

Agreements Statement

A copy of the Asset Purchase Agreement ("APA") associated with the proposed assignment of license is being submitted in this application. The Exhibits to the APA, however, have not been included. The excluded Exhibits are as follows:

Exhibit 1.1 – FCC Licenses

Exhibit 1.2 – Tangible Personal Property

Exhibit 1.3 – Site Lease

Exhibit 1.4 - Station Contracts

Exhibit 4 - Escrow Agreement

Exhibit 6.5 – Litigation

Exhibit 11 - Non-Assumed Contracts/Programming to be Terminated as of Closing Date

Exhibit 14.1(h) - Post-Closing FCC Repack Reimbursement Cooperation and Indemnification Agreement

The Exhibits identified above contain proprietary information, contain information already of Commission record, and/or are not germane to the Commission's consideration of this application. See LUJ, Inc. and Long Nine, Inc., Memorandum Opinion and Order, 17 FCC Rcd. 16980 (2002).

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (hereinafter "Agreement" or "APA"), is made and entered into this 6th day of April, 2021, by and between Fifth Street Enterprises, LLC, a Delaware limited liability company ("Seller") and Zebra Media, LLC, a Pennsylvania limited liability company ("Buyer").

WITNESSETH

WHEREAS, Seller, under authority of authorizations issued by the Federal Communication Commission (the "FCC"), is the owner of Class A digital commercial television station WTOO-CD, Bolivar, Pennsylvania (Fac. Id. 68403) (the "Station"); and

WHEREAS, Seller desires to sell and Buyer desires to purchase the assets and rights belonging to or used or held for use in the business and operation of the Station pursuant to the terms and conditions stated herein; and

WHEREAS, assignment of the Station FCC authorizations as part of the sale is subject to and conditioned upon the consent of the FCC to the terms and conditions stated herein and the assignment of the FCC Authorizations to Buyer; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements stated herein, the parties hereto agree as follows:

1. **Assets Sold and Purchased.** On the date of the consummation of the sale and purchase contemplated hereunder (the "Closing") of this Agreement, as provided for in Section 5 below (the "Closing Date"), Seller will cause to be sold, transferred, assigned and conveyed to Buyer, by appropriate instruments, and Buyer will purchase and assume, subject to the terms and conditions set forth herein, all of Seller's right, title and interest in all the assets, real, personal, tangible and intangible, good will, contract rights, leases and licenses of Seller used and/or held for use in the operation of the Station as same exist on the date of Closing (collectively, the "Assets"), free and clear of all liens, claims, security interests, instruments or encumbrances ("Liens") including, without limitation, the following assets and properties:

1.1 **Authorizations.** The Station FCC licenses and all other FCC authorizations issued to Seller, and all applications filed by Seller that are pending at the FCC, related to the operation of the Station, as set forth in Exhibit 1.1 hereto (the "FCC Authorizations"), and any and all other licenses, rights, permits and authorizations issued to Seller by any other governmental or regulatory agency which are used or useful in connection with the operation of the Station.

1.2 **Tangible Personal Property.** The fixed and tangible personal property assets owned by Seller and used or held for use in the sole operation of the Station, including without limitation all of the antennae, cables, wiring, connectors, transmitters, equipment, spare or replacement parts along with any unexpired warranties, only as listed and described in Exhibit 1.2

hereto, together with replacements thereof and improvements and additions made between the date hereof and the Closing Date, (collectively the "Tangible Personal Property").

1.3 **Site Lease.** The Laurel Ridge Site Lease between Seller and Bob's Radio Service for antenna space on a tower and associated space for transmission equipment located on Laurel Ridge and described in Exhibit 1.3 hereto (the "Site Lease").

1.4 **Station Contracts.** Those contracts listed and described in Exhibit 1.4 hereto (the "Station Contracts"). To the extent that the assignment of any Station Contract may require the consent of a third party, Seller will use all commercially reasonable efforts to secure such consent and Buyer will reasonably cooperate with Seller to secure such consents. In the event that Seller is unable to secure such consent, Buyer will not be required to assume performance pursuant to such contract or agreement.

1.5 **Records.** All of Seller's records relating to the operation of the Station through the Closing Date, including, but not limited to, all program, operating and maintenance logs maintained in connection with the Station, whether or not required by the FCC; engineering or consultant reports, data or analyses pertaining to the Station's facilities; and the Station's online public inspection file.

1.6 **Intellectual Property.** All intellectual property owned or licensed by Seller used or held for use in the current operation of the Station, including without limitation all of Seller's rights in and to the Station call letters and Seller's rights in and to the trademarks, trade names, service marks, internet websites, domain names, copyrights, computer software, programs and programming materials, jingles, slogans, logos, Facebook, Twitter and other social media accounts and other intellectual property (the "Intellectual Property"), together with the goodwill of the business associated with the foregoing.

2. **Excluded Assets.** Seller's cash, cash equivalents, accounts receivable, fixed debt or trade payables, any reimbursement funds or rights to reimbursement of Seller for the post-auction repack of the Station to channel 22, any contracts or agreements not assumed by Buyer, and any property of Seller not defined as an Asset herein or included on an exhibit to Section 1 hereof, shall be and are excluded from the assets to be sold hereunder (the "Excluded Assets"). Except as set forth herein and expressly assumed by Buyer, all Seller liabilities shall remain liabilities of the Seller, and shall not be assumed by Buyer.

