

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of February 17, 2023, by and between **David R. Magnum** (“Magnum”), and two Wisconsin corporations, **Magnum Radio, Inc.** (“MRI”), and **Magnum Communications, Inc.** (“MCI,” and collectively, “Sellers”) and **Civic Media, Inc., WI-Radio Real Estate Racine LLC, WI-Radio Real Estate Chippewa Falls LLC, WI-Radio Real Estate La Crosse LLC** (individually “Buyer,” collectively, “Buyers,” and, together with Sellers, “Parties”).

### RECITALS

**WHEREAS**, Magnum Communications, Inc. owns and operates **WRJN**, Racine, WI, Facility ID 41437 (“**WRJN**”), **WLXR**, La Crosse, WI, Facility ID 7056 (“**WLXR**”), and other related assets as detailed further herein, (each a “Station”):

**WHEREAS**, Magnum Radio, Inc. owns and operates **WEZY**, Chippewa Falls, WI, Facility ID 7874 (“**WEZY**”), **FM Translator W228EP**, Eau Claire, WI, Facility ID 7875 (“**W228EP**”), and other related assets as detailed further herein, (each a “Station”);

**WHEREAS**, David R. Magnum owns and operates **FM Translator W260CV**, Racine, WI, Facility ID 157055 (“**W260CV**”), **FM Translator W251BU**, Kenosha, WI, Facility ID 152103 (“**W251BU**”), **FM Translator W239CV**, Oshkosh, WI, Facility ID 156035 (“**W239CV**”), and other related assets as detailed further herein, (each a “Station” and collectively with the above, “Stations”):

**WHEREAS**, Sellers own various parcels of real property, some of which are used in the operation of the Stations, as described herein (“**Owned Real Property**”);

**WHEREAS**, Magnum Communications, Inc. holds certain broadcast rights under an Affiliate Radio Broadcast Agreement (“**Broadcast Rights**”);

**WHEREAS**, Sellers own or hold certain tangible and intangible assets, including certain licenses, permits and authorizations issued by the Federal Communications Commission (the “**FCC**”), used or useful in the operation and ownership of the Stations;

**WHEREAS**, Buyers desire to purchase from Sellers, and Sellers desire to sell to Buyers, certain of the assets of Sellers used in the ownership and operation of the Stations; and

**WHEREAS**, the acquisition of Stations is subject to prior approval of the FCC.

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants, agreements, and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

## 1. PURCHASE AND SALE OF ASSETS

**1.1 Assets to be Transferred.** Subject to the terms and conditions of this Agreement, on the Closing Date (as hereinafter defined), Sellers shall sell, transfer, convey, assign, and deliver to Buyers, free and clear of any and all Liens (as defined below), except for Permitted Liens (as defined below), and Buyers shall purchase and accept the following assets of Sellers that relate to the ownership and operation of the Stations, together with all rights and privileges associated with such assets and with the ownership of the Stations as follows (collectively the “**Purchased Assets**”):

(a) Licenses, Permits and Authorizations. All of Sellers’ rights in and to all of the licenses, permits, and authorizations issued or granted by the FCC to Sellers for the operation of the Stations or used in connection with the operation of the Stations including but not limited to those described in Schedule 1.1(a) attached hereto (the “**FCC Authorizations**”), and all other licenses, permits and authorizations issued to Sellers by any other governmental entity in connection with the ownership and operation of the Stations (collectively with the FCC Authorizations, the “**Licenses**”);

(b) Tangible Personal Property. All items of tangible personal property owned, by Sellers that are used in operation of the Stations including but not limited to those assets described or listed in Schedule 1.1(b) attached hereto except those assets expressly listed as **Excluded Assets** (defined below);

(c) Assumed Contracts. All of Sellers’ rights under and interest in all programming agreements, including but not limited to Magnum Communications, Inc.’s broadcast rights under the Affiliate Radio Broadcast Agreement, barter, trade and other vendor contracts, identified and set forth in Schedule 1.1(c) (collectively, the “**Assumed Contracts**”).

(d) Programming and Copyrights. All of Sellers’ rights in and to programs and programming materials and elements, music libraries and software of whatever form or nature owned, leased or licensed by Sellers and used or held for use solely in connection with the business and operation of the Stations on the Closing Date, whether recorded on any form of media or intended for live performance, and whether completed or held introduction and any related common law and statutory copyrights owned by Sellers or used or held for use solely in connection with the business and operation of the Stations, or licensed or sublicensed to Sellers in connection therewith, but excluding any software or other material held pursuant to a license or other contract where Buyers do not assume the underlying contract.

