

**ASSET PURCHASE AGREEMENT**  
**(WMLB(AM), Avondale Estates, GA)**

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is dated as of January 16, 2023, by and between **Delmarva Educational Association**, a Virginia not-for-profit corporation (“**Seller**”), and **Disruptor Radio, LLC**, a Virginia limited liability company (“**Buyer**”).

**RECITALS**

1. Seller owns and operates radio station **WMLB(AM), Avondale Estates, Georgia (FCC Facility ID No. 87118)** (the “**Station**”), and holds the licenses and authorizations issued by the FCC for the operation of the Station.

2. Seller and Buyer are parties to that certain Time Brokerage Agreement for the Station, dated March 1, 2021, as amended by the First Amended to the Time Brokerage Agreement, dated February 22, 2022 (the “**TBA**”), pursuant to which Buyer commenced programming the Station on March 1, 2021.

3. Pursuant to the terms of the TBA, Buyer has exercised the Option Right to purchase certain assets of the Station from Seller.

5. The acquisition of the Station is subject to prior approval of the FCC.

**AGREEMENTS**

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein, Seller and Buyer hereby agree as follows:

**ARTICLE I**

**TERMINOLOGY**

1.1 **Act.** The Communications Act of 1934, as amended.

1.2 **Adjustment Amount.** As provided in **Section 2.7**, the amount by which Buyer’s account is to be credited or charged, as reflected on the Adjustment List(s).

1.3 **Adjustment List.** As provided in **Section 2.7**, an itemized list(s) of all sums to be credited or charged against the account of Buyer, with a brief explanation in reasonable detail of the credits or charges, consistent with the allocation principle set forth in **Section 2.7(a)**.

1.4 **Assumed Obligations.** Such term shall have the meaning defined in **Section 2.3**.

1.5 **Business Day.** Any calendar day, excluding Saturdays and Sundays, on which federally chartered banks are regularly open for business.

1.6 **Buyer's Threshold Limitation.** As provided in **Section 9.3(b)**, the threshold dollar amount for the aggregate of claims, liabilities, damages, losses, costs, and expenses that must be incurred by Buyer for a breach of Seller's representations or warranties hereunder before Seller shall be obligated to indemnify Buyer. The Buyer's Threshold Limitation shall be Twenty-Five Thousand Dollars (\$25,000.00) in the aggregate; provided, however, that for any individual item or series of related items, the Buyer's Threshold Limitation shall be Ten Thousand Dollars (\$10,000.00).

1.7 **Closing.** The closing with respect to the transactions contemplated by this Agreement.

1.8 **Closing Date.** The date determined as the Closing Date as provided in **Section 8.1**.

1.9 **Documents.** This Agreement and all Exhibits and Schedules hereto, and each other agreement, certificate, or instrument delivered pursuant to or in connection with this Agreement, including amendments thereto that are expressly permitted under the terms of this Agreement.

1.10 **[Intentionally omitted].**

1.11 **[Intentionally omitted].**

1.12 **Environmental Laws.** The Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Emergency Planning and Community Right-to-Know Act, the Safe Drinking Water Act, each as amended, and any other applicable federal, state and local laws, statutes, rules or regulations concerning or relating to the treating, producing, handling, storing, releasing, spilling, leaking, pumping, pouring, emitting or dumping of Hazardous Materials, or the pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata).

1.13 **Excluded Assets.** Such term shall have the meaning defined in **Section 2.2**.

1.14 **[Intentionally omitted].**

1.15 **[Intentionally omitted].**

1.16 **FCC.** The Federal Communications Commission.

1.17 **FCC Licenses.** The licenses, permits, and authorizations (and any renewals, extensions, amendments, or modifications thereof) granted by the FCC for the operation of the Station as listed on **Schedule 3.8**, including without limitation, all assignable licenses, permits, and authorizations of the FCC to the extent they pertain to the operation of the Station.

1.18 **FCC Order.** An action, order, or decision of the FCC, granting its consent to the assignment of the FCC Licenses to Buyer without any Material Adverse Condition other than those of general applicability.

1.19 **Final Action.** An action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended; with respect to which no timely petition for reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending and as to which the time for filing any such petition or appeal (administrative or judicial) or for the taking of any such sua sponte action of the FCC has expired.

1.20 **Hazardous Materials.** Toxic materials, hazardous wastes, hazardous substances, pollutants or contaminants, asbestos or asbestos-related products, polychlorinated biphenyls (PCBs), petroleum, crude oil or any fraction or distillate thereof in excess of legally-defined permissible limits (as such terms are defined in any applicable federal, state or local laws, ordinances, rules and regulations, and including any other terms which are or may be used in any applicable Environmental Laws to define prohibited or regulated substances).

1.21 **Indemnified Party.** Any party described in **Section 9.3** or **Section 9.4** against which any claim or liability may be asserted by a third party which would give rise to a claim for indemnification under the provisions of this Agreement by such party.

1.22 **Indemnifying Party.** The party to this Agreement (not the Indemnified Party) that, in the event of a claim or liability asserted by a third party against the Indemnified Party which would give rise to a claim for indemnification under the provisions of this Agreement, is obligated to indemnify and hold harmless the Indemnified Party to the extent expressly provided in this Agreement.

1.23 **Lien.** Any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, lien, lease, or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any Sale Assets, including any written or oral agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement, and the filing of or agreement to give any financing statement with respect to any of the Sale Assets under the Uniform Commercial Code or comparable law of any relevant jurisdiction.

1.24 **Material Adverse Condition.** A condition, event or circumstance which would materially restrict, limit, increase the cost or burden of or otherwise materially adversely affect or materially impair the right of Buyer to the ownership, use, control, enjoyment or operation of the Station or the proceeds therefrom; provided, however, that any condition which requires that the Station be operated in accordance with a condition similar to those contained in the present FCC Licenses issued for operation of the Station shall not be deemed a Material Adverse Condition.

1.25 **OSHA Laws.** The Occupational Safety and Health Act of 1970, as amended, and all other federal, state, or local laws or ordinances, including orders, rules, and regulations thereunder, regulating or otherwise affecting health and safety of the workplace.

1.26 **Permitted Lien.** For purposes hereof, “**Permitted Lien**” shall mean (i) easements, restrictions, and other similar matters which will not materially adversely affect Buyer’s use of the Real Property pursuant to the current transmitter site lease agreement in the ordinary course of business; (ii) liens for taxes not due and payable or, that are being contested in good faith by appropriate proceedings; (iii) mechanics, materialmen’s, carriers’, warehousemen’s, landlords’ or other similar liens in the ordinary course of business for sums not yet due or which are being contested in good faith by appropriate proceedings; (iv) liens or mortgages that will be released at Closing; (v) zoning ordinances and regulations, including statutes and ordinances relating to the liens of streets and to other municipal improvements, which will not materially adversely affect the use of the Real Property in the ordinary course of business, provided that any of the foregoing alone or in the aggregate do not materially impair the value or materially interfere with the use of any asset or property of the Seller material to the operation of its business as it has been and is now conducted; and/or (vi) a Lien securing only an Assumed Obligation.

1.27 **Person.** Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivisions thereof.

1.28 **Purchase Price.** The consideration to be paid by Buyer to Seller for purchase of the Sale Assets in an amount equal to Five Hundred Thousand Dollars (\$500,000.00) payable pursuant to the terms of **Section 2.5** and subject to adjustments pursuant to **Section 2.7**.

1.29 **Real Property.** Such term shall have the meaning defined in **Section 3.7**.

1.30 **Real Property Lease Agreement.** The Lease Agreement dated February 26, 2021, by and between Atlanta 2034 Lenox LLC, as Lessor, and Seller, as Tenant, for the Real Property.

1.31 **Rules and Regulations.** The rules of the FCC as set forth in Volume 47 of the Code of Federal Regulations, as well as such other policies of the FCC, whether contained in the Code of Federal Regulations, or not, that apply to the Station.

1.32 **Sale Assets.** All of the tangible and intangible assets to be transferred by Seller to Buyer as set forth in **Section 2.1**.

1.33 **Seller’s Threshold Limitation.** As provided in **Section 9.4(b)**, the threshold dollar amount for the aggregate of claims, liabilities, damages, losses, costs, and expenses that must be incurred by Seller for a breach of Buyer’s representations or warranties hereunder before Buyer shall be obligated to indemnify Seller. The Seller’s Threshold Limitation shall be Twenty-Five Thousand Dollars (\$25,000.00) in the aggregate; provided, however, that for any individual item or series of related items, the Seller’s Threshold Limitation shall be Ten Thousand Dollars (\$10,000.00).

1.34 **Station Agreements.** The agreements, commitments, contracts, leases, and other items described in **Section 3.9(a)**.

1.35 **Tangible Personal Property.** The personal property described in **Section 2.1(a)**.

1.36 **Tower Registration.** Such term shall have the meaning defined in **Section 3.15.**

## **ARTICLE II**

### **PURCHASE AND SALE**

2.1 **Sale of Assets.** On the Closing Date, Seller will sell, transfer, assign, and convey to Buyer, and Buyer will purchase from Seller, free and clear of all Liens, except Permitted Liens, all of Seller's right, title, and interest, legal and equitable, in and to the following assets to the extent such assets are used or held for use in the operation of the Station:

(a) **Tangible Personal Property.** All equipment, parts, supplies, fixtures, and other tangible personal property now or hereinafter owned by Seller located at the Real Property and listed on **Schedule 3.6**, in each case as used or held for use exclusively in connection with the operation of the Station, together with such modifications, replacements, improvements and additional items, made or acquired between the date hereof and the Closing Date;

(b) **Real Property and Leases.** All right, title, and interest of Seller in and to the Station's transmitter site (the "**Real Property**"), including but not limited to Seller's interest as tenant in the Real Property Lease Agreement.

