained in this Agreement, after which point Buyer will have no obligation to indemnify the Seller Indemnified Parties from and against further such Damages;

(b) The Assumed Liabilities; and

(c) Any and all claims, liabilities or obligations of any nature, absolute or contingent, relating to the business and operation of the Station as conducted by Buyer on and after the Closing Date.

#### 12.4 Procedures.

(a) Promptly after the receipt by any party (the "Indemnified Party") of notice of (a) any claim or (b) the commencement of any action or proceeding which may entitle such party to indemnification under this Section, such party shall give the other party (the "Indemnifying Party") written notice of such claim or the commencement of such action or proceeding and shall permit the Indemnifying Party to assume the defense of any such claim, or any litigation or proceeding resulting from such claim. The failure to give the Indemnifying Party timely notice under this subsection shall not preclude the Indemnified Party from seeking indemnification from the Indemnifying Party unless, and then only to the extent, such failure has materially prejudiced the Indemnifying Party's ability to defend the claim, litigation or proceeding. If such claim does not arise from the claim of a third party, the Indemnifying Party shall have 30 days after such notice to cure the conditions giving rise to such claim to the Indemnified Party's satisfaction. The Indemnifying Party shall assume the defense of any such claim, litigation or proceeding by a third party within 30 days after receipt of notice thereof from the Indemnified Party (or notify the Indemnified Party why it refuses to assume such defense), with counsel of its choice reasonably satisfactory to the Indemnified Party; *provided, however*, that the Indemnifying Party must conduct the defense of such claim, litigation or proceeding actively and diligently thereafter in order to preserve its rights in this regard; and *provided further* that the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of such claim, litigation or proceeding, provided that the Indemnifying Party shall direct and control the defense of such claim, litigation or proceeding.

(b) So long as the Indemnifying Party has assumed and is conducting the defense of any such claim, litigation or proceeding resulting therefrom (A) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to such claim, litigation or proceeding without the prior written consent of the Indemnified Party (not to be

withheld unreasonably) unless the judgment or proposed settlement involves only the payment of money damages by one or more of the Indemnifying Parties, does not impose an injunction or other equitable relief upon the Indemnified Party, and provides a release for the benefit of the Indemnified Party; and (B) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to such claim, litigation or proceeding without the prior written consent of the Indemnifying Party (not to be withheld unreasonably). The Indemnified Party shall cooperate and make available all books and records reasonably necessary and useful in connection with the defense.

(c) If the Indemnifying Party shall not assume the defense of any such claim, litigation or proceeding resulting therefrom, the Indemnified Party may, but shall have no obligation to, defend against such claim, litigation or proceeding in such manner as it may deem appropriate; *provided*, that the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to such claim, litigation or proceeding without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

### **ARTICLE 13. TERMINATION RIGHTS**

**13.1 Termination.** This Agreement may be terminated, by written notice given by any party (provided such party is not then in material breach of any of its representations, warranties, covenants or duties hereunder) to the other party hereto, at any time prior to the Closing Date as follows, and in no other manner.

(a) By mutual written consent of the parties;

(b) By Buyer or Seller if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(c) By Buyer, if Seller fails to perform or breaches in any material respect any of its representations, warranties, covenants or duties under this Agreement, and Seller has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Buyer (“Seller’s Breach”);

(d) By Buyer, as specifically provided in Sections 14.1 and 14.2;

(e) By Seller, if Buyer fails to perform or breaches in any material respect any of its obligations, representations, warranties, covenants or duties under this Agreement, and Buyer has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Seller (“Buyer’s Breach”);

(f) By any party, if the FCC denies the FCC Application, or if the FCC Application is designated for a hearing, or if a renewal application, if filed, is denied or designated for hearing;

(g) By either party, if the Closing has not occurred by December 31, 2013;

(h) By any party, if the satisfaction of a condition to the terminating party's obligations to consummate the transactions contemplated by this Agreement shall become reasonably impracticable; *provided, however*, that a party may not terminate this Agreement under this subsection if such party's breach, misrepresentation or failure to fulfill any material obligation under this Agreement is the cause of, or has resulted in, the condition being reasonably impracticable to satisfy.

13.2 Liability of Buyer. Upon a termination of this Agreement (except for reason of a Buyer's Breach) Buyer shall have no further liability hereunder.

13.3 Liability of Seller. Upon termination of this Agreement (except for reason of a Seller's Breach), Seller shall not have any liability or obligation hereunder.

13.4 Specific Performance as Remedy for Seller's Breach. Seller acknowledges and agrees that the Station Assets are unique assets not readily available on the open market, and if the Closing does not occur due to a Seller's Breach as described in the provisions of Section 13.1(c), money damages alone cannot adequately compensate Buyer for its injury. In such event, Buyer shall be entitled to specific performance of this Agreement and of Seller's obligation to consummate the transactions contemplated hereby, and Seller shall waive any and all defenses that Buyer has an adequate remedy at law.

13.5 Limitation of Liability. In no event shall either party be liable to the other for direct damages in excess of Four Hundred Twenty Thousand Dollar (\$420,000) individually or in the aggregate. In no event shall either party be liable to the other for consequential, individual or punitive damages.