3. **Purchase Price.** The total cash purchase price for all of the Assets sold and purchased hereunder shall be FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) (the "Purchase Price"), subject to agreed-upon pro-rations or other adjustments set forth in this Agreement, which shall be paid by Buyer to Seller by electronic funds transfer in immediately available U.S. funds on the Closing Date.

3.1 **Assumed Liabilities.** The Buyer at the Closing shall assume only those liabilities accruing after the Closing Date under the Station Contracts and the Site Lease assumed by Buyer.

3.2 **Retained Liabilities.** Buyer does not assume and shall not be obligated to pay, perform, or discharge any of Seller's obligations, liabilities, agreements, or commitments not specifically assumed by Buyer (the "Retained Liabilities"), and the indemnification obligations set forth in Section 8 hereof shall apply in the event of any loss, liability, damage or expense (including reasonable attorney's fees) incurred by Buyer arising out of Seller's failure to pay, perform or discharge any of the Retained Liabilities. Without limiting the generality of the foregoing, or any other provision of this Agreement, the Retained Liabilities shall include, and Buyer shall not assume or be liable for (i) any liability, claim or obligation, contingent or otherwise, of or against Buyer arising out of the business or operation of the Station or the Assets prior to the Closing Date; (ii) any liability or obligation under any contracts not specifically assumed by Buyer under the terms of this Agreement or relating to a breach prior to the Closing Date under any such contracts; (iii) any liability, claim or obligation under the contracts assumed by Buyer hereunder accruing before the Closing Date; (iv) any liability or obligation for any federal, state, or local income or other taxes or fees; (v) any liability or obligation with respect to the Excluded Assets; (vi) any liability or obligation to any employee or former employee of Seller or Station attributable to any period of time on or through the Closing Date (including accrued vacation and holiday pay and allowances); (vii) any severance or other liability arising out of the termination of any employee of Seller or Station; (viii) any duty, obligation or liability related to any employee benefit, pension, 401(k) or other similar plan, agreement or arrangement provided to employees of Seller or Station, and none of such plans shall be assumed by Buyer; (ix) any liability or obligation of Seller arising out of any litigation, proceeding or claim by any person or entity relating to the business or operation of the Station prior to the Closing Date, whether or not such litigation, proceeding, or claim is pending, threatened or asserted before, on, or after the Closing Date; (x) frequency discounts, rebates or allowances to advertisers (or their agencies) which are based on broadcasts prior to the Closing Date, and (xi) any liability or obligation of Seller arising from its requests for or receipt of post-auction repack reimbursement funds from the U.S. Treasury for the Station, including without limitation, any audit, investigation, litigation or settlement in connection therewith.

3.3 **Payment of Liabilities by Seller.** Seller shall pay, perform, discharge and settle (i) all of the material liabilities at Closing which at such time, or with the passage of time, would result in an encumbrance on any of the Assets; and (ii) all other liabilities in the ordinary course of business and on a timely basis (except for liabilities being disputed by Seller in good faith and by appropriate proceedings), and Seller shall deliver the Assets to Buyer at Closing free and clear of liabilities, liens, or encumbrances. Seller shall pay the final salaries and any accrued paid-time-off or vacation pay of each of the employees of the Seller for monies due them to and including the Closing Date.

4. **Escrow Deposit.** Within two (2) business days of the execution and delivery of this Agreement, Buyer shall deposit the amount of FORTY-FIVE THOUSAND DOLLARS (\$45,000) (the "Escrow Deposit") with Hardy, Carey, Chautin & Balkin, LLP ("Escrow Agent") pursuant to the terms of a written escrow agreement in the form attached hereto as Exhibit 4 (the "Escrow Agreement"). The Escrow Agreement shall be signed by Seller, Buyer, and Escrow Agent simultaneously with the execution of this Agreement. At Closing, Seller and Buyer shall join in causing the Escrow Deposit to be applied to the Purchase Price and remitted to Seller. Any interest accrued on the Escrow Deposit shall be disbursed to Buyer. If this Agreement is not

consummated because of Buyer's default, the Escrow Deposit and any interest accrued thereon shall be disbursed in accordance with this Agreement. If this Agreement is terminated for any other reason, the Escrow Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Escrow Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement unless contested by a party in good faith in writing within five (5) business days of a disbursement request, in which event, the Deposit shall remain with the Escrow Agent until the parties' dispute is resolved. Any failure by Buyer to make the Escrow Deposit constitutes a material default as to which no cure period applies, entitling Seller to immediately terminate this Agreement as its sole and exclusive remedy.

5. **Closing of the Agreement.**

5.1 **Closing Date**

(a) The Closing shall take place by the exchange of signed documents via electronic mail or overnight courier, within ten (10) business days after the FCC approval of the assignment of the FCC Authorizations to Buyer in accordance with Section 13 has become Final (as defined in Section 5.1(c)) (the "Closing Date"), unless Buyer, in its sole discretion, elects to close at an earlier time and date, in any event, subject to satisfaction or waiver of all other conditions to Closing set forth herein.