(c) **Licenses and Permits.** The FCC Licenses and all other assignable or transferable governmental permits, licenses, and authorizations (and any renewals, extensions, amendments, or modifications thereof) now held by Seller or hereafter obtained by Seller between the date hereof and the Closing Date, to the extent such other permits, licenses and authorizations are used or held for use exclusively in the operation of the Station;

(d) **Station Agreements.** The agreements which are listed on **Schedule 3.9** as well as any renewals, extensions, amendments, or modifications of those agreements being assumed which are made in the ordinary course of Seller's operation of the Station and in accordance with the terms and provisions of this Agreement;

(e) **Records.** Copies of all of the books, records, accounts, files, logs, ledgers, and reports of Station engineers exclusively pertaining to or used in the operation of the Station (other than corporate records);

(f) **Intangible Assets.** The WMLB call letters and any Internet domain names which includes the WMLB call letters.

(g) **Miscellaneous Assets.** Any other tangible, intangible, real, personal, or mixed asset, property, or right of any kind or nature not otherwise described in this **Section 2.1** and now or hereinafter owned or used by Seller in connection with the operation of the Station which are listed on **Schedule 2.1(g)**.

2.2 **Excluded Assets.** Notwithstanding any provision of this Agreement to the contrary, the Sale Assets shall not include, and Seller shall not transfer, convey, or assign to Buyer,

but shall retain all of its right, title, and interest in and to, all of the following assets owned or held by Seller (collectively, the “**Excluded Assets**”):

(a) Any and all cash, cash equivalents, cash deposits to secure contract obligations, all inter-company receivables from any affiliate of Seller and all other accounts receivable, bank deposits, and securities held by Seller in respect of the Station at the Closing Date, provided that such cash or receivable is not for services or obligations of the Station after the Closing Date (except to the extent Seller receives a credit therefor under **Section 2.7**, in which event such cash, receivable, deposit or security shall be included as part of the Sale Assets).

(b) Except as provided in the TBA, the Station’s accounts receivable and any other rights to payment of cash consideration for goods or services sold or provided prior to the Effective Time (as defined in **Section 2.7**) or otherwise arising during or attributable to any period prior to the Effective Time (the “**A/R**”);

(c) Any and all claims of Seller with respect to the Sale Assets, the Station, or transactions prior to the Closing including, without limitation, claims for tax refunds and refunds of fees paid to the FCC.

(d) All deposits and prepaid expenses (except to the extent Seller receives a credit therefor under **Section 2.7**, in which event the prepaid expense shall be included as part of the Sale Assets).

(e) All claims against insurers and contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies.

(f) All employee benefit plans and the assets thereof and all employment contracts.

(g) All contracts that are terminated in accordance with the terms and provisions of this Agreement or have expired prior to the Closing Date in the ordinary course of business; and all loans and loan agreements.

(h) All tangible personal property disposed of or consumed between the date hereof and the Closing Date in accordance with the terms and provisions of this Agreement and in the ordinary course of business.

(i) Seller’s corporate and trade names, and corporate records except to the extent such records pertain to or are used exclusively in the operation of the Station, in which case Seller shall deliver materially accurate copies thereof to Buyer.

(j) The Seller’s studio location(s), and all tangible assets owned or leased by Seller and used or useful in the operation of Seller’s broadcast studios, including but not limited to all studio equipment currently used in the operation of the Station;

(k) All commitments, contracts and agreements not specifically assumed by Buyer pursuant to **Section 2.1(d)**, above.

(l) All assets, both tangible and intangible, real, personal, or mixed, of Seller or Seller's affiliates relating to the other radio stations of Seller or Seller's affiliates, including but not limited to computers and other similar assets and any other operating systems and related assets that are used in the operation of multiple stations or other business units.

(m) All of Seller's Intellectual Property used in, or related to, the Station or Sale Assets, other than Internet domain names that include the Station call sign. For purposes of this Agreement, "**Intellectual Property**" shall mean all of the following relating to the exclusive use or operation of the Station or the Sale Assets: trademarks, service marks, brand names, trade names, mask works, trade dress, logos, Internet Web page(s), HTML content located and publicly accessible from any Internet domain names, the visitor e-mail data bases for Internet domain names, slogans, and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdictions to register the foregoing, including any extension, modification or renewal of any such registration or application; inventions, discoveries and ideas, whether patentable or not; patents and applications for patents; nonpublic information, trade secrets or confidential information; writings and other works, whether copyrightable or not; technology, know-how or computer software programs and applications used in the Station's business, programs and programming material, jingles, slogans, and any similar intellectual property or proprietary rights, and any claims or causes of action arising out of or relating to any infringement or misappropriation of any of the foregoing;

(n) Seller's rights in and to other intangible property which is used or held for use in the operation of the Station, along with programming information and studies, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, and credit and sales reports.

### 2.3 **Assumption of Liabilities.**

(a) At the Closing, Buyer shall assume and agree to perform, without duplication of Seller's performance, the following liabilities and obligations of Seller (the "**Assumed Obligations**"):

(i) Current liabilities of Seller for which Buyer receives a credit pursuant to **Section 2.7**, but not in excess of the amount of such credit;

(ii) Liabilities and obligations arising under the Station Agreements assumed by and transferred to Buyer in accordance with this Agreement, but only to the extent such liabilities and obligations relate to the Sale Assets and are attributable to the period of time after the Closing; and

(iii) The obligations, if any, specifically listed in **Schedule 2.3**.

(b) Except for the Assumed Obligations, Buyer shall not assume or in any manner be liable for any debts, liens, charges, claims, encumbrances, duties, responsibilities,

obligations, or liabilities of Seller of any kind or nature, whether express or implied, known, or unknown, contingent, or absolute, including, without limitation, any liabilities to or in connection with Seller's employees whether arising in connection with the transaction contemplated hereunder or otherwise.

2.4 **[Intentionally omitted].**

2.5 **Payment of the Purchase Price.**

(a) At the Closing, the Purchase Price, less the Option Payment paid to Seller pursuant to the TBA and less the total of any and all Monthly Fees paid by Buyer to Seller pursuant to the TBA, minus any tower rent reimbursement portions of the Monthly Fees, shall be paid to Seller by wire transfer of immediately available funds. For the avoidance of any doubt, the amount due at Closing is Three Hundred Five Thousand Dollars (\$305,000.00), subject to any further adjustments pursuant to **Section 2.7** herein.

(b) Buyer shall pay to Seller, or Seller shall pay to Buyer, the Adjustment Amount in accordance with **Section 2.7**. Such payments may be reflected as additions to or deductions from the Purchase Price.

2.6 **Allocation of the Purchase Price.** Buyer and Seller shall agree to an allocation of the Purchase Price as reasonably determined by Seller. Buyer and Seller shall use such allocation for all reporting purposes in connection with federal, state, and local income and, to the extent permitted under applicable law, franchise taxes. Buyer and Seller agree to report such allocation to the Internal Revenue Service in the form required by Treasury Regulation § 1.1060-1T.

2.7 **Adjustment of Purchase Price.**

(a) Except as otherwise set forth in the TBA, all operating income and operating expenses of the Station shall be adjusted and allocated between Seller and Buyer, and an adjustment in the Purchase Price shall be made as provided in this **Section 2.7**, to the extent necessary to reflect the principle that all such income and expenses attributable to the operation of the Station on or before 11:59 p.m. on the day immediately preceding the Closing Date (the "**Effective Time**") shall be for the account of Seller, and all income and expenses attributable to the operation of the Station after the Closing Date shall be for the account of Buyer. Such prorations shall include without limitation all ad valorem, real estate, and other property taxes (except transfer taxes as provided by **Section 14.3(b)**), FCC regulatory fees, music and other license fees, utility expenses, rent and other amounts under Station Agreements and similar prepaid and deferred items. Sellers shall receive a credit for all of the Station's deposits and prepaid expenses. There shall be no proration or adjustment for any imbalance in the value of rights and obligations under trade, barter, or similar agreements for the sale of time for goods or services. Any cost or obligation related to any Permitted Lien shall also be included as part of the adjustment and allocation between Buyer and Seller.

(b) To the extent not inconsistent with the express provisions of this Agreement, the allocations made pursuant to this **Section 2.7** shall be made in accordance with generally accepted accounting principles.



(c) Prorations and adjustments shall be made at Closing to the extent practicable. For purposes of making the final adjustments pursuant to this **Section 2.7**, Seller shall prepare and deliver an initial Adjustment List to Buyer within forty-five (45) days following the Closing Date, or such later date as shall be mutually agreed to by Seller and Buyer. Seller may also prepare and deliver to Buyer additional Adjustment Lists as Seller becomes aware of additional Adjustment List items. The Adjustment List(s) shall set forth the Adjustment Amount. If the Adjustment Amount is a credit to the account of Buyer, Seller shall pay such amount to Buyer within fifteen (15) days of receiving the Adjustment List(s) if both parties agree on the amount, and if the Adjustment Amount is a charge to the account of Buyer, Buyer shall pay such amount to Seller within fifteen (15) days of delivering the Adjustment List(s) to Seller if both parties agree on the amount. In the event Buyer disagrees with the Adjustment Amount determined by Seller or with any other matter arising out of this **Section 2.7(c)**, and Buyer and Seller cannot within sixty (60) days resolve the disagreement themselves, the parties will refer the disagreement to a firm of independent certified public accountants, mutually acceptable to Seller and Buyer, whose decision shall be final and binding on the parties. The fees and expenses of such accountants shall be paid by the party who does not prevail on the disputed matters decided by the accountants.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as follows:

3.1 **Organization and Good Standing.** Seller is a not-for-profit corporation, validly existing and in good standing under the laws of the Commonwealth of Virginia and authorized to conduct business in the State of Georgia and each and every jurisdiction where Seller conducts business. Seller has all requisite power to own, operate and lease its properties and carry on its business as it is now being conducted and as the same will be conducted until the Closing.