(e) Owned and Leased Real Property. All right, title, and interest in the real property owned (the “**Owned Real Property**”) or leased (the “**Leased Real Property**”) and used in the operation of the Stations, as listed and described on Schedule 1.1(d), to be sold or assigned to Buyers, as applicable, without any material conditions adverse to Buyers including the improvements and appurtenances to such improvements, located on such real property, including without limitation, buildings, outside storage areas, driveways, walkways and parking areas (the Owned Real Property and the Leased Real Property collectively referred to herein as the “**Real Property**”). True and complete executed copies of each of the leases included in the Leased Real Property have been provided to Buyer;

(f) Intangible Personal Property. All items of intangible personal property owned, leased or held by Sellers and used in connection with operation of the Stations including all registered and unregistered trademarks, trade names, service marks, franchises and copyrights, including registrations and applications for registration of any of them, and all jingles, logos, slogans, licenses, patents, Internet domain names, Internet URLs, Internet web sites, social media accounts, content and data bases, permits, privileges, including but not limited to those described or listed in Schedule 1.1(e) attached hereto;

(g) Books and Records. All of Sellers' rights in and to the content of the Station's public inspection files (excluding records relating to any Excluded Asset (as hereinafter defined)) and to the records, books of accounts, sales correspondence, invoices, and related files and statements relating to the business or operation of the Stations and all other records as are required to be maintained under the rules and regulations of the FCC; and all other technical information and engineering data relating to the operations of the Stations in the possession of Seller;

(h) Goodwill. All of Sellers' goodwill in, and going concern value of, the Stations.

**1.2 Excluded Assets.** It is understood and agreed that the following assets (the "**Excluded Assets**") shall not be included among the Purchased Assets and shall not be acquired by Buyers as part of the transactions provided for herein:

(a) Cash. Any and all cash, cash equivalents, cash deposits to secure contract obligations, all inter-company receivables from any affiliate of Sellers and all other accounts receivable, bank deposits and securities held by Sellers at the Closing Date.

(b) Tax Refunds. Any claims, rights and interests in and to any refunds of taxes for periods prior to the Closing Date;

(c) Company Records. All records relating to the Excluded Assets described in this Section 1.2 and to Sellers' accounts payable and general ledger records;

(d) Insurance, etc. Any insurance policies and proceeds thereof, promissory notes, bonds, certificates of deposits or other similar items and cash surrender value in regard thereto, and any claims against insurers;

(e) Benefit Plans. Any pension, profit-sharing or cash or deferred (Section 401(k)-type) plans and trusts and assets thereof, or any other employee benefit plan or arrangement, and the assets thereof;

(f) Miscellaneous Contracts. Any agreements, including employment contracts or any obligations for any personnel working at the Stations, not included among the Contracts listed on Schedule 1.1(c);

(g) Financial Records. All of Sellers' tax returns and supporting materials, all original financial statements and supporting materials, all books and records that Sellers are required by law to retain, and all records of Sellers relating to the sale of the Purchased Assets; and

(h) Corporate Records. Sellers' corporate records other than the Books and Records of the Stations;

(i) Accounts Receivable. All accounts receivable, notes receivable and other monies or barter due to Sellers for sales and deliveries of goods, performance of services, sale of advertisements, broadcast time and programming and other business transactions related to the Station attributable to the period prior to Closing.

(j) Insurance. Any insurance policies, intercompany accounts, promissory notes, amounts due from employees, bonds, letters of credit, or other similar items, any cash surrender value in regard thereto of Sellers, and any proceeds from insurance claims made by Sellers relating to property or equipment included in the Purchased Assets that has been repaired, replaced or restored by Sellers prior to the Closing Date;

(k) WLXR Call Sign. Station call sign WLXR.