(b) If Closing occurs prior to such FCC approval becoming Final (defined below), and prior to becoming Final such FCC approval is reversed or otherwise set aside, and there is a Final order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Authorizations to Seller, then the purchase and sale of the Assets shall be rescinded. In such event, Buyer shall re-convey to Seller the Assets, and Seller shall repay to Buyer the Purchase Price and reassume the contracts and leases assigned and assumed at Closing. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Assets to Seller and execution by Seller of instruments of assumption of the contracts and leases assigned and assumed at Closing) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

(c) For purposes of this Agreement, the word "Final" shall mean 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, petition for reconsideration, 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.

6. **Seller's Representations, Warranties and Covenants.** Seller makes the following representations, warranties, and covenants, each of which shall be deemed to be a

separate representation, warranty, and covenant, all of which have been made for the purpose of inducing Buyer to join in and execute this Agreement, and in reliance on which Buyer has entered into this Agreement:

6.1 **Organization; Authority.** Seller is now and will be on the Closing Date, a for-profit limited liability company in good standing in the state of its formation and authorized to do business under the laws of the Commonwealth of Pennsylvania. The execution, delivery and consummation of this Agreement and the transactions contemplated herein have been duly authorized by each individual or entity that is a member of Seller or has a right or obligation to approve the transactions, and no further authorization, approval or consent is required of the members or of any third-parties, except for any Station Contract and the Site Lease assignment consents and the FCC's consent. The execution, delivery and consummation of this Agreement will not conflict with any provision of the articles of organization or operating agreement of Seller. This Agreement is a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

6.2 **Licenses and Authorizations.** Seller holds the Station FCC Authorizations, and all other FCC licenses, authorizations or approvals necessary for or used in connection with the operation of the Station. The Station FCC Authorizations are valid, existing and in full force and effect in every material respect for the purpose of operating the Station, and expire on the dates shown in Exhibit 1.1. Except for proceedings of general applicability or specific applicability to this market (i) no application, action or proceeding is pending for the modification of any Station FCC Authorization and (ii) no application, action or proceeding is pending or threatened that may result in the revocation, modification, non-renewal or suspension of the Station FCC Authorizations or other authorizations. Seller has not realized income from ancillary/supplemental use of its digital capacity as defined by the FCC, and has not submitted and is not in arrears in remitting any portion of such income to the FCC for such ancillary/supplemental channel use. Except where omissions or delays are *de minimis* or immaterial, Seller has timely filed, submitted or uploaded all reports, certifications or other materials with the FCC as required by the FCC's rules, regulations and policies. Seller has not received from the FCC any notice of inquiry, violation, apparent liability, or investigation related to the Station. The Station is licensed as a Class A television station, as that term is defined in the FCC's rules, and Seller has and continues to operate the Station in such a manner as to meet the FCC's requirements for Class A status, namely, broadcasting (a) a minimum of eighteen (18) hours per day, and (b) an average of at least three (3) hours per week of programming each quarter produced within the market area of the Station.

6.3 **Tangible Personal Property.** Seller holds and will convey to Buyer at Closing good and marketable title to the Tangible Personal Property, free and clear of all Liens as listed on Exhibit 1.2. The assets listed on Exhibit 1.2, together with all improvements, replacements and additions thereto from the date hereof to the Closing Date, (i) constitute all the tangible personal property owned by Seller used or held for use in the operation of the Station and necessary to operate the Station in accordance with the Station FCC Authorizations, and (ii) are in

good operating condition, normal wear and tear excepted. The Tangible Personal Property is transferrable by Seller by its sole act and deed and no consent on the part of any other person is necessary to validate the transfer thereof to Buyer, except as otherwise expressly contemplated by this Agreement. The Station's transmitting equipment included in the Tangible Personal Property is operating in accordance with the terms and conditions of the Station FCC Authorizations and the rules and regulations of the FCC. No third party is the listed owner of or has rights to use any of the Tangible Personal Property.

6.4 **Contracts.** True and complete copies of all contracts and agreements listed on Exhibits 1.3 and 1.4 have been furnished to Buyer. All provisions of such contracts have been complied with in all material respects by Seller and no material default in respect to any duties or obligations required to be performed thereunder has occurred. There are not any agreements, contracts, understandings or commitments which restrict or inhibit the right of Seller to enter into this Agreement, to make the representations and warranties provided herein, or to consummate any of the transactions contemplated hereby, except for the need to obtain the FCC consent and any third-party consents required to assign any of the Station Contracts or the Site Lease. For any contracts not assumed by Buyer, Seller shall be responsible for taking all actions, before and after Closing, to terminate same, including without limitation any costs and payments associated therewith.

6.5 **Litigation.** No judgment is presently pending against Seller with respect to the Station or the Assets and, except for proceedings of general applicability or specific applicability to this market, or as identified in Exhibit 6.5 attached hereto, there is no litigation, proceeding or investigation by or before the FCC pending, or, to the knowledge of Seller, threatened with respect to the Station or the Assets which might result in any material adverse change in the operation of the Station or would have a material adverse effect on the right, title or interest of Seller in the Assets or the ownership, use or possession of the Station or the Assets by Buyer, or which may question the validity of any action taken or to be taken pursuant to or in connection with any of the provisions of this Agreement.