3.2 **Authorization and Binding Effect of Documents.** Seller's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized and approved by all necessary corporate action on the part of Seller, and no other corporate proceedings on the part of the Seller are necessary to authorize and approve this Agreement. Seller has the power and authority to execute, deliver and perform its obligations under this Agreement and each of the other Documents and to consummate the transactions hereby and thereby contemplated. This Agreement and each of the other Documents have been, or at or prior to the Closing will be, duly executed by Seller. The Documents, when executed and delivered by the parties hereto, will constitute legal and valid obligations of Seller enforceable against it in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting the enforcement of creditors' rights or remedies generally, and except as may be limited by general principles of equity.

3.3 **Absence of Conflicts.** The execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents by Seller, and the consummation of the transactions contemplated hereby and thereby:

(a) do not in any material respect (with or without the giving of notice or the passage of time or both) violate, or result in the creation of any Lien other than a Permitted Lien, on any of the Sale Assets under any provision of law, rule or regulation or any order, judgment, injunction, decree or ruling applicable to Seller;

(b) do not (with or without the giving of notice or the passage of time or both) conflict with or result in a breach or termination of, or constitute a default or give rise to a right of termination or acceleration under the articles of incorporation or bylaws of Seller or pursuant to any lease, agreement, commitment or other instrument which Seller is a party to, or bound by, or by which any of the Sale Assets may be bound, or result in the creation of any Lien, other than a Permitted Lien, upon any of the Sale Assets.

3.4 **Governmental Consents and Consents of Third Parties.** Except for such consents as are required by the FCC and as are disclosed on **Schedule 3.4**, the execution and delivery of, and the performance of Seller's obligations under, this Agreement and each of the other Documents by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, do not require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration of filing with, any court or public agency or governmental body or other authority, or the consent of any Person under any agreement, arrangement or commitment of a nature to which Seller is a party or by which it is bound or by which the Sale Assets are bound or to which they are subject to, the failure of which to obtain would constitute a Material Adverse Condition on the Sale Assets or the operation of the Station.

3.5 **Sale Assets.** The Sale Assets include all of the assets, properties and rights of every type and description, real, personal, and mixed, tangible and intangible, that are used in the conduct of the business of owning and operating the Station in the manner in which that business is now conducted, including, without limitation all of the assets described in **Section 2.1** with the exception of the Excluded Assets described in **Section 2.2**.

3.6 **Tangible Personal Property.** Except for supplies and other incidental items which in the aggregate are not of material value, the list of Tangible Personal Property set forth on **Schedule 3.6** includes all of the items of tangible personal property (other than Excluded Assets) owned by Seller which are used to a material extent in the operation of the Station's transmitter site in the manner in which it is now operated. In addition, except to the extent that any defect would not constitute a Material Adverse Condition on the Station or Sale Assets:

(a) Seller has good, marketable, and valid title to all of the items of Tangible Personal Property free and clear of all Liens except Permitted Liens, and including the right to transfer same.

(b) The Tangible Personal Property used to a material extent in the operation of the Station's transmitter site in the manner in which it is now operated has been maintained in

accordance with industry practices and is in good operating condition subject only to ordinary wear and tear.

(c) The Tangible Personal Property complies with applicable rules and regulations of the FCC and the terms of the FCC Licenses.

3.7 **Real Property.** Except as set forth in **Schedule 3.7:**

(a) The real property (described on **Schedule 3.7**) constitutes a complete and correct summary description in all material respects of all of the interests of Seller in real estate as the Station transmitter site, including, without limitation, the leasehold interest in the Real Property Lease Agreement to be conveyed by Seller to Buyer. Said real property, together with all improvements affixed thereto, is herein defined as the “**Real Property.**”

(b) To Seller’s knowledge, the Real Property complies in all respects with all applicable federal, state, and local laws, ordinances, statutes, rules, and regulations in effect as of the Effective Date and the Closing Date.

(c) To Seller’s knowledge, Seller’s present use of the Real Property is in compliance with all applicable zoning codes in effect as of the date hereof, and Seller has not received any notices of uncorrected violations of the applicable housing, building, safety, or fire ordinances.

(d) Seller has not received any notice of condemnation or of eminent domain proceedings or negotiations relating to the Real Property Lease Agreement in lieu of condemnation, and no condemnation or eminent domain proceedings or negotiations have been commenced or, to the best of Seller’s knowledge, threatened in connection with the Real Property Lease Agreement.

(e) To Seller’s knowledge, all utility services necessary for the operation of the Station’s transmitter site are available to the Real Property and no unpaid assessments, impact fees, development fees, tap-on fees or recapture costs are payable in connection therewith.

3.8 **FCC Licenses.** Seller is the holder of the licenses, permits, and authorizations listed on **Schedule 3.8**, and except as set forth on such Schedule, (i) the FCC Licenses are valid, in good standing and in full force and effect, unimpaired by any act or omission of Seller, and constitute all of the FCC licenses, permits and authorizations required by the Act, the Rules and Regulations or the FCC for, or used in, the operation of the Station in all material respects as now operated, (ii) the licenses, permits and authorizations listed on **Schedule 3.8** constitute all the current licenses, permits and authorizations issued by the FCC to Seller or pending before the FCC for or in connection with the Station; (iii) there is no condition imposed by the FCC as part of any FCC License which is neither set forth on the face thereof as issued by the FCC nor contained in the Rules and Regulations applicable generally to stations of the type, nature, class or location of the Station; (iv) the Station is being operated in accordance with the terms and conditions of the FCC Licenses applicable to it and in accordance with the Rules and Regulations, except to the extent a failure to so comply would not constitute a Material Adverse Condition; (v) no application, action or proceeding is pending, or, to Seller’s actual knowledge is threatened, which is reasonably likely to result in the revocation, material adverse modification, non-renewal or suspension of any

of the FCC Licenses, the denial of any pending applications, the issuance of any cease and desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC with respect to the Station or its operation, other than proceedings affecting the radio broadcasting industry in general; (vi) to Seller's knowledge there is not before the FCC any material investigation, proceeding, notice of violation or order of forfeiture relating to the Station; (vii) Seller has complied in all material respects with all requirements to file reports, applications and other documents with the FCC with respect to the Station, and all such reports, applications and documents are complete and correct in all material respects except to the extent a failure to so comply would not constitute a Material Adverse Condition; (viii) there are no matters (A) which could reasonably be expected to result in the suspension, revocation, cancellation, modification of or the refusal to renew any of the FCC Licenses or the imposition of any fines or forfeitures by the FCC, or (B) against Seller which could reasonably be expected to result in the FCC's refusal to grant approval of the assignment to Buyer of the FCC Licenses or the imposition of any Material Adverse Condition in connection with approval of such assignment; (ix) there are not any unsatisfied or otherwise outstanding citations issued by the FCC with respect to the Station or its operation; and (x) the "Public Inspection File" of the Station is in material compliance with Section 73.3526 of the Rules and Regulations.

### 3.9 **Station Agreements.**

(a) **Schedule 3.9** sets forth a list of all Station Agreements to be assumed by Buyer at Closing.

(b) Except as set forth in the Schedules, to Seller's knowledge with respect to all Station Agreements listed on **Schedule 3.9**, (i) the Station Agreements are legal, valid and enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity; (ii) neither Seller, nor any party thereto is in material breach of or in material default under any Station Agreements; (iii) there has not occurred any event which, after the giving of notice or the lapse of time or both, would constitute a material default under, or result in the material breach of, any Station Agreements which are, individually or in the aggregate, material to the operation of the Station; and (iv) Seller holds the right to enforce and receive the benefits under all of the Station Agreements, free and clear of all Liens (other than Permitted Liens) but subject to the terms and provision of each such agreement.

(c) Buyer and Seller acknowledge that certain of the Station Agreements to be included in the Sale Assets, and the rights and benefits thereunder necessary or appropriate or relating to the conduct of the business and activities of Seller and/or the Station may not, by their terms, be assignable. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign such Station Agreement, and Buyer shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights under such Station Agreement of Buyer or Seller thereunder. In such event, Seller will cooperate with Buyer to provide for Buyer all benefits to which Seller is entitled under such Station Agreements, and any transfer or assignment to Buyer by Seller of any such Station Agreement or any right or benefit arising thereunder or resulting therefrom which

shall require the consent or approval of any third party shall be made subject to such consent or approval being obtained. Seller shall, without further consideration therefor, pay, assign, and remit to Buyer promptly all monies, and, to the extent permitted, all other rights or consideration received or obtained, or which may be received or obtained, in respect of performance of such Station Agreements.