## 2. ASSUMPTION OF LIABILITIES

**2.1 Liabilities to be Assumed.** Buyers agree to assume and timely perform all obligations and liabilities related to the Purchased Assets arising on or after the Closing Date. No expense, debt or liability of Sellers, of any nature whatsoever, shall be assumed by Buyers unless said assumption is set forth in this Agreement, or in any separate written agreements executed by both Buyers and Sellers. Attached hereto as Schedules 1.1(c) and the leases listed on Schedule 1.1(d) are a list of all contracts, agreements and obligations relating to the operation of the Stations, that Buyers agree to assume at Closing ("**Assumed Contracts**"). Prior to Closing, both the Sellers and Buyers agree to take all actions that are necessary to obtain any consents necessary for the assumption of such obligations so that such matters may be effectuated at or before the Closing. However, should any such contract not be validly assigned and Buyers not receive the full benefit of all of Sellers' rights under it, Buyers shall (i) assume Sellers' liabilities only to the extent Buyers obtain such rights and benefits, or (ii) have the right to terminate this Agreement without penalty.

**2.2 Liabilities Not to be Assumed.** Except as and to the extent specifically set forth in Section 2.1 and Schedule 2.1 of this Agreement, Buyers are not assuming any liabilities of Sellers, and all such liabilities shall be and remain the responsibility of Sellers ("**Excluded Liabilities**"). Without limiting the generality of the foregoing, Sellers shall retain and perform all obligations and liabilities related to any employees providing services to the Stations, incurred on or prior to the Closing Date, including, without limitation, any obligations that may arise as the result of the consummation of the transactions contemplated by this Agreement.

## 3. PURCHASE PRICE/CONSIDERATION; PAYMENT; ALLOCATION

**3.1 Purchase Price and Method of Payment.** The purchase price for the Stations, Broadcast Rights, and related assets as detailed in Schedules 1.1(a), 1.1(b), 1.1(c), and 1.1(d), is **USD Three Million**

**Six Hundred Fifty Thousand (\$3,650,000.00)**, subject to prorations and adjustments pursuant to Section 3.2 of this Agreement, (“**Purchase Price**”). The Purchase Price shall be paid by Buyers to Sellers in the following manner:

(a) Down Payment. Upon execution and delivery of this Agreement, Buyers shall deposit with the Escrow Agent (as defined below), the amount of **USD One Million Dollars (\$1,000,000.00)** (the “**Escrow Deposit**”). The Escrow Deposit shall be held in an interest-bearing account in the name of Civic Media Inc., for the benefit of Buyers and Sellers and pursuant to the terms of the Escrow Agreement to be entered into concurrently with this Agreement. The Escrow Deposit shall not be disbursed except with the joint written permission from the Parties to John C. Trent, Esq., and Kathleen Victory, Esq., who shall jointly act as Escrow Agent.

(b) Payments at Closing; Release of Escrow Deposit. At Closing, Buyers and Sellers shall provide joint written instructions to the Escrow Agents to disburse the Escrow Deposit to Sellers and, unless instructed otherwise, any interest accrued thereon to Buyers. At Closing, Buyers also shall deliver to Sellers by wire transfer of immediately available US Funds an amount equal to the remainder of the Purchase Price, adjusted as provided in Section 3.2 below, pursuant to wire instructions provided by Sellers at least three (3) days prior to the Closing Date (as defined below). In the event Buyers terminate this Agreement under Section 14.2(a), then the Escrow Deposit and any interest accrued thereon shall be released to Buyers. In the event the sale of the Stations is approved by the FCC but does not consummate due to (i) Buyers’ default under this Agreement or (ii) a termination of this Agreement for which the disposition of the Escrow Deposit is not covered by Section 14, or for which a remedy is not otherwise addressed in this Agreement, then the Escrow Deposit shall be released to Sellers as liquidated damages. In addition to the Escrow Deposit, Buyers shall deliver to Sellers by wire transfer of immediately available USD funds an amount the remainder of the Purchase Price pursuant to wire instructions provided by Sellers at least three (3) days prior to the Closing Date (as defined below).

**3.2 Prorations and Adjustments.** Except as otherwise provided herein, all prepaid income and accrued but unpaid expenses arising from the conduct of the business and operations of the Stations shall be prorated between Buyers and Sellers as of 11:59 p.m. local time on the Closing Date. Such prorations shall include, without limitation, all ad valorem and other taxes, business and license fees, rents, FCC regulatory fees, and similar prepaid and deferred items. The prorations and adjustments contemplated by this Section 3.3 shall be made to the extent practicable at the Closing, and to the extent not made at the Closing shall be made within sixty (60) calendar days after the Closing Date. Promptly following agreement or final determination regarding the prorations contemplated by this Section 3.3, which are not reflected by an adjustment to the Purchase Price, a cash payment in respect of such prorations shall be made by Sellers to Buyers or by Buyers to Sellers, as the case may be.