6.6 **Insurance.** Seller maintains in force fire, casualty and liability insurance in respect to the Assets and the business and operations of the Station, and will maintain or cause to be maintained such presently existing insurance in force until the Closing.

6.7 **Disposal of Assets.** Between the date hereof and the Closing Date, Seller will not sell or agree to sell or otherwise dispose of the Assets other than in the ordinary course of business and only as such Assets are replaced, prior to the Closing Date, by other assets of substantially equal or greater value and utility. Any such disposition of the Assets shall only be after consultation with and approval of Buyer, which shall not be unreasonably withheld.

6.8 **No Infringement.** To Seller's knowledge, the operation of the Station does not infringe, and no one has asserted that such operation infringes, upon any copyright, patent, trademark, trade name, service mark, or other similar right of any other party.

6.9 **Reserved**

6.10 **No Breach.** The execution and performance of this Agreement will not violate any order, rule, judgment, or decree to which Seller is subject or breach any contract, agreement, or other commitment to which Seller is a party or by which Seller is bound, except for the need to obtain the FCC consent and any third-party consents required to assign any of the Station Contracts or the Site Lease.

6.11 **Administrative Violations or Notices.** Between the date hereof and the Closing Date, if Seller receives an administrative notice or other order relating to any violation of the rules and regulations of the FCC, or of any other federal, state or local regulatory or administrative body, including rules regarding the employment of labor and equal employment opportunity, it will promptly notify Buyer of such order and use reasonable efforts to remove or correct such violations in the ordinary course of business and will be responsible for the cost of removing same, including the payment of any fines or back pay that may be assessed for any such violation, and Seller will indemnify and hold Buyer harmless with respect to any and all such violations occurring prior to the Closing Date.

6.12 **Taxes.** Seller has, in respect of the Station's business, paid and discharged all taxes, assessments, excises and other levies relative to the Assets being sold which have become payable.

6.13 **Operations Pending Closing.** Between the date hereof and the Closing Date, Seller shall ensure that the Station is operated in the normal and usual manner in accordance in all material respects with the rules, regulations and policies of the FCC. No increase shall be made in the compensation payable or to become payable to any employee or agent of the Station other than in the ordinary course of business consistent with Seller's past practice. No employment contract shall be entered into by Seller or on behalf of the Station which would legally bind the Buyer following the Closing. No other new contract, lease or agreement which have a term extending beyond the Closing Date shall be entered into by Seller or on behalf of the Station, without the prior written consent of Buyer. Seller shall promptly provide a copy to Buyer of any filing by Seller with the FCC, or the receipt of any correspondence or notice from the FCC, with respect to the Station.

6.14 **Adverse Developments.** Prior to the Closing Date, Seller shall promptly notify Buyer, in writing, of any materially adverse developments with respect to the operation of the Station.

6.15 **Access.** Between the date hereof and the Closing Date, upon reasonable notice, Seller will give Buyer or representatives of Buyer reasonable access during normal business hours to the Assets and furnish Buyer with all documents and copies of documents and information concerning the Assets of the Station as Buyer may reasonably request; provided, however, that no investigation made by or on behalf of Buyer shall affect Seller's representations, warranties and covenants hereunder.

6.16 **Environmental Matters.** Seller is not aware of the generation, use, transportation, treatment, storage, release or disposal of any substance classified as hazardous under applicable laws by Seller in connection with the conduct of Seller's business or utilization

of the Site Lease premises which has created or might reasonably be expected to create any material liability under any applicable environmental law or which would require reporting to or notification of any governmental entity. To Seller's knowledge, the Station is in compliance in all material respects with all environmental, health and safety laws applicable to the use of the Site Lease premises and the equipment located thereon.

6.17 **Bankruptcy.** No insolvency proceedings of any character, voluntary or involuntary, affecting Seller's or any of the Assets are pending or, to Seller's knowledge threatened, and Seller has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

6.18 **Broker.** Seller has retained Jeff Winemiller as Seller's media broker for this transaction, and is solely responsible for any fees arising therefrom. Seller agrees to indemnify and hold Buyer harmless from and against any claim from Jeff Winemiller based upon any agreement, arrangement, or understanding alleged to have been made by Seller with Jeff Winemiller.

6.19 **Carriage Rights.** To the extent any multichannel video programming distributor ("MVPD") carries any portion of the Station's programming pursuant to a retransmission consent agreement, such agreement is included as a Station Contract in Exhibit 1.4.

7. **Buyer's Representations and Warranties.** Buyer hereby makes the following representations, warranties and covenants each of which shall be deemed to be a separate representation, warranty and covenant, all of which have been made for the purpose of inducing Seller to join in and execute this Agreement, and in reliance on which Seller has entered into this Agreement:

7.1 **Corporate Existence.** Buyer is a limited liability company duly organized, existing, and in good standing and qualified to do business under the laws of the Commonwealth of Pennsylvania.

7.2 **Corporate Authorization.** The execution, delivery and consummation of this Agreement and the transactions contemplated herein has been duly authorized by the sole member of Buyer and no further authorization, approval or consent of Buyer's membership is required. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.3 **No Breach.** The execution, delivery and consummation of this Agreement will not conflict with any provision of the articles of incorporation or bylaws of Buyer.