3.10 **Litigation.** There are no actions, suits, claims, investigations or administrative, arbitration or other proceedings pending or threatened against Seller which would, individually or in the aggregate if adversely determined, be a Material Adverse Condition on the Sale Assets or the operation of the Station, or which would give any third party the right to enjoin the transactions contemplated by this Agreement. There is no basis for any such claim, investigation, action, suit or proceeding which would, individually or in the aggregate if adversely determined, be a Material Adverse Condition on the Sale Assets or operation of the Station. There are no existing or pending orders, judgments or decrees of any court or governmental agency affecting Seller, the Station or any of the Sale Assets which would materially adversely affect the Station's operations or the Sale Assets other than those of general applicability. Notwithstanding the disclosure of any matter herein, Buyer shall not assume any liability for any such matter related to the operation of the Station prior to Closing.

3.11 **Labor Matters.** Seller is not a party to any collective bargaining agreement, and there is no collective bargaining agreement that determines the terms and conditions of employment of any employees of Seller. With respect to the Station, there are no labor strikes, disputes, slow-downs or stoppages pending or, to the actual knowledge of Seller, threatened against the Station, there are neither pending nor threatened, any suits, actions, administrative proceedings, union organizing activities, arbitrations, grievances, complaint, charges, claims or other proceedings between Seller and any employees of the Station or any union representing such employees; and there are no existing labor or employment or other controversies or grievances involving employees of the Station which have had or are reasonably likely to constitute a Material Adverse Condition on the operation of the Station;

3.12 **Employee Benefit Plans.** Buyer's consummation of the transactions contemplated by this Agreement in accordance with the terms hereof shall not, as a result of or in connection with the transactions contemplated hereby, impose upon Buyer any obligation under any benefit plan, contract, or arrangement (regardless of whether they are written or unwritten and funded or unfunded) covering employees or former employees of Seller in connection with their employment by Seller. For purposes of the Agreement, "benefit plans" shall include without limitation employee benefit plans within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, vacation benefits, employment and severance contracts, stock option plans, bonus programs and plans of deferred compensation.

3.13 **Compliance with Law.** To Seller's knowledge, the operation of the Station complies in all material respects with the applicable rules and regulations of the FCC, and all other federal, state, local or other laws, statutes, ordinances, regulations, and any applicable order, writ, injunction or decree of any court, commission, board, agency, or other instrumentality.

3.14 **Environmental Matters; OSHA.**

(a) Seller has obtained all material, environmental, health and safety permits known by Seller to be necessary or required for either the operation of the Station as currently operated or the ownership of the Sale Assets and all such permits are in full force and effect and Seller is in compliance with all material terms and conditions of such permits.

(b) To Seller's knowledge, there is no proceeding pending or threatened which may result in the reversal, rescission, termination, modification, or suspension of any environmental or health or safety permits necessary for the operation of the Station as currently conducted or the ownership of the Sale Assets.

(c) With respect to the Station and the Sale Assets, to Seller's knowledge Seller is in compliance in all material respects with the provisions of Environmental Laws.

(d) Seller has not, and, to Seller's knowledge, no other Person or entity has, caused or permitted materials to be generated, released, stored, treated, recycled, disposed of, on, under or at the Real Property, which materials, if known to be present, would require clean up, removal or other remedial or responsive action under Environmental Laws (other than normal office, cleaning and maintenance supplies in reasonable quantities used and /or stored appropriately in the buildings or improvements on the Real Property). To Seller's knowledge, Seller has not caused the migration of any materials from the Sale Assets onto or under any property, which materials, if known to be present, would require cleanup, removal or other remedial or responsive action under Environmental Laws.

(e) To Seller's knowledge, Seller is not subject to any judgment, decree, order, or citation with respect to the Sale Assets related to or arising out of Environmental Laws, and Seller has not received notice that it has been named or listed as a potentially responsible party by any Person or governmental body or agency in any matter, under Environmental Laws.

(f) To Seller's knowledge, no portion of the Sale Assets have ever been used by Seller, in material violation of Environmental Laws or as a landfill, dump site or any other use which involves the disposal or storage of Hazardous Materials on-site or in any manner which may constitute a Material Adverse Condition on the value of the Sale Assets.

(g) To Seller's knowledge, no pesticides, herbicides, fertilizers, or other materials have been used on, applied to, or disposed of on or in the Sale Assets in material violation of any Environmental Laws (other than normal office, cleaning and maintenance supplies in reasonable quantities used and/or stored appropriately in the buildings or improvements on the Real Property) in any manner which may constitute a Material Adverse Condition.

(h) With respect to the Sale Assets, to Seller's knowledge Seller has disposed of all waste in full compliance with all Environmental Laws and there is no existing condition that may form the basis of any present or future claim, demand or action seeking clean up of any facility, site, location or body of water, surface or subsurface, for which the Buyer could be liable or responsible solely as a result of the disposal of waste at such site by a prior owner of the Sale Assets.

(i) To Seller's knowledge, Seller is in material compliance with all OSHA Laws applicable to the Sale Assets.

(j) Seller has not received written notice of, nor is it the subject of, any actions, causes of action, claims, investigations, demands, or notices alleging liability under or non-compliance with Environmental Laws or that Seller is a potentially responsible party at any superfund site or state equivalent site with respect to the Real Property or Sale Assets.

3.15 **Tower Registration.** The Station's tower at the Station's licensed transmitter site is registered with the FCC and Federal Aviation Administration to the extent required by applicable regulations.

3.16 **Filing of Tax Returns.** Seller has filed all federal, state, and local tax returns which are required to be filed by it with respect to the Sale Assets, and has paid all taxes and all assessments to the extent that such taxes and assessments have become due, other than such returns, taxes and assessments, the failure to file or pay would not, individually or in the aggregate, constitute a Material Adverse Condition.

3.17 **Absence of Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition, or arrangement with creditors, voluntary or involuntary, affecting the Seller or any of the Sale Assets, are pending or threatened, and Seller has made no assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

3.18 **Broker's or Finder's Fees.** Except as set forth on **Schedule 3.18**, no agent, broker, investment banker or other Person or firm acting on behalf of or under the authority of Seller or any affiliate of Seller is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with the transactions contemplated by this Agreement, except Jorgenson Broadcast Brokerage, Inc. representing Seller.

3.19 **Insurance.** There is now, and through the Closing Date there shall be, in full force and effect with reputable insurance companies fire and extended coverage insurance with respect to all material tangible Sale Assets and public liability insurance, all in commercially reasonable amounts, and the Sale Assets shall be insured to cover the full amount of any loss.

3.20 **Absence of Certain Changes Or Events.** Except as otherwise set forth in the TBA, as of the Closing Date, the Station and Sale Assets shall have been conducted and utilized in all material respects in the ordinary course and there has not been any event, circumstance, occurrence, or development that has or will constitute a Material Adverse Condition on the Station or Sale Assets.

3.21 **Compliance with Patriot Act.** Seller is not nor will it become (i) a person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (ii) a person or entity

that knowingly engages in any dealings or transactions, or be otherwise knowingly associated, with any such person. Seller is not in violation of the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act) Act of 2001.

3.22 **Representations Complete.** None of the representations or warranties made by Seller, nor any statement made in any document or certificate furnished by Seller pursuant to this Agreement contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing, to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

4.1 **Organization and Good Standing.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is or will be as of the Closing Date duly authorized to conduct business in the State of Georgia. Buyer has all requisite corporate power to own, operate and lease its properties and carry on its business as it is now being conducted and as the same will be conducted following the Closing.

4.2 **Authorization and Binding Effect of Documents.** Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized and approved by all necessary corporate action on the part of Buyer. Buyer has the power and authority to execute, deliver and perform its obligations under this Agreement and each of the other Documents and to consummate the transactions hereby and thereby contemplated. This Agreement and each of the other Documents have been, or at or prior to the Closing will be, duly executed by Buyer. The Documents, when executed and delivered by the parties hereto, will constitute the valid and legally binding agreement of Buyer, enforceable against Buyer in accordance with their terms, except as may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights or remedies generally, and except as may be limited by general principles of equity.

4.3 **Absence of Conflicts.** Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents and the consummation by Buyer of the transaction contemplated hereby and thereby:

(a) do not in any material respect (with or without the giving of notice or the passage of time or both) violate or result in the creation of any claim, lien, charge or encumbrance on any of the assets or properties of Buyer under any provision of law, rule or regulation or any order, judgment, injunction, decree or ruling applicable to Buyer in any manner which would have



a material adverse effect on the assets, business, operation or financial condition or results of operations of Buyer;

(b) do not (with or without the giving of notice or the passage of time or both) conflict with or result in a breach or termination of, or constitute a default or give rise to a right of termination or acceleration under, the articles of incorporation or bylaws of Buyer or any lease, agreement, commitment, or other instrument which Buyer is a party to, bound by, or by which any of its assets or properties may be bound, the results of which would be a Material Adverse Condition.

4.4 **Governmental Consents and Consents of Third Parties.** Except for the FCC Order, Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents and the consummation by Buyer of the transactions contemplated hereby and thereby, do not require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or the consent of any Person under any agreement, arrangement or commitment of any nature to which Buyer is a party or by which it is bound, the failure of which to obtain would have a material adverse effect on the assets, business, operation or financial condition or results of operations of Buyer.