**3.3 Allocation of Purchase Price.** The Purchase Price shall be allocated as set forth in Schedule 3.1, which shall reflect the fair market values of the Purchased Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the “Code”). Sellers and Buyers will follow and use such allocation in all tax returns, filings or other related reports made by them to any governmental agencies.

#### **4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Sellers make the following representations and warranties to Buyers, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date, and shall survive the Closing of the transactions provided for herein as specified in Section 15 of this Agreement.

##### **4.1 Organization and Power.**

(a) Organization. Sellers are for-profit corporations duly organized, validly existing and in good standing under the laws of the State of Wisconsin.

(b) Power. Sellers have all requisite power and authority to own, operate and lease its properties, to carry on its business as and where such is now being conducted, to enter into this Agreement and the other documents and instruments to be executed and delivered by Sellers pursuant hereto and to carry out the transactions contemplated hereby and thereby.

**4.2 Authority.** Subject to the fulfillment of the conditions precedent and the FCC Consent as required herein, the execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Sellers pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action of Sellers. No other act or proceeding on the part of Sellers is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Sellers pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Sellers pursuant hereto will constitute, valid and binding agreements of Sellers, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

##### **4.3 Contracts; Required Consents; No Conflicts.**

(a) Each of the Assumed Contracts is in full force and effect and constitutes a legal, valid and binding obligation of Sellers and, to the knowledge of Sellers, of each other party thereto. Sellers are not in default under any such Assumed Contract and, to Sellers' knowledge, no other party to any such Assumed Contract is in default thereunder, and no event has occurred which (with or without notice, lapse of time, or the happening of any other event) would constitute a default thereunder. All accrued and currently payable amounts due from Sellers under any Assumed Contract have been paid, except where a good faith claim has been raised by Sellers. Buyers will not be required to pay any form of fee in connection with the assignment of any Assumed Contract.

(b) Except as set forth in Schedule 4.3(a) or in connection with the filings referred to in Section 6.1 and Section 6.2, the execution, delivery and performance by the Sellers of this Agreement or any of the agreements to be delivered in connection herewith will not require the consent, approval, authorization or permit of, or filing with, or notification to any Governmental Entity, except (i) as have been obtained or will

be obtained or have occurred prior to the Closing, and (ii) those the absence of which will not be reasonably expected to have a material adverse effect on the Stations or its business.

(c) Except as set forth in Schedule 4.3(b), the execution and delivery of this Agreement or any of the agreements to be delivered in connection herewith, the fulfillment of and the compliance with the respective terms and provisions of each, and the consummation of the transactions described in each, do not and will not (i) conflict, in any material respects, with or violate any Law applicable to or affecting Sellers, the Stations or the Purchased Assets, (ii) conflict, in any material respects, with or result in any material breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under any Contract to which Sellers are a party or by which Sellers are bound or to which any of the Purchased Assets or the Stations is subject or affected (except certain of the Assumed Contract may be assigned only with the consent of third parties as set forth in Schedule 4.3(b)), or result in the creation of any Lien upon the Purchased Assets, or (iii) conflict with or violate the organizational documents of Sellers.

**4.4 Absence of Certain Changes.** Except as and to the extent set forth in Schedule 4.4 attached hereto, there has not been (i) any sale, lease or other transfer or disposition of any of the Purchased Assets, except for the sale of items in the ordinary course of business; or (ii) any other event or condition not in the ordinary course of business relating to the Stations that would have a material adverse effect on the Stations as they are presently operated.

**4.5 Absence of Undisclosed Liabilities.** Sellers do not have any Liabilities relating to the Purchased Assets or operation of the Stations other than commercial liabilities and obligations incurred in the ordinary course of business and consistent with past practice and none of which has or will have a material adverse effect on the business or results of operations of the Stations, and none of which shall be assumed or payable by Buyers. The Purchased Assets shall be transferred by Sellers to Buyers free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities, and encumbrances of every kind and nature ("Liens"), other than for taxes not yet due and payable, Liens that shall be discharged prior to Closing, and Buyers' obligations to perform on and after the Closing Date the obligations arising under the Assumed Contracts and other Purchased Assets ("Permitted Liens").