7.4 **Buyer Qualified.** Buyer is legally, financially and otherwise qualified to acquire and operate the Assets. This qualification is consistent with the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission

("FCC"). To Buyer's knowledge, no circumstances exist which reasonably could support a conclusion by the FCC that Buyer lacks the requisite qualifications to acquire and operate the Station.

7.5 **No Conflict.** Neither the execution or delivery of this Agreement nor compliance with the terms of this Agreement will (i) conflict with any order, judgment, injunction, award or decree of any governmental body, administrative agency or court, or any agreement, lease or commitment, to which Buyer is a party or by which Buyer is bound, or (ii) constitute a violation by Buyer of any law or regulation applicable to it, except for the need to obtain the FCC consent.

7.6 **Litigation.** There is no claim, litigation, proceeding or governmental investigation pending or threatened, or any judgment, order, injunction or decree outstanding, against Buyer and Buyer does not know of any valid basis for future claims, litigations, proceedings or investigations against Buyer that might materially and adversely affect its ability to consummate the transactions contemplated by this Agreement.

7.7 **Insolvency Proceedings.** No insolvency proceedings of any kind including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement of creditors, voluntary or involuntary, affecting the Buyer or any of its assets or properties are pending or, to Buyer's knowledge, threatened, and Buyer has made no assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

7.8 **Broker.** Buyer represents and warrants that there is no broker or finder or other person who would have a valid claim against Buyer for a commission or a brokerage fee in connection with this Agreement or the transaction contemplated hereby, and that the indemnification provisions herein shall apply to any such claim.

8. **Indemnification.**

8.1 **Buyer's Right to Indemnification.** Seller undertakes and agrees to indemnify and hold Buyer harmless against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by Buyer arising from the breach, misrepresentation, or other violation by Seller of any of the covenants, warranties or representations contained in this Agreement, and for and against (i) all liabilities of Seller not assumed by Buyer pursuant to this Agreement, (ii) all liens, charges, or encumbrances on the Assets transferred hereunder not specifically excepted herein, and (iii) all liabilities of Seller accruing prior to Closing under the Station Contracts and Site Lease assigned to Buyer hereunder. The foregoing indemnity is intended by the Seller 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 which exceed in the aggregate \$10,000. Notwithstanding the above, Seller's liability to Buyer for indemnification shall not include any indirect, consequential, punitive or exemplary damages to Buyer, specifically including any "lost profits" or business interruption damages incurred by Buyer.

8.2 **Seller's Right to Indemnification.** Buyer undertakes and agrees to indemnify and hold Seller harmless against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by Seller arising from breach, misrepresentation, or other violation by Buyer of any of the covenants, warranties or representations contained in this Agreement, and for and against (i) all liabilities of Buyer, (ii) any and all liabilities or obligations accruing after the Closing Date under the Station Contracts or Site Lease assumed by Buyer hereunder and (iii) any actions by Buyer after Closing. The foregoing indemnity is intended by the 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 which exceed in the aggregate \$10,000. Notwithstanding the above, Buyer's liability to Seller for indemnification shall not include any indirect, consequential, punitive or exemplary damages to Seller, specifically including any "lost profits" or business interruption damages incurred by Seller.

8.3 **Procedure.**

(a) If any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise, the party who seeks indemnification shall give written notice thereof to the other party promptly describing in reasonable detail the nature and basis of the claim and the party from whom indemnification is sought shall have the right to employ counsel to defend against any such claim or proceeding or to compromise, settle or otherwise dispose of the same, if the indemnifying party deems it advisable to do so, all at the expense of the indemnifying party. The parties will fully cooperate in any such action, making available to each other books or records for the defense of any such claim or proceeding. If a party from whom indemnification is sought does not furnish a written acknowledgment of its undertaking to defend or settle such claim or proceeding in a timely manner, the party seeking indemnification shall be free to dispose of the matter, at the expense of the indemnifying party, in any reasonable way which it deems in its best interest (subject to the right of the indemnifying party to assume the defense of or opposition to such claim at any time prior to settlement, compromise or final determination thereof).

(b) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such claim; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such claim.

9. **Survival of Representations and Warranties.** The several representations and warranties of the parties contained herein shall survive the Closing for a period of twelve (12) months, at which point they shall be of no further force and effect; provided, however, that all warranties as to corporate or company authority shall survive for such maximum period as permitted by law.

10. **Seller Covenants.** Pending the Closing of this Agreement, Seller will:

10.1 **Access:** Give Buyer and its representatives access in accordance with Section 6.15 of this Agreement. Buyer agrees to take no action which would interfere with the normal business or operation of the Station, and to comply with the requirements of any landlord applicable to the area being accessed.

10.2 **Compliance with Laws.** Comply in all material respects with all applicable federal, state and local laws, ordinances and regulations including, but not limited to, the Communications Act of 1934 and the rules and regulations of the FCC.

10.3 **Third Party Consents.** Obtain the written consents specified on Exhibit 1.4 for the assignment of the Station Contracts to Buyer in a form acceptable to Buyer's counsel, the written consent to the assignment of the Site Lease and associated estoppel certificate as required in Section 11.6 hereof, and any payoff and release letters from third parties with Liens on the Assets that are to be released at Closing in exchange for payments specified therein.