4.5 **Qualification.**

(a) Buyer is legally qualified to hold the Sale Assets and to be the licensee of the Station under the Act and the Rules and Regulations. Buyer has no knowledge after due inquiry of any facts concerning Buyer or any other Person with an attributable interest in Buyer (as such term is defined under the Rules and Regulations) which, under present law (including the Act) and the Rules and Regulations, would (i) disqualify Buyer from being the holder of the FCC Licenses, the owner of the Sale Assets or the operator of the Station upon consummation of the transactions contemplated by this Agreement, or (ii) raise a substantial and material question of fact (within the meaning of Section 309(e) of the Act) respecting Buyer's qualifications. No waiver of or exemption from any FCC rule or policy is necessary to be obtained by Buyer in order for the FCC Order to be granted.

(b) Without limiting the foregoing **Section 4.5(a)**, Buyer shall make the affirmative certifications provided in Section III of FCC Form 314, or as may be required on any form required by the FCC to obtain its consent to this transaction, at the time of filing of such form with the FCC as contemplated by **Section 5.2**.

4.6 **Financing.** Buyer has, and as of the Closing Date will have, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to make payment of the Purchase Price and any other amounts to be paid by it in accordance with the terms of this Agreement and the Documents.

4.7 **Broker's or Finder's Fees.** No agent, broker, investment banker, or other Person or firm acting on behalf of or under the authority of Buyer or any affiliate of Buyer is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, in connection with transactions contemplated by this Agreement.

4.8 **Litigation.** There are no legal, administrative, arbitration or other proceedings or governmental investigations pending or, to the knowledge of Buyer, threatened against Buyer that would give any third party the right to enjoin the transactions contemplated by this Agreement.

4.9 **Compliance with Patriot Act.** Buyer is not nor will it become (i) a person whose property or interests in property are blocked pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (ii) a person or entity that knowingly engages in any dealings or transactions, or be otherwise knowingly associated, with any such person. Buyer is not in violation of the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act) Act of 2001.

4.9 **Representations Complete.** None of the representations or warranties made by Buyer, nor any express statement made in any document or certificate furnished by Buyer pursuant to this Agreement contains or will contain at the Closing, any untrue statement of a material fact, or omits or will omit at the Closing, to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

## **ARTICLE V**

### **TRANSACTIONS PRIOR TO THE CLOSING DATE**

5.1 **Conduct of the Station's Business Prior to the Closing Date.** Seller covenants and agrees with Buyer that between the date hereof and the Closing Date, unless the Buyer otherwise agrees in writing (which agreement shall not be unreasonably withheld or delayed), except as otherwise set forth in the TBA, Seller shall:

(a) Use reasonable commercial efforts to maintain insurance upon all of the Sale Assets in such amounts and of such kind as is consistent with Seller's other radio stations and with insurers of substantially the same or better financial condition;

(b) Operate the Station and otherwise conduct its business in all material respects in accordance with the terms or conditions of its FCC Licenses, the Rules and Regulations, the Act and all other rules and regulations, statutes, ordinances and orders of all governmental authorities having jurisdiction over any aspect of the operation of the Station, except where the failure to so operate would not constitute a Material Adverse Condition on the Sale Assets or the operation of the Station or on the ability of Seller to consummate the transactions contemplated hereby;

(c) Comply in all material respects with all Station Agreements now or hereafter existing which Buyer is assuming;

(d) Promptly notify Buyer of any default by, or claim of default against, any party under any Station Agreements Buyer is assuming and any event or condition which, with notice or lapse of time or both, would constitute an event of default under such Station Agreements;

(e) Not mortgage, pledge, or subject any of the Sale Assets to any Lien other than a Permitted Lien;

(f) Not sell, lease, or otherwise dispose of, nor agree to sell, lease, or otherwise dispose of, any of the Sale Assets, unless replaced with similar items of substantially equal or greater value and utility;

(g) Not amend or terminate any Station Agreement;

(h) Not introduce any material change with respect to the operation of the Station including, without limitation, any material changes in the broadcast hours of the Station. Buyer acknowledges that the Station's format, programming, and other intangible property (other than the Station's call letters) are Excluded Assets, and therefore no programming or format change or change in staffing between the date hereof and Closing shall be deemed a material change with respect to the operation of the Station or outside the ordinary course of business.

5.2 **Governmental Consents.** Seller and Buyer shall file with the FCC, within five (5) business days after the execution of this Agreement, such applications and other documents in the name of Seller or Buyer, as appropriate, as may be necessary or advisable to obtain the FCC Order. Seller and Buyer shall take all commercially reasonable steps necessary to prosecute such filings with diligence and shall diligently oppose any objections to, appeals from or petitions to reconsider such approval of the FCC, to the end that the FCC Order and a Final Action with respect thereto may be obtained as soon as practicable; provided, however, that in the event the application for assignment of the FCC Licenses has been denied or is designated for hearing, either Buyer or Seller may elect to terminate this Agreement pursuant to **Section 10.1(c)**. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC assignment application, and shall furnish all information required by the FCC. Buyer shall not knowingly take, and Seller covenants that Seller shall not knowingly take, any action that such party knows or has reason to know would materially and adversely affect or materially delay issuance of the FCC Order or materially and adversely affect or materially delay its becoming a Final Action without a Material Adverse Condition, unless such action is requested or required by the FCC, its staff or the Rules and Regulations. Should Buyer or Seller become aware of any facts which could reasonably be expected to materially and adversely affect or materially delay issuance of the FCC Order without a Material Adverse Condition (including but not limited to, in the case of Buyer, any facts which would reasonably be expected to disqualify Buyer from controlling the Station), such party shall promptly notify the other party thereof in writing and both parties shall cooperate to take all steps necessary or desirable to resolve the matter expeditiously and to obtain the FCC's approval of matters pending before it. Subject to the terms and conditions herein provided, Buyer and Seller shall promptly determine whether any filings are required to be made with, or consents, permits, authorizations or approvals are required to be obtained from, any other governmental agency or regulatory body of the federal, state and local jurisdictions in connection with the execution and delivery of this Agreement and the

consummation of the transactions contemplated hereby, and take all reasonable actions necessary to obtain any required permits, authorizations or appraisals.

5.3 **Other Consents.** Buyer and Seller shall use their commercially reasonable best efforts to obtain the consent or waivers to the transactions contemplated by this Agreement required under any assumed Station Agreements; provided that Buyer and Seller shall not be required to pay or grant any material consideration in order to obtain any such consent or waiver.

5.4 **Tax Returns and Payments.** All taxes pertaining to ownership of the Sale Assets or operation of the Station prior to the Closing Date will be timely paid; provided that Seller shall not be required to pay any such tax so long as the validity thereof shall be contested in good faith by appropriate proceedings and Seller shall have set aside adequate reserves with respect to any such tax to the reasonable satisfaction of Buyer.

5.5 **Access Prior to the Closing Date.** Prior to the Closing, Buyer and its representatives may make such reasonable investigation of the Station and the Sale Assets as it may desire; and Seller shall give to Buyer, its engineers, counsel, accountants and other representatives reasonable access during normal business hours throughout the period prior to the Closing to personnel and all of the assets, books, records and files of or pertaining to the Sale Assets, provided that (i) Buyer shall give Seller reasonable advance notice of each date on which Buyer or any such other Person or entity desires such access, (ii) each Person (other than an officer of Buyer) shall, if requested by Seller, be accompanied by an officer or their representative of Buyer approved by Seller, which approval shall not be unreasonably withheld, (iii) the investigations at the offices of Seller shall be reasonable in number and frequency and, (iv) all investigations shall be conducted in such a manner as not to physically damage any property or constitute a disruption of the operation of the Station or Seller. Seller shall furnish to Buyer during such period all documents and copies of documents and information concerning the Sale Assets as Buyer may reasonably request. No investigation or information furnished pursuant to this **Section 5.5** shall affect any representations or warranties made by the Seller herein.

5.6 **Confidentiality; Press Release.** All nonpublic information, data and materials furnished or to be furnished to either party with respect to the other party in connection with this transaction or pursuant to this Agreement are confidential. Prior to Closing, each party agrees that, subject to the requirements of applicable law, (a) it shall not disclose or otherwise make available, at any time, any such information, data or material to any Person who does not have a confidential relationship with such party; (b) it shall protect such information, data and material with a high degree of care to prevent the disclosure thereof; and (c) if, for any reason, this transaction is not consummated, all information, data or material concerning the other party obtained by such party, and all copies thereof, will be returned to the other party. After Closing, neither party will disclose or otherwise make available to any Person any of such information, data or material concerning the other party, except as may be necessary or appropriate in connection with the operation of the Station by Buyer or as required by applicable law. Each party shall use its reasonable efforts to prevent the violation of any of the foregoing confidentiality provisions by its respective representatives. Notwithstanding the foregoing, nothing contained herein shall prohibit Buyer or Seller from:

(i) using such information, data, and materials in connection with any action or proceeding brought or any claim asserted by Buyer or Seller in respect of any breach by the other of any representation, warranty or covenant made in or pursuant to this Agreement; or

(ii) supplying or filing such information, data, or materials to or with the FCC or SEC or any other valid governmental or court authority to the extent required by law or reasonably necessary to obtain any consent, waiver, amendment, modification, approval, authorization, permit or license which may be necessary to effectuate this Agreement, and to consummate the transaction contemplated herein.

Notwithstanding anything herein to the contrary, unless and until such filing with the FCC as described in **Section 5.2** is made, no public announcement shall be made about this transaction and Buyer shall take all reasonable steps to ensure that Seller's employees, customers, clients and others are not made aware of the existence of this agreement or the transaction contemplated hereby, except to the extent as is necessary and reasonable to effectuate the TBA and for Buyer to provide the programming thereunder.