**4.6 No Litigation.** Except as set forth in Schedule 4.6 attached hereto, there is no litigation pending or, to Sellers' knowledge, threatened against the Stations or Sellers relating to its ownership and operation of the Stations, or any of the Purchased Assets, nor do Sellers know, or have grounds to know, of any basis for any litigation.

**4.7 FCC Authorizations.** Sellers are the holder of the FCC Authorizations listed on Schedule 1.1(a), and the FCC Authorizations (i) are valid, in good standing and in full force and effect and constitute all of the licenses, permits and authorizations required by the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC (collectively, the "FCC Laws") for, or used in, the operation of the Stations as now operated, and (ii) constitute all the licenses and authorizations issued by the FCC to Sellers for or in connection with the current operation of the Stations. The licenses for the Stations have been renewed for a full term and without the issuance of a fine or Consent Decree. Sellers have no knowledge of any condition imposed by the FCC as part of any FCC Authorization

which is neither set forth on the face thereof as issued by the FCC nor contained in the FCC Laws applicable generally to the Stations of the type, nature, class or location of the Stations. The Stations are being operated in material compliance with the terms and conditions of the FCC Authorizations applicable to it and in accordance with the FCC Authorizations. WEZY is operating at low power with an FCC authorized Special Temporary Authority, which expires 6/10/2023 (the "WEZY STA"). At or before Closing, the facilities in the outstanding construction permit for W239CV shall be constructed and implemented and a license to cover filed. No proceedings are pending or, to the knowledge of the Sellers, are threatened which may result in the revocation, modification, non-renewal or suspension of any of the FCC Authorizations, 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 either the Stations or their operations, other than proceedings affecting the radio broadcasting industry in general. Sellers have complied in all material respects with all requirements to file reports, applications and other documents with the FCC (including the registration of Sellers' towers, if required) with respect to the Stations, and all such reports, applications and documents are true and correct in all material respects. Sellers have no knowledge of any matters (i) which could reasonably be expected to result in the suspension or revocation of or the refusal to renew any of the FCC Authorizations or the imposition of any fines or forfeitures by the FCC, or (ii) against Sellers which could reasonably be expected to result in the FCC's refusal to grant approval of the assignment to Buyers of the FCC Authorizations or the imposition of any Material Adverse Condition in connection with approval of such assignment. As used in this Agreement, a Material Adverse Condition is a condition that would materially restrict, limit, increase the cost or burden of or otherwise adversely affect or materially impair the right of Buyers to ownership, use, control, enjoyment or operation of the Stations or the proceeds therefrom; provided, however, that any condition which requires that the Stations be operated in accordance with a condition similar to those contained in the present FCC Authorizations issued for operation of the Stations, shall not be materially adverse. There are not any unsatisfied or otherwise outstanding citations issued by the FCC with respect to the any of the Stations or their respective operations.

**4.8 Title and Condition of Purchased Assets.** Sellers own and have, and will have by the Closing Date, good and marketable title to the Purchased Assets. Sellers have no indebtedness which is secured by any of the Purchased Assets or restricts the ability of Sellers to transfer the Purchase Assets to Buyers hereunder. The Purchased Assets are in good operating condition and repair, subject only to ordinary wear and tear. There is no change in the zoning or building ordinances directly affecting leasehold interests included in the Purchased Assets, pending or, to the Sellers' knowledge, threatened. With respect to the transmitting facilities of the Stations included in the Lease, all towers, guy wire, anchors, ground systems and all other structures are located entirely within the confines of the relevant parcel included in the Lease. Each parcel included in the Lease is freely accessible directly from public streets, or, if not, any use of adjoining private land to access the same is done in accordance with valid easements of record. Any such easements are now, and on the Closing Date will be, in full force and effect and assignable to Buyers pursuant to this Agreement.