10.4 **Non-Assumed Contracts.** Take all actions necessary to terminate any contract related to the Station that is not being assigned and assumed hereunder.

11. **Conditions Precedent to Buyer's Obligations to Close.** The obligation of Buyer to consummate the Closing under this Agreement is subject to the satisfaction, or to Buyer's written waiver, on or before the Closing, of each of the following conditions:

11.1 **Representations and Warranties True and Correct.** The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and all of the agreements of Seller to be performed on or prior to the Closing pursuant to the terms of this Agreement shall have been duly performed in all material respects. Such facts shall be evidenced by a certificate to that effect, delivered at Closing, and signed by an authorized officer of Seller.

11.2 **FCC Consent.** The FCC shall have consented to the assignment of the Station FCC Authorizations from Seller to Buyer without any conditions materially adverse to Buyer, and such consent shall have become Final.

11.3 **No Injunction.** There shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in any action or proceeding against the consummation of the sale of the Assets contemplated by this Agreement.

11.4 **Closing Documents.** Seller shall deliver to Buyer at the Closing all the closing documents specified in Section 14.1, which documents shall be duly executed.

11.5 **Third-Party Consents.** Seller shall have obtained and delivered to Buyer those written consents to the assignment of the Station Contracts specified and required on Exhibit 1.4, and such consents shall not modify any material terms of the Station Contracts.

11.6 **Site Lease.** The Lessor identified in the Site Lease shall have approved the assignment thereof to Buyer in writing without any change in the monthly/annual rent rate or terms in effect as of the Closing Date (except as allowed therein) and in connection therewith executed an estoppel certificate, the form of both of which shall be acceptable to Buyer's counsel.

11.7 **Programming Termination.** Seller shall have taken all actions required to terminate any third-party programming or programming rights on the Station that are not being assumed by Buyer, including without limitation, those listed on Exhibit 11.8 hereto (the "Non-Assumed Contracts), each in full accordance with any agreement therefor or pursuant to mutually agreeable written terms between Seller and any such programmer. Seller shall provide documentary proof of such terminations to Buyer.

12. **Conditions Precedent to Seller's Obligations to Close.** The obligation of Seller to consummate the Closing under this Agreement is subject to the satisfaction, or to Seller's written waiver, on or before the Closing, of each of the following conditions:

12.1 **Payments.** All payments which are due and payable by Buyer under this Agreement on or before the Closing Date shall have been paid in accordance with the terms of this Agreement.

12.2 **Representations and Warranties True and Correct.** The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and all of the agreements of Buyer to be performed on or prior to the Closing pursuant to the terms of this Agreement shall have been duly performed in all material respects. Such facts shall be evidenced by a certificate to that effect, delivered at Closing, and signed by an authorized officer of Buyer.

12.3 **FCC Consent.** The FCC shall have consented to the assignment of the Station FCC Authorizations from Seller to Buyer.

12.4 **No Injunction.** There shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in any action or proceeding against the consummation of the sale of the Assets contemplated by this Agreement.

12.5 **Closing Documents.** Buyer shall deliver to Seller at the Closing all the closing documents specified in Section 14.2, which documents shall be duly executed.

13. **FCC Approval and Application**

13.1 **Condition of FCC Consent.** Consummation of the Closing is subject to and conditioned upon receipt from the FCC of its consent in writing to the assignment to Buyer of the Station FCC Authorizations to be transferred to Buyer hereunder.

13.2 **Application for Consent.** The parties to this Agreement agree to proceed as expeditiously as practicable to file or cause to be filed one or more applications requesting FCC consent to the assignment of the Station FCC Authorizations, as contemplated by this Agreement (the "Assignment Application"). The parties agree that the Assignment Application shall be duly filed with the FCC not later than five (5) business days after the date of this Agreement, and that such application shall be prosecuted in good faith and with due diligence. The failure of either party to timely file or diligently prosecute its portion of the Assignment Application shall be deemed a material breach of this Agreement. Seller and Buyer shall each pay one-half of the filing fee for the Assignment Application. Buyer and Seller shall notify each other of all documents filed with or received from the FCC with respect to the Assignment Application. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of the Assignment Application.

13.3 **Absence of Commission Consent.** In the event that the FCC fails or refuses to grant the Assignment Application within twelve (12) months of filing, then this Agreement may be terminated at the option of either party upon written notice to the other; provided, however, that neither party may terminate this Agreement if (a) such party is in default hereunder, (b) if a delay in any decision or determination by the Commission respecting the Assignment Application has been caused or materially contributed to by any failure of such party to furnish, file or make available information within its control or caused by the willful furnishing by such party of incorrect, inaccurate or incomplete information to the Commission, or caused by any action taken by such party for the purposes of delaying any decision or determination respecting the Assignment Application. Upon termination pursuant to this Paragraph, the parties shall be released and discharged of all obligations hereunder and the Escrow Deposit, together with accrued interest, shall be returned to the Buyer.

13.4 **Designation for Hearing.** The time for FCC consent provided in Section 13.3 notwithstanding, either party may terminate this Agreement upon written notice to the other, if, for any reason, the Assignment Application is designated for hearing by the FCC, provided, however, that such termination shall not negate the provisions of this Agreement permitting legal recourse by one party against the other related to the reason cited by the FCC for hearing designation.