In the event that either party determines in good faith that a press release or other public announcement is desirable under any circumstances, the parties shall consult with each other to determine the appropriate timing, form and content of such release or announcement.

5.7 **Reasonable Best Efforts.** Subject to the terms and conditions of this Agreement, each of the parties hereto will use its reasonable best efforts to take all action and to do all things necessary, proper, or advisable to satisfy any condition to the parties' obligations hereunder in its power to satisfy and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement.

5.8 **FCC Reports.** Seller shall continue to file on a current basis until the Closing Date, all reports and documents required to be filed with the FCC with respect to the Station. Seller shall provide Buyer with copies of all such filings within five business days of the filing with the FCC. Seller shall maintain the Online Public File at fcc.gov through the Closing Date.

5.9 **Conveyance Free and Clear of Liens.** At or prior to the Closing, Seller shall obtain executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Sale Assets and properties as security for payment of loans and other obligations or judgments and of any other Liens on the Sale Assets, except Permitted Liens. At the closing, Seller shall transfer and convey to Buyer all of the Sale Assets free and clear of all Liens except Permitted Liens.

5.10 **Disclosure Schedules.** Notwithstanding anything to the contrary in this Agreement, during the period after the date of this Agreement but prior to the Closing, subject to the reasonable approval of Buyer, Seller shall be entitled to update, amend or supplement the Schedules to this Agreement to the extent information contained therein is discovered to be untrue, incomplete or inaccurate after the date of this Agreement by delivering such update, amendment or supplement to Buyer; (each such update, amendment or supplement reasonably approved or deemed reasonably approved by the Buyer, an "[date] Updated Schedule"). Buyer shall not be

obligated to approve any change or changes to the schedules which would have, or which would reasonably be expected to have, in the aggregate, a material adverse effect on the Station Assets. If Seller delivers to the Buyer one or more Updated Schedule, all references in this Agreement to any such schedule shall thereafter mean the schedule as updated by each such Updated Schedule.

## **ARTICLE VI**

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER TO CLOSE**

Buyer's obligation to close the transaction contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Buyer in writing:

#### **6.1 Accuracy of Representations and Warranties; Closing Certificate.**

(a) The representations and warranties of Seller contained in this Agreement or in any other Document shall be complete and correct in all material respects on the date hereof and at the Closing Date with the same effect as though made at such time except for changes permitted or contemplated by this Agreement and changes that do not constitute a Material Adverse Condition on the Station or the Sale Assets taken as a whole.

(b) Seller shall have delivered to Buyer on the Closing Date a certificate that (i) the condition specified in **Section 6.1(a)** is satisfied as of the Closing Date, and (ii) except as set forth in such certificate (none of which exceptions shall constitute a Material Adverse Condition on Seller's ability to consummate the transaction contemplated hereby), the condition specified in **Section 6.2** is satisfied as of the Closing Date.

6.2 **Performance of Agreements.** Seller shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement and each of the other Documents to be performed or complied with by it prior to or upon the Closing Date.

#### **6.3 FCC and Other Consents.**

(a) The FCC Order shall have been issued by the FCC and shall have become effective under the rules of the FCC, without any Material Adverse Condition.

(b) Seller shall have satisfied all material conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied by Seller prior to transfer of the FCC Licenses to Buyer.

(c) All other material authorizations, consents, approvals and clearances of federal, state or local governmental agencies required to permit the consummation by Buyer of the transactions contemplated by this Agreement including, without limitation, the assignment of any FCC Licenses requested by Buyer, shall have been obtained; all material statutory and regulatory

requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would constitute a Material Adverse Condition.

6.4 **Adverse Proceedings.** Neither Buyer nor any affiliate of Buyer shall be subject to any ruling, decree, order, or injunction restraining, imposing material limitations on or prohibiting (i) the consummation of the transactions contemplated hereby or (ii) its participation in the operation, management, ownership, or control of the Station; and no litigation, proceeding or other action seeking to obtain any such ruling, decree, order, or injunction shall be pending. No governmental authority having jurisdiction shall have notified any party to this Agreement that consummation of the transaction contemplated hereby would constitute a violation of the laws of the United States or of any state or political subdivision or that it intends to commence proceedings to restrain such consummation or to force divestiture unless such governmental authority shall have withdrawn such notice. No governmental authority having jurisdiction shall have commenced any such proceeding.

6.5 **Other Consents.** Seller shall have obtained in writing and provided to Buyer on or before the Closing Date, without any condition materially adverse to Buyer or the Station, the material consents or waivers to the transactions contemplated by this Agreement required under those Station Agreements which Buyer has elected to assume.

6.6 **Delivery of Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer on the Closing Date each of the Documents required to be delivered pursuant to **Section 8.2.**

## **ARTICLE VII**

### **CONDITIONS PRECEDENT OF THE OBLIGATION OF SELLER TO CLOSE**

The obligation of Seller to close the transaction contemplated by this Agreement is subject to the satisfaction, on or prior to the closing Date, of each of the following conditions, unless waived by Seller in writing:

#### **7.1 Accuracy of Representations and Warranties; Closing Certificate.**

(a) The representations and warranties of Buyer contained in this Agreement shall be complete and correct in all material respects on the date hereof and at the Closing Date with the same effect as though made at such time except for changes that are not materially adverse to Seller.

(b) Buyer shall have delivered to Seller on the Closing Date a certificate that (i) the condition specified in **Section 7.1(a)** is satisfied as of the Closing Date, and (ii) except as set forth in such certificate (none of which exceptions shall be a material adverse effect on Buyer's ability to consummate the transaction contemplated hereby), the conditions specified in **Section 7.2** are satisfied as of the Closing Date.

7.2 **Performance of Agreements.** Buyer shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement and each of the other Documents to be performed or complied with by it prior to or upon the Closing Date.

7.3 **FCC and Other Consents.**

(a) The FCC Order shall have been issued by the FCC and shall have become effective without any condition materially adverse to Seller.

(b) Conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied by Buyer prior to transfer of the FCC Licenses to Buyer shall have been satisfied by Buyer.

(c) All other authorizations, consents, approvals and clearances of all federal, state and local governmental agencies required to permit the consummation by Seller of the transactions contemplated by this Agreement shall have been obtained; all statutory and regulatory requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would have any material adverse effect on Seller.

7.4 **Adverse Proceedings.** Neither Buyer nor Seller shall be subject to any ruling, decree, order, or injunction restraining, imposing material limitations on or prohibiting the consummation of the transactions contemplated hereby. No governmental authority having jurisdiction shall have notified any party to this Agreement that consummation of the transactions contemplated hereby would constitute a violation of the laws of the United States or of any state or political subdivision or that it intends to commence proceedings to restrain such consummation or to force divestiture unless such governmental authority shall have withdrawn such notice. No governmental authority having jurisdiction shall have commenced any such proceeding.

7.5 **Delivery of Closing Documents and Purchase Price.** Buyer shall have delivered or caused to be delivered to Seller on the Closing Date each of the Documents required to be delivered pursuant to **Section 8.3**, and Seller shall have received payment of the Purchase Price with the form of payment set forth in **Section 2.5**.

## **ARTICLE VIII**

### **CLOSING**

8.1 **Time and Place.** Unless otherwise agreed to in advance by the parties, Closing shall take place via email or at such other place as the parties agree, on the date (the "**Closing Date**") that is the later of (i) the fifth Business Day after the Applicable Date, or (ii) the date as soon as practicable following satisfaction or waiver of the conditions precedent hereunder. The "**Applicable Date**" shall be the date on which issuance of the FCC Order without any Material Adverse Condition or condition materially adverse to Seller has become effective



under the rules of the FCC. Notwithstanding the foregoing, the parties will endeavor in good faith to effect the Closing simultaneously in different locations to avoid the travel and additional expense of requiring all parties to be located in the same place and in connection therewith the parties will deliver, in escrow, to opposing counsel and other appropriate parties, all agreements, instructions, documents, releases, certificates, wire transfer instructions, pay-off instructions, UCC-3's and other matters and things necessary to effect Closing in such manner.

8.2 **Documents to be Delivered to Buyer by Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

- (a) The certificate required by **Section 6.1(b)**.
- (b) A bill of sale and other instruments of transfer and conveyance transferring to Buyer the Tangible Personal Property.
- (c) Executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Sale Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens).
- (d) An instrument or instruments assigning to Buyer all right, title, and interest of Seller in and to all Station Agreements being assumed by Buyer, including the Real Property Lease Agreement (the "**Assignment and Assumption of Station Contracts**").
- (e) An instrument assigning to Buyer all right, title, and interest of Seller in the FCC Licenses, and all other assignable or transferable governmental permits, licenses, and authorizations (and any renewals, extensions, amendments, or modifications thereof) (the "**Assignment and Assumption of FCC Licenses**").
- (f) [Intentionally omitted].
- (g) An instrument assigning to Buyer all rights, title, and interest of Seller to the assets described in **Section 2.1(f)** and **Section 2.1(g)** hereof, and any remaining Sale Assets not otherwise conveyed.
- (h) True and correct copies of all records as described in **Section 2.1(e)** hereof.
- (i) Such additional information and materials as Buyer shall have reasonably requested to convey, transfer, and assign the Sale Assets from Seller to Buyer, free and clear of Liens except for Permitted Liens, including without limitation, evidence that all consents and approvals required as a condition to Buyer's obligation to close hereunder have been obtained.