**4.9 Owned Real Property.** Sellers have good and marketable fee simple title to the parcels of Owned Real Property listed on Schedule 1.1(d) free and clear of any Liens except for Permitted Liens. Sellers shall obtain and deliver to Buyers at least twenty days prior to the Closing a commitment to issue an

owner's policy of title insurance from a title company acceptable to Buyers for the Owned Real Property included in the Purchased Assets, which title policies shall be in form and substance satisfactory to Buyers. After delivery of the title insurance commitment, the Buyers shall have ten (10) days to examine said title insurance commitment and notify the Sellers in writing of any objections thereto. If there are objections, Sellers shall furnish to Buyers a new or amended title insurance commitment satisfying any such objections. The costs for the issuance of the title insurance commitment and policy shall be the responsibility of Sellers. Sellers shall allow Buyers, at its own option, cost and expense, to have conducted a Phase I environmental study of the Owned Real Property within 30 days of the date of this Agreement. Within fifteen (15) days after Buyers' receipt of the Phase I Study, if the Phase I indicates environmental conditions may exist on, under or affect the Owned Real Property and Buyers reasonably concludes that such environmental conditions would constitute a material violation or breach of Sellers' representations and warranties contained in this Agreement and the cost of removal, correction or remedy of the environmental conditions exceeds Ten Thousand Dollars (\$10,000) in order to make Sellers' representations in this Agreement materially true and accurate, then notwithstanding any other provisions of this Agreement to the contrary, (a) Sellers shall perform such work at the Sellers' cost, or (b) either Sellers or Buyers shall have the option to terminate the Agreement upon written notice to the other party.

**4.10 Environmental.** To Sellers' knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the parcels of Owned Real Property and Leased Real Property. To Sellers' knowledge, Sellers have complied in all material respects with all environmental, health and safety laws applicable to such parcels and the Stations.

**4.11 Hazardous Materials.** To Sellers' knowledge, no hazardous or toxic materials (as hereinafter defined) exist in any structure located on, or exist in, on or under the surface of, any of the land subject to the Lease to be executed at Closing or on which the Station's tower sites or any equipment to be conveyed to or leased by Buyers. For purposes of this Agreement, "hazardous or toxic material" shall mean waste, substances, materials, smoke, gas, pollutants, contaminants, asbestos or asbestos related products, PCB's, petroleum, crude oil (or any fraction or distillate thereof) or particular matter designated as hazardous, toxic or dangerous, or requiring special handling, treatment or storage whether or not designated hazardous, toxic or dangerous under any environmental laws. For purposes of this Agreement "environmental law" shall be interpreted to mean the Comprehensive Environmental Response Compensation and Liability Act, any successor to such law, and/or any other applicable federal, state, or local environmental, health or safety law, rule or regulation concerning the treating, producing, handling, storing, releasing, spilling, leaking, pumping, pouring, emitting, or dumping of any waste, substance, materials, smoke, gas or particulate matter or imposing liability or standards in connection therewith.

**4.12 Compliance with Laws.** Sellers have operated and are operating the Stations in material compliance with all laws, regulations, and governmental orders applicable to the operation of the Stations. Sellers have not received any notice asserting any noncompliance with any applicable statute, rule, or regulation, in connection with the operation of the Stations, and, no investigation is pending or, to Sellers' knowledge, threatened regarding any such matter.

**4.13 Employees.** Sellers are not a party or subject to any labor union or collective bargaining agreements. Sellers, in the operation of the Stations, has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination, and the payment of social security and other payroll-related taxes, and it has not received any notice alleging that it has failed to comply in any material respect with any such laws, rules or regulations. Sellers acknowledge and agree that Buyers may, but has no obligation to offer employment to any employee of Sellers or the Stations and will assume no post-closing liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyers may offer employment to any such employee and then such employment shall be a new employment relationship and Buyers shall be responsible only from and after the time at which such offer shall have been extended and accepted by such employee, and subject to the terms and conditions thereof.

**4.14 Taxes.** Sellers have filed all federal, state, local and foreign income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid with respect to the Stations.

**4.15 Broker Commission or Finder's Fees.** Sellers represent and warrant that it has incurred no liability to any real estate broker or other broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. Subject to the foregoing, Sellers agree that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Sellers in connection with this transaction, all such claims shall be handled and paid by Sellers and Sellers shall indemnify, defend, protect and save and hold Buyers harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

**4.16 Insurance.** Sellers maintain insurance policies or other arrangements with respect to the Stations and the Purchased Assets and will maintain such policies or arrangements until the Closing.

**4.17 No Third-Party Options.** There are no existing agreements with, options or rights of, or commitments to any person other than Buyers to acquire any of the Purchased Assets or any interest therein or in the Stations. Sellers agree to indemnify, defend and hold harmless Buyers from and against all third-party option claims that may be asserted against Sellers and Buyers with regard to the transaction contemplated by this Agreement.