13.5 **Control of Station Pending Closing.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operation of the Station. Such operation shall be the sole responsibility of Seller.

13.6 **Modification Application.** Buyer, in its sole discretion and at its sole cost and expense, may file an application to modify the Station's licensed facilities (the "Modification Application"), provided that the filing thereof shall request processing and grant contingent upon the consummation of the transaction contemplated herein. The Modification Application may be filed at any time after the execution of this Agreement and the Closing. Grant of the Modification Application shall not be a Closing condition. Seller shall reasonably cooperate, if necessary, with Buyer's efforts to prepare and file the Modification Application.

14. **Closing Documents.** On the Closing Date:

14.1 Seller shall deliver to Buyer:

(a) An assignment transferring all of the interests of Seller in and to the FCC Authorizations, pending applications and all other licenses, permits, and authorizations issued by any other regulatory bodies which are used or held for use in the operation of the Station, and the Intellectual Property;

(b) A bill of sale conveying to Buyer all of the Tangible Personal Property, and executed payoff and release letters agreeing to release any Liens thereon in exchange for the payments at Closing specified therein;

(c) One or more assignments, together with all obtained consents and estoppels, assigning the Station Contracts and the Site Lease to Buyer;

(d) The certificate, dated as of the Closing Date, described in Section 11.1;

(e) A Certificate, dated as of the Closing Date, of a duly authorized officer certifying that all necessary company or other action by Seller has been taken to approve this Agreement and to authorize the consummation of the transactions described herein, and a company resolution executed by each member of Seller consenting to the transaction;

(f) The records and files referred to in Section 1.5 hereof;

(g) A settlement statement setting forth the amounts due after adjustments and pro-rations, and wire instructions for disbursement of funds to Seller; and

(h) the Post-Closing FCC Repack Reimbursement Cooperation and Indemnification Agreement in the form attached hereto at Exhibit 14.1(h).

(i) Joint written instructions to be provided to Escrow Agent for the release of the Escrow Deposit.

14.2 Buyer shall deliver to Seller:

(a) The Purchase Price, in the form provided for in Section 3 hereof;

(b) The certificate, dated as of the Closing date, described in Section 12.2;

(c) A certificate, dated as of the Closing date, of a duly authorized officer of Buyer certifying that all necessary corporate or other action by Buyer has been taken to approve this Agreement and to authorize the consummation of the transactions described herein;

(d) a countersigned Post-Closing FCC Repack Reimbursement Cooperation and Indemnification Agreement;

(e) Joint written instructions to be provided to Escrow Agent for the release of the Escrow Deposit;

(f) A countersigned settlement statement;

(g) As necessary, countersigned assignment and assumption documents for the assignment of the Station Contracts and Site Lease to Buyer.

15. **Pro-rations.**

15.1 **Apportionment of Income and Expense.** Seller shall be entitled to all income received, payable or arising from pre-Closing Station operations, and shall be responsible for all expenses arising out of, the operation of the Station through the close of business on the Closing Date. All prepaid and deferred income and expenses relating to the Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 12:00 midnight on the Closing Date. Such prorations (the "Prorations") shall include without limitation:

(a) Advance payments received from advertisers or programmers of the Station prior to or on the Closing Date for services to be rendered in whole or in part on or after the Closing Date;

(b) Prepaid expenses and deposits arising from payments made for goods or services prior to the Closing Date where all or part of the goods or services have not been received or used at the Closing Date (for example, rents or utilities paid in advance for a rental period extending beyond the Closing Date);

(c) Liabilities, customarily accrued, arising from expenses incurred but unpaid as of the Closing Date;

(d) Personal and real property taxes and utility charges related to the Station or in respect of any of the Assets; and

(e) Deposits and unearned prepayments received by Seller in connection with any Station Contract or the Site Lease assumed by Buyer.

15.2 **Determination and Payment.** Prorations shall be made and paid, insofar as feasible, on the Closing Date by way of adjustment to the Purchase Price. As to Prorations that cannot be made on the Closing Date, within sixty (60) days after the Closing Date, the parties shall determine and agree upon all such Prorations and promptly thereafter Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the net amount due.

16. **Default and Remedies.**

16.1 **Material Breaches.** A party shall be deemed to be in default under this Agreement only if such party has materially breached or failed to perform its obligations hereunder, and no non-material breaches or failures shall be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement, unless such breach has delayed FCC Consent to the Assignment Application as set forth in Section 13.3.

16.2 **Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall promptly provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of (i) five (5) business days after the scheduled Closing Date, or (ii) within twenty (20) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such twenty (20) day period and continue such efforts thereafter), then the party giving such notice may exercise the remedies available to such party pursuant to this Section 16, subject to the right of the other party to contest such action through appropriate proceedings.

16.3 **Seller's Remedies.** Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, 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 if this Agreement is not consummated due to Buyer's breach, as its sole remedy Seller shall be entitled to the Escrow Deposit as liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Agreement.

16.4 **Buyer's Remedies.** Seller agrees that the 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, if Buyer is not in material default in its obligations hereunder, as its sole remedy specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any suit for specific performance 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. Buyer's reasonable costs of enforcing Seller's performance hereunder shall be offset by a reduction to the Purchase Price in the amount of such costs.