8.3 **Documents to be Delivered to Seller by Buyer.** At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

- (a) The Purchase Price as set forth in **Section 2.5**.

- (b) [Intentionally omitted].
- (c) The Assignment and Assumption of Station Agreements.
- (d) The certificate required under **Section 7.1(b)**.
- (e) The Assignment and Assumption of FCC Licenses.
- (f) Such additional information and materials as Seller shall have reasonably requested.

8.4 **FCC Compliance.** If after Closing the FCC Order is reversed or otherwise set aside, and there is a Final Action of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Sale Assets shall be rescinded. In such event, Buyer shall reconvey to Seller the Sale Assets free and clear of Liens other than Permitted Liens, and Seller shall repay to Buyer the Purchase Price and reassume the Station Agreements. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final Action (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 Sale Assets to Seller and execution by Seller of instruments of assumption of the Station Agreements) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

## **ARTICLE IX**

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

9.1 **Survival of Representation and Warranties.** All representations, warranties, covenants, and agreements contained in this Agreement or in any other Document shall survive the Closing for the Survival Period and the Closing shall not be deemed a waiver by either party of the representations, warranties, covenants, or agreements of the other party contained herein or in any other Document. No claim may be brought under this Agreement or any other Document unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the Survival Period. In the event such a notice is so given, the right to indemnification with respect thereto under this **Article IX** shall survive the Survival Period until such claim is finally resolved and any obligations with respect thereto are fully satisfied. For purposes of this agreement the “**Survival Period**” shall be twelve (12) months after the Closing Date except as follows:

(a) Any representation and warranty contained in this Agreement shall be subject to the twelve (12) month Survival Period, except that any representation or warranty of Buyer or Seller as to (i) such party’s qualification and authority to consummate the transactions contemplated hereby, (ii) title of the parties to the Station or Sale Assets, or (iii) any tax obligation of Seller, the Survival Period shall be indefinite; and,

(b) As to any representation and warranty relating to any Station Agreement, the Survival Period shall be for the presently existing term of such assumed Station Agreement plus any applicable period of time under any applicable law governing the bringing of claims under such Station Agreement.

9.2 **Indemnification in General.** Buyer and Seller agree that the rights to indemnification and to be held harmless set forth in this Agreement shall, as between the parties hereto and their respective successors and assigns, be exclusive of all rights to indemnification and to be held harmless that such party (or its successors or assigns) would otherwise have by statute, common law or otherwise. Except with respect to claims based on actual fraud or intentional misrepresentation or as provided in **Article X**, each party's rights under this **Article IX** shall be the sole and exclusive remedies with respect to claims resulting from or relating to any misrepresentation, breach of warranty or failure to perform any covenant or agreement contained in this Agreement or otherwise relating to the transactions that are the subject of this Agreement. Without limiting the generality of the foregoing, in no event shall either party or any Person claiming through, by or on behalf of either party, be entitled to claim or seek rescission of the transactions consummated under this Agreement, except in accordance with **Section 8.4**.

9.3 **Indemnification by Seller.**

(a) Subject to the provisions of **Section 9.3(b)** below and **Section 10.2** below, Seller shall indemnify and hold harmless Buyer and any officer, director, agent, employee, and affiliate thereof with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities, and expenses (including reasonable attorneys' fees), relating to or arising out of:

(i) Any breach or non-performance by Seller of any of its representations, warranties, covenants, or agreements set forth in this Agreement or any other Documents; or

(ii) The ownership or operation by Seller of the Station and the Sale Assets on or prior to the Closing Date, other than the Assumed Obligations and except as otherwise provided in the TBA; or

(iii) All other liabilities and obligations of Seller other than the Assumed Obligations.

(iv) Noncompliance by Seller with the provisions of the Bulk Sales Act, if applicable, in connection with the transactions contemplated hereby.

(b) Except for any amounts owed by Seller to Buyer under **Section 9.3(a)(iv)**, and **Section 2.7**, if Closing occurs, Seller shall not be obligated until the amount of such claims, liabilities, damages, losses, costs, and expenses exceeds Buyer's Threshold Limitation, in which case Buyer shall then be entitled to indemnification of the entire amount.

#### 9.4 **Indemnification by Buyer.**

(a) Subject to the provisions of **Section 9.4(b)** below and **Section 10.2** below, Buyer shall indemnify and hold harmless Seller and any officer, director, agent, employee, and affiliate thereof with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) relating to or arising out of:

(i) Any breach or non-performance by Buyer of any of its representations, warranties, covenants, or agreements set forth in this Agreement or any other Document; or

(ii) The ownership or operation of the Station after the Closing Date; or

(iii) All other liabilities or obligations of Buyer pursuant to the terms of this Agreement, including, without limitation, the Assumed Obligations.

(b) Except for any amounts owed by Buyer to Seller under **Section 2.7**, if Closing occurs, Buyer shall not be obligated until the amount of such claims, liabilities, damages, losses, costs, and expenses exceeds Seller's Threshold Limitation, in which case Seller shall then be entitled to indemnification of the entire amount.

9.5 **Indemnification Procedures.** In the event that an Indemnified Party may be entitled to indemnification hereunder with respect to any asserted claim of, or obligation or liability to, any third party, such party shall notify the Indemnifying Party thereof, describing the matters involved in reasonable detail, and the Indemnifying Party shall be entitled to assume the defense thereof upon written notice to the Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, that once the defense thereof is assumed by the Indemnifying Party, the Indemnifying Party shall keep the Indemnified Party advised of all developments in the defense thereof and any related litigation, and the Indemnified Party shall be entitled at all times to participate in the defense thereof at its own expense. If the Indemnifying Party fails to notify the Indemnified Party of its election to defend, or contests its obligation to indemnify under this **Article IX**, the Indemnified Party may pay, compromise, or defend such a claim without prejudice to any right it may have hereunder.

### **ARTICLE X**

#### **TERMINATION; LIQUIDATED DAMAGES**

10.1 **Termination.** If Closing shall not have previously occurred, this Agreement shall terminate upon the earliest of:

(a) the giving of written notice from Seller to Buyer, or from Buyer to Seller, if:

(i) Seller gives such termination notice and is not at such time in material default hereunder, or Buyer gives such termination notice and Buyer is not at such time in material default hereunder; and

(ii) Either:

(A) Any of the representations or warranties contained herein of Buyer (if such termination notice is given by Seller), or of Seller (if such termination notice is given by Buyer), are inaccurate in any respect and materially adverse to the party giving such termination notice unless the inaccuracy has been induced by or is the result of actions or omissions of the party giving such termination notice; or

(B) Any material obligation to be performed by Buyer (if such termination notice is given by Seller) or by Seller (if such termination notice is given by Buyer) is not timely performed in any material respect unless the lack of timely performance has been induced by or is the result of actions or omissions of the party giving such termination notice; or

(C) Any condition (other than those referred to in **Section 10.1(a)(ii)(A)** or **Section 10.1(a)(ii)(B)**) to the obligation to close the transaction contemplated herein of the party giving such termination notice has not been timely satisfied, and

(iii) any such inaccuracy, failure to perform or non-satisfaction of a material condition neither has been cured nor satisfied within twenty (20) days after written notice thereof from the party giving such termination notice nor waived in writing by the party giving such termination notice; provided however that such opportunity to cure shall not apply to the failure of a party to perform its obligations set forth in **Article VIII** herein, or Buyer's obligation to pay the Purchase Price at Closing.

(b) Written notice from Seller to Buyer, or from Buyer to Seller, at any time after twelve (12) months from the date this Agreement is executed; provided that termination shall not occur upon the giving of such termination notice by Seller if Seller is at such time in material default hereunder or upon the giving of such termination notice by Buyer if Buyer is at such time in material default hereunder.

(c) Written notice from Seller to Buyer, or from Buyer to Seller, at any time following a determination by the FCC that the application for consent to assignment of the FCC Licenses has been denied or designated for hearing; provided that the party which is the subject of the hearing (or whose alleged actions or omissions resulted in the denial or designation for hearing) may not elect to terminate under this **Section 10.1(c)**.

(d) The written election by a party to the other party under **Section 5.10** or **Article XI**.

(e) The written election by Seller if Seller terminates the TBA in accordance with **Section 7.1** of the TBA, or the written election by Buyer if Buyer terminates the TBA in accordance with **Section 7.1** or **Section 7.2** of the TBA.

## 10.2 Obligations Upon Termination.

(a) In the event this Agreement is terminated pursuant to Section 10.1(a)(ii)(A) or Section 10.1(a)(ii)(B), the aggregate liability of Buyer for breach hereunder shall be limited as provided in Section 10.2(c) below, and the aggregate liability for Seller for breach hereunder shall be limited as provided in Section 10.2(b). In the event this Agreement is terminated for any other reason, neither party shall have any liability hereunder except that the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, NO MATTER WHAT THE CAUSE, CLAIM OR THEORY FOR SUCH DAMAGES MIGHT BE.

10.3 Specific Performance. Seller acknowledges that the Station and the Sale Assets are of a special, unique, and extraordinary character, and that any breach of this Agreement by Seller could not be compensated for by damages. Accordingly, if Seller shall breach its obligations under this Agreement, Buyer shall be entitled, in addition to any of the remedies that it may have, to enforcement of this Agreement (subject to obtaining any required approval of the FCC) by decree of specific performance or injunctive relief requiring Seller to fulfill its obligations under this Agreement. In any action by Buyer to equitably enforce the provisions of this Agreement, Seller shall waive the defense that there is an adequate remedy at law or equity and agree that Buyer shall have the right to obtain specific performance of the terms of this Agreement without being required to prove actual damages, post bond, or furnish other security. Notwithstanding the foregoing, if Buyer fails to comply with its obligations related to the Escrow Deposit or Section 5.6 or Article XII, Seller shall be entitled to all available rights and remedies, including without limitation specific performance.