**4.18 Disclosure.** No representation or warranty by Sellers in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Sellers pursuant to this Agreement or in connection with transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading. All statements and information contained in any certificate, instrument, or signed document delivered by or on behalf of Sellers shall be deemed representations and warranties by Sellers.

## **5. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyers make the following representations and warranties to Sellers, each of which is true and correct on the date hereof, shall remain true and correct to and including the Closing Date and shall survive the Closing of the transactions provided for herein as specified in Section 15 of this Agreement.

### **5.1 Organization and Power.**

(a) Organization. Buyers are a for-profit corporation duly organized, validly existing and in good standing under the laws of the State of Delaware (as to Civic Media, Inc.) and limited liability corporations organized under the laws of the State of Wisconsin (as to all other Buyers) and on the Closing Date all Buyers will be duly authorized to conduct business in the state of Wisconsin.

(b) Power. Buyers have all requisite power to enter into this Agreement and the other documents and instruments to be executed and delivered by Buyers and to carry out the transactions contemplated hereby and thereby.

**5.2 Authority.** Subject to the fulfillment of the conditions precedent and the FCC Consent as required herein, the execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Buyers pursuant hereto and the consummation of the transaction contemplated hereby and thereby have been duly authorized by all necessary action of Buyers. No other act or proceeding on the part of Buyers is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Buyers pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Buyers pursuant hereto will constitute, valid and binding agreements of Buyers, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

**5.3 Broker Commission or Finder's Fee.** Buyers represent and warrant that they have incurred no liability to any real estate broker or other broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby. Subject to the foregoing, Buyers agree that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyers in connection with this transaction, all such claims shall be handled and paid by Buyers and Buyers shall indemnify, defend, protect and save and hold Sellers harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

**5.4 Qualifications as a Broadcast Licensee.** Civic Media, Inc. is legally, financially and otherwise qualified under the FCC Laws, to acquire and operate the Stations. Acquisition of the FCC Authorizations by Civic Media, Inc. complies with the FCC Laws with respect to multiple ownership as they exist on the date of this Agreement.

**5.5 No Conflicts.** The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto do not conflict with any organizational documents of Buyers or any law, judgment, order, or decree to which Buyers are subject, and does not require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent. There are no facts known to Buyers that would delay the consummation of the transactions contemplated by this Agreement.

**5.6 Litigation.** There is no litigation pending or, to Buyers' knowledge, threatened against or affecting Buyers that would materially adversely affect or prevent the consummation of the transactions contemplated hereby, nor are Buyers subject to any order of any court or governmental entity that would materially adversely affect or prevent consummation of the transactions contemplated hereby, other than those of general applicability.

**5.7 Disclosure.** No representation or warranty by Buyers in this Agreement, nor any statement, certificate, schedule, document or exhibit hereto furnished or to be furnished by or on behalf of Buyers pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make the statements contained therein not misleading. All statements and information contained in any certificate, instrument, or signed document delivered by or on behalf of Buyers shall be deemed representations and warranties by Buyer.

## **6. APPLICATIONS TO AND CONSENT BY FCC**

**6.1 FCC Consent.** Consummation of the transactions provided for herein and the performance of the obligations of Sellers and Civic Media, Inc. under this Agreement are subject to the condition that the FCC shall have issued its consent to an application for consent to the assignment of the FCC Authorizations from Sellers to Civic Media, Inc. (the "**Assignment Application**") without any condition materially adverse to Civic Media, Inc. (the "**FCC Consent**"), as detailed further in Schedule 5.1.

**6.2 Assignment Application and Notice.** Sellers and Civic Media, Inc. shall file the Assignment Application with the FCC within ten (10) business days after the execution of this Agreement. Sellers shall air on the Stations and post on a website that complies with the FCC's rules, the required public notices of the Assignment Application commencing within five business days after the FCC issues public notice of the acceptance of the Assignment Application. Sellers and Civic Media, Inc. shall take all commercially reasonable steps necessary to prosecute the Assignment Application with diligence including opposing any objections to, appeals from or petitions to reconsider such approval of the FCC, to the end that the FCC Consent and a Final Order with respect thereto may be obtained as soon as practicable; *provided, however*, that in the event the Assignment Application has been designated for hearing, either Civic Media, Inc. or Sellers may elect to terminate this Agreement pursuant to Section 14. Subject to Section 14.2(b), neither Buyers nor Sellers shall knowingly take any action that the party knows or has reason to know would materially and adversely affect or materially delay issuance of the FCC Consent without a Material Adverse Condition, unless such action is requested or required by the FCC, its staff or the FCC Laws. Should Civic Media, Inc. or Sellers become aware of any facts which could reasonably be expected to materially and adversely affect or materially delay issuance of the FCC

Consent without a Material Adverse Condition, 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.