## **ARTICLE 14. DAMAGE TO STATION ASSETS**

14.1 Risk of Loss. The risk of loss to any of the Station Assets prior to the Closing shall be upon Seller. In such event Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Station Asset valued in excess of \$10,000, *provided, however*, that in the event that Station Assets with a value of greater than Fifty Thousand Dollars (\$50,000) are damaged or lost as of the date otherwise scheduled for Closing, Buyer may, at its option (i) postpone the Closing for a period of sixty (60) days as Seller attempts to cure such condition, and if such cure occurs within such period, then the parties shall consummate the transaction at the earliest practicable date thereafter, subject to satisfaction or waiver of the conditions set forth in ARTICLE 9, or (and shall in the event a Seller's cure is not successful at the end of the cure period), (ii) close with the Assets in their current condition, in which case Seller shall assign all proceeds from insurance on such lost or damaged Station Assets to Buyer, and Buyer shall assume the responsibility to repair or replace the Station Assets thereafter. Seller shall have no responsibility to repair or replace damaged or destroyed Station Asset if the cost of such repair is less than Ten Thousand Dollars (\$10,000) or (to the extent not covered by insurance) exceeds Fifty Thousand Dollars (\$50,000); if the extent of damage not covered by insurance exceeds Fifty Thousand Dollars (\$50,000), Seller may terminate this Agreement

without penalty upon written notice to Buyer, provided, however, that Buyer may, upon receipt of such notice, waive Seller's responsibility for any repair cost above the amount of applicable insurance coverage plus \$50,000, and proceed to Closing, assuming the cost of all additional repairs.

14.2 Transmission Default. Should Station (i) not operate for any period in excess of one hundred twenty (120) consecutive hours, or (ii) not operate at more than 90% of its maximum authorized power for a period of ten (10) consecutive days before the Closing (unless by agreement with Seller), or (iii) shall not be operating at more than 90% of maximum authorized power (unless by agreement with Seller) as of the scheduled Closing Date (each a "Transmission Default"), and it is reasonably expected that the Transmission Default could be remedied within a reasonable time, Buyer may postpone the Closing for a period of up to sixty (60) days as Seller attempts to cure the Transmission Default condition, and if such cure occurs within such period, then the parties shall consummate the transaction at the earliest practicable date thereafter, subject to satisfaction or waiver of the conditions set forth in ARTICLE 9.

## **ARTICLE 15. MISCELLANEOUS PROVISIONS**

15.1 Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily or involuntarily assign this Agreement or any right or obligation hereunder without the prior written consent of the other party. Notwithstanding anything to the contrary, no such assignment by Buyer shall relieve Buyer of any of its obligations hereunder, and Seller shall remain entitled to enforce any of its rights under this Agreement against Buyer as if no such assignment had been made.

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

15.3 Governing Law. This Agreement and the rights of the parties hereto shall be governed, construed and interpreted in accordance with the internal laws of the State of Minnesota, without giving effect to the choice of law principles thereof.

15.4 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

15.5 Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

15.6 Construction. The language used in this Agreement will be deemed to be language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

15.7 Attorneys' Fees. Should any party hereto institute any action or proceeding at law or in equity to enforce any provision of this Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

15.8 Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing. Assuming that the contents of a notice meet the requirements of the specific Section of this Agreement which mandates the giving of that notice, a notice shall be validly given or made to another party if served either personally or if deposited in the United States mail, postage prepaid, or if transmitted by telegraph, telecopy or other electronic written transmission device or if sent by overnight courier service, and if addressed to the applicable party as set forth below. If such notice, demand or other communication is served personally, service shall be conclusively deemed given at the time of such personal service. If such notice, demand or other communication is given by mail, service shall be conclusively deemed given three (3) business days after the deposit thereof in the United States mail. If such notice, demand or other communication is given by overnight courier, or electronic transmission, service shall be conclusively deemed given at the time of confirmation of delivery. The addresses for the parties are as follows:

If to Buyer to:

OMI Oilfield Investments, LLC  
Attn: Mr. Mike Castanon  
P.O. Box 951  
Perryton, Texas 79070

If to Seller to:

Grace Community Church  
Attn: Mr. Ron Wade  
P. O. Box 7441  
Amarillo, TX 79114

Any party hereto may change its or his address for the purpose of receiving notices, demands and other communications as herein provided, by a written notice given in the aforesaid manner to the other parties hereto.

15.9 Entire Agreement. This Agreement, the Schedules and Exhibits attached hereto and the ancillary documents provided for herein, constitute the entire agreement and understanding of the parties hereto relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to

the matters provided for herein. All Exhibits and Schedules attached hereto or to be delivered in connection herewith are incorporated herein by this reference.

15.10 Waivers. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

15.11 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

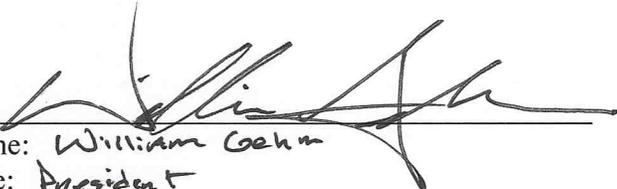
15.12 Counterparts. This Agreement and any ancillary document hereto may be executed in counterpart signature pages, and each such counterpart signature page shall constitute one and the same original signature page. The exchange of copies of this Agreement and of signature pages hereto by facsimile or electronic mail in portable document format (PDF) shall constitute effective execution and delivery of this Agreement. Signatures of the parties transmitted by facsimile or electronic mail in portable document format shall be deemed to be the parties' original signatures for all purposes.

[SIGNATURE PAGE FOLLOWS]

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

**SELLER:**

**GRACE COMMUNITY CHURCH OF AMARILLO**

By: 

Name: *William Cohn*

Title: *President*

**BUYER:**

**OMI OILFIELD INVESTMENTS, LLC**

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

Name: *Oralia T. Cowan*

Title: *Sole Managing Member*

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

**SELLER:**

**GRACE COMMUNITY CHURCH OF AMARILLO**

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

**BUYER:**

**OMI OILFIELD INVESTMENTS, LLC**

By: Oralia Cowan \_\_\_\_\_  
Name: Oralia T. Cowan  
Title: Sole Managing Member