## ARTICLE XI

### CASUALTY

Upon the occurrence of any casualty loss, damage, or destruction material to the operation of the Station or the Sale Assets prior to the Closing, Seller shall promptly give Buyer written notice setting forth in detail the extent of such loss, damage or destruction and the cause thereof if known. Seller shall use its reasonable efforts to promptly commence and thereafter to diligently proceed to repair or replace any such lost, damaged, or destroyed property. In the event that such repair or replacement is not fully completed prior to the Closing Date, Seller shall assign to Buyer the portion of the insurance proceeds (less all reasonable costs and expenses, including without limitation attorney's fees, expenses and court costs incurred by Seller to collect such amounts), if any, not previously expended by Seller to repair or replace the damaged or destroyed property and Buyer shall accept the damaged Sale Assets in their damaged condition provided that Seller has satisfied its insurance obligations in Section 5.1(a) hereof.

## **ARTICLE XII**

### **CONTROL OF STATION**

Subject to the TBA, between the date of this Agreement and the Closing Date, Buyer shall not control, manage, or supervise the operation of the Station or conduct of its business, all of which shall remain the sole responsibility and under the control of Seller, subject to Seller's compliance with this Agreement.

## **ARTICLE XIII**

Intentionally left blank

## **ARTICLE XIV**

### **MISCELLANEOUS**

14.1 **Further Actions.** From time to time before, at and after the Closing, each party, at its expense and without further consideration, will execute and deliver such documents to the other party as the other party may reasonably request in order more effectively to consummate the transactions contemplated hereby.

14.2 **Access After the Closing Date.** After the Closing and for a period of twelve (12) months, Buyer shall provide Seller, Seller's counsel, accountants and other representatives with reasonable access during normal business hours to the books, records, property, personnel, contracts, commitments and documents of the Station pertaining to transactions occurring prior to the Closing Date, that are the responsibility and obligation of the Seller, when requested by Seller, and Buyer shall retain such books and records for the normal document retention period of Buyer. At the request and expense of Seller, Buyer shall deliver copies of any such books and records to Seller.

14.3 **Payment of Expenses.**

(a) Any fees assessed by the FCC in connection with the filings contemplated by **Section 5.2** or consummation of the transactions contemplated hereby shall be shared equally between Seller and Buyer.

(b) All state or local sales or use, stamp or transfer, grant, and other similar taxes payable in connection with consummation of the transactions contemplated hereby shall be paid for by Buyer.

(c) Except as otherwise expressly provided in this Agreement, each of the parties shall bear its own expenses, including the fees of any attorneys and accountants engaged by such party, in connection with this Agreement and the consummation of the transactions contemplated herein.

14.4 **Notices.** All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by courier, nationally recognized overnight delivery service, or sent by registered or certified mail, first class, postage prepaid, addressed as follows:

(a) If to **Seller**, to:

Delmarva Educational Association  
3780 Will Scarlet Road  
Winston-Salem, NC 27104  
Attention: Nancy Epperson, President

(b) If to **Buyer**, to:

Disruptor Radio, LLC  
317 Wildlife Trace  
Chesapeake, VA 23320  
Attention: John Fredericks, Managing Member

(c) If to either **Buyer** or **Seller**, a copy  
(which must not constitute notice) to:

Wilkinson Barker Knauer LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036  
Attention: Davina Sashkin, Esq.

or such other address with respect to any party hereto as such party may from time to time notify (as provided above) to the other party hereto. Any such notice, demand or communication shall be deemed to have been given (i) if so mailed, as of the close of the third (3<sup>rd</sup>) business day following the date mailed, and (ii) if personally delivered or sent by confirmed delivery by a nationally recognized overnight delivery service, on the date received.

14.5 **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, and the other Documents constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede any prior negotiations, agreements, understandings, or arrangements between the parties with respect to the subject matter hereof.

14.6 **Binding Effect; Benefits.** Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or assigns. Except to the extent specified herein, nothing in this Agreement, express or implied, shall confer on any Person other than the parties hereto and their respective successors or assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement.



14.7 **Assignment.** This Agreement and any rights hereunder shall not be assignable by either party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

14.8 **Governing Law; Jury Trial Waiver; Representation by Counsel.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Georgia, including all matters of construction, validity, and performance. BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE. Buyer and Seller hereby acknowledge that they have each been represented by counsel in the negotiation, execution, and delivery of this Agreement and that their lawyers have fully explained the meaning of this Agreement, including in particular the jury-trial waiver.

14.9 **Bulk Sales.** Buyer hereby waives compliance by Seller with the provisions of the Bulk Sales Act and similar laws of any state or jurisdiction, if applicable. Seller shall, in accordance with **Article IX**, indemnify and hold Buyer harmless from and against any and all claims made against Buyer by reason of such non-compliance.

14.10 **Amendments and Waivers.** No term or provision of this Agreement may be amended, waived, discharged, or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge, or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions.

14.11 **Severability.** If any provision of this Agreement, or the application thereof to any Person or entity or any circumstance, is invalid or unenforceable in any jurisdiction so long as no party is deprived of the benefits of this Agreement in any material respect, (i) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the extent and purpose of such invalid and unenforceable provision, and (ii) the remainder of this Agreement and the application of such provision to other Persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

14.12 **Headings.** Except as provided in **Article I**, the captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

14.13 **Counterparts.** This Agreement may be executed in any number of counterparts, and by either party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Fax or .pdf signatures shall be deemed the same as original signatures. This Agreement is not binding until executed by both parties hereto.

14.14 **References.** All references in this Agreement to Articles and Sections are to Articles and Sections contained in this Agreement unless a different document is expressly specified.

14.15 **Schedules and Exhibits.** Unless otherwise specified herein, each Schedule and Exhibit referred to in this Agreement is attached hereto, and each such Schedule and Exhibit is hereby incorporated by reference and made a part hereof as if fully set forth herein.

14.16 **Attorneys' Fees.** If any action at law or equity is brought, whether in a judicial proceeding or arbitration, to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses from the other party, which fees and expenses shall be in addition to any other relief, which may be awarded.

14.17 **Knowledge.** All references to the knowledge or awareness of Seller or Buyer shall refer to the Seller's or Buyer's respective actual knowledge, assuming a reasonable degree of investigation by such party.

*Signatures appear on following page.*

**SIGNATURE PAGE TO  
ASSET PURCHASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first written.

**SELLER**

**BUYER**

**Delmarva Educational Association**

**Disruptor Radio, LLC**

By:

  
Nancy Epperson  
President

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

John Fredericks  
Managing Member

**SIGNATURE PAGE TO  
ASSET PURCHASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first written.

**SELLER**

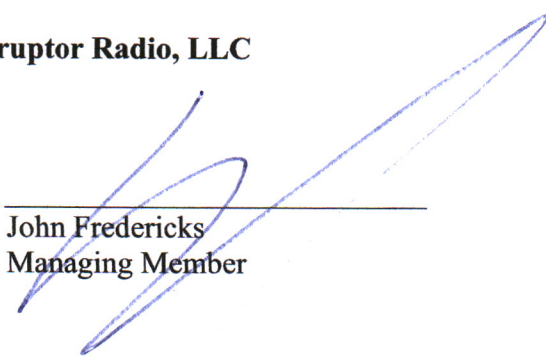
**BUYER**

**Delmarva Educational Association**

**Disruptor Radio, LLC**

By: \_\_\_\_\_  
Nancy Epperson  
President

By: \_\_\_\_\_  
John Fredericks  
Managing Member



## **LIST OF SCHEDULES**

<b><u>Schedule 2.1(g)</u></b>	<b>Miscellaneous Assets</b>
<b><u>Schedule 2.3</u></b>	<b>Liabilities Assumed by Buyer</b>
<b><u>Schedule 3.4</u></b>	<b>Consents</b>
<b><u>Schedule 3.6</u></b>	<b>Tangible Personal Property</b>
<b><u>Schedule 3.7</u></b>	<b>Description of Real Property</b>
<b><u>Schedule 3.8</u></b>	<b>FCC Licenses</b>
<b><u>Schedule 3.9</u></b>	<b>Station Agreements</b>
<b><u>Schedule 3.18</u></b>	<b>Brokers or Finders' Fees</b>

These Schedules are not intended to constitute, and shall not be construed as constituting, any representation or warranty of Seller except as and to the extent expressly provided in the Agreement. The fact that any item of information is contained herein shall not, in and of itself, be construed to mean that such information is required to be disclosed in or by the Agreement or that such item of information is “material” as such term is used in the Agreement.

Seller has not undertaken to describe the contents of documents referred to in these Schedules. Instead, references to such documents are qualified in their entirety by the text of such documents. Furthermore, the reference to any document is deemed to include any and all exhibits, schedules, annexes, and other attachments to such document.

Any matter disclosed in one Schedule hereof in such a way as to make its relevance to information called for by another Schedule readily apparent shall be deemed to be disclosed in such other Schedules, notwithstanding the omission of an appropriate cross-reference. The headings in these Schedules are for convenience of reference only and shall not be deemed to alter or affect the express description of the sections of these Schedules as set forth in the Agreement.