17. **Damage.** The risk of loss or damage to the Assets shall be upon Seller at all times prior to Closing and Buyer shall bear the risk of loss or damage thereafter. In the event of such loss or damage, Seller shall promptly notify Buyer thereof and repair, replace or restore any such

damaged property to its former condition as soon as possible after its loss and prior to the Closing Date. If damage has occurred and such relief or restoration of any such damage has not been completed prior to the Closing Date, Buyer may, at its option: (a) elect to consummate the Closing in which event Seller shall pay to Buyer the costs of such repairs, replacements or restoration as is required to restore the property to its former condition and against such obligation shall assign to Buyer all of Seller's rights under any applicable insurance policies. Buyer shall in such event submit to Seller an itemized list of the costs of such repairs, replacements or restoration. If the parties are unable to agree upon the costs of such repairs, the matter 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 as to the costs shall be final, and whose fees and expenses shall be shared equally by Seller and Buyer; or (b) elect to postpone the Closing Date for a period of up to ninety (90) days, with prior consent of the FCC if necessary, to permit Seller to make such repairs, replacements, or restoration as is required to restore the property to its former condition. If after the expiration of the extension period granted by Buyer the property has not been adequately repaired, replaced or restored, Buyer may terminate this Agreement, and the Escrow Deposit and all accrued interest shall be returned to Buyer. If the parties disagree as to whether the property has been adequately repaired, replaced or restored, the matter shall be referred to a mutually-acceptable qualified consulting communications engineer, who is a member of the Association of Federal Communications Consulting Engineers, whose decision shall be final, and whose fees and expenses shall be shared equally by Seller and Buyer.

18. **Failure of Broadcast Transmission.** If regular broadcast transmissions by the Station in the normal and usual manner is interrupted or discontinued for more than twenty-four (24) hours in a single occurrence, or if the Station is operated at less than eighty percent (80%) of its licensed operating or effective radiated power, as the case may be, Seller shall give prompt written notice thereof to Buyer. If prior to Closing, the Station is off the air or operating at power outside the tolerance permitted by the FCC's rules (a "Broadcast Interruption"), then Seller shall notify Buyer and use commercially reasonable efforts to return the Station to the air (or to tolerance) as promptly as practicable in the ordinary course of business. Notwithstanding anything herein to the contrary, if on the day otherwise scheduled for Closing, there is a Broadcast Interruption of the Station that has a material adverse effect on the Station, then Closing shall be postponed until the date five (5) business days after the Station returns to the air or to tolerance in all material respects.

19. **Reserved.**

20. **Notices.** Any notice required hereunder shall be in writing and any payment, notice or other communication shall be deemed given on the date of personal delivery or confirmed email transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third day after mailing by U.S. certified mail, postage prepaid, with return receipt requested, and addressed as follows (or to any other address as any party may request by written notice):

If to Buyer: Zebra Media, LLC
Dan Huber
813 N. Fenwick Street
Allentown, PA 18109

If to Seller: Fifth Street Enterprises, LLC
Ron Bruno
975 Greentree Rd.
Pittsburg, PA 15220

21. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior agreements between the parties and contains all of the terms agreed upon with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. 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.

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

23. **Headings.** The headings of the paragraphs of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of the Agreement.

24. **Exhibits.** The Exhibits to this Agreement are a material part hereof.

25. **Severability.** In case any one or more of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any material respect by a court or governmental authority, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

26. **Choice of Laws and Venue.** This Agreement is to be construed and governed by the laws of the Commonwealth of Pennsylvania.

27. **Bulk Sales.** Seller will indemnify and hold Buyer harmless against any cost or expense as a result of Seller's failure to comply with the provisions of any bulk sales or fraudulent conveyance statutes.

28. **Benefit; Assignment.** This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its rights and obligations hereunder without the other party's written consent. Nothing in this Agreement, expressed or implied, is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

29. **Fees and Expenses.** Except as specifically otherwise provided herein, Buyer and Seller shall each pay their own costs and expenses relating to the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby.

30. **Public Announcements.** Prior to Closing, no party hereto shall make or shall authorize any other person to make any public announcement relating to any aspect of the transactions described herein without having first consulted with the other party concerning the requirement for, and timing and content of, such public announcement and having received their prior written consent thereto. Notwithstanding the foregoing, actions relative to obtaining approvals and like matters shall be permissible and Buyer may make all disclosures in its judgment necessary to obtain financing for purposes of carrying out the transactions described in this Agreement.

31. **Confidentiality.** Each party and its counsel, accountants, engineers and other representatives shall hold in confidence all data and information obtained regarding the other party and the Station's business and properties, except for public record information, and if the transactions provided for in this Agreement are not consummated as contemplated, shall continue to hold such non-public information in confidence and return all information and documents without retaining any copies thereof, and further Buyer (and its representatives) shall not directly or indirectly disclose to anyone or use in competition with the Station any data and information obtained in connection with this proposed purchase, or induce or attempt to persuade any of Seller's employees not to be employed by, or to terminate their employment with Seller at any time.

32. **Assurances.** After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

Buyer:

Zebra Media, LLC

By: Margaret Huber
Title: President of Sole Member
Sonshine Family Television Corp.

Seller:

Fifth Street Enterprises, LLC

By: Ron Bruno
Title: Manager

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