**6.3 Mutual Covenant of Reasonable Cooperation.** Sellers and Civic Media, Inc. shall diligently and expeditiously take all necessary and proper steps, provide any additional information requested by the FCC, and otherwise use their best efforts to obtain the FCC Consent and to comply with this Section 6, as relevant and further detailed in Schedule 5.1.

**6.4 Assignment Application Expenses and Fees.** Each party shall be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. Each party shall be responsible for one-half of any filing fee imposed by the FCC for the filing any application required to assign FCC Authorizations to Buyers.

**6.5 Possession and Control of Stations.** Between the date of this Agreement and the Closing Date control and operation of the Stations shall remain with the Sellers. Civic Media, Inc. shall be entitled to reasonable inspection of, and access to, the premises and assets, and to notice of any unusual operating problems or developments with the purpose that an uninterrupted and efficient transfer of ownership may be accomplished. It is further understood and agreed that effective on the Closing Date and thereafter, Sellers shall have no control over, nor right to intervene or participate in, the operation of the Stations.

**6.6 FCC Reports and Public Inspection File.** Sellers shall continue to timely file, on a current basis until the Closing Date, all reports and documents required to be filed with the FCC with respect to the Stations and timely upload any and all documents required to be placed in the Station's online public inspection file. Sellers shall provide Civic Media, Inc. with copies of all such filings within ten (10) business days of the filing with the FCC.

## **7. OTHER MATTERS**

**7.1 Costs.** Except as otherwise provided herein, including as detailed in Schedule 5.1, each party to this Agreement shall be responsible for and bear all of its own costs and expenses, including, without limitation, the expenses of its representatives, incurred at any time in connection with pursuing or consummating the transactions provided for in this Agreement.

**7.2 Risk of Loss.** Risk of loss for damage to or theft, loss or destruction of the Purchased Assets (by any means, including, without limitation, acts of God) occurring after the date of this Agreement and prior to the Closing shall be borne by Sellers, and after the Closing shall be borne by Buyers. Sellers shall use all commercially reasonable efforts to repair or replace any damaged or lost Assets, provided, however, that in the event that the Assets with a value of greater than USD Ten Thousand Dollars (\$10,000) are damaged or lost on the date otherwise scheduled for Closing, Buyers may, at their option, either (i) postpone Closing for a period of up to sixty (60) days while Sellers repair or replace such Assets, or (ii) elect to close with the Assets in their current condition, in which case Sellers shall assign all proceeds from insurance on such lost or damaged Assets to Buyers, and Buyers shall have the responsibility to repair or replace the Assets. Sellers shall have no responsibility to repair or replace

damaged or destroyed Assets not covered by insurance if the cost of such repair exceeds USD Two Hundred Fifty Thousand Dollars (\$250,000), provided, however, that should Sellers advise Buyers within five (5) days after being requested to do so that Sellers will not repair or replace such Assets, Buyers may (i) agree to close with an assignment of all insurance proceeds from Sellers' insurance company and complete the repair itself, or (ii) terminate this Agreement without penalty upon written notice to Sellers and return of the Escrow Deposit and any interest accrued thereon.

**7.3 Updating of Schedules.** From time to time after the full execution of this Agreement and prior to the Closing, Sellers will promptly supplement or amend the Schedules delivered in connection herewith with respect to any matter which exists or occurs after the date of this Agreement and which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules or which is necessary to correct any information therein; provided, however, that the provisions of this Section are informational only and Buyers shall not be bound to the terms of any changed Schedules unless they are incorporated into this Agreement by a written amendment signed by Buyer.

**7.4 Transfer Taxes and Similar Charges.** All recordation, transfer and documentary taxes and fees, stamps, and any excise, sales or use taxes, and all similar costs of transferring the Purchased Assets in accordance with this Agreement shall be borne equally by Sellers and Buyer.

## **8. FURTHER COVENANTS OF SELLER**

**8.1 Conduct of Business Pending the Closing.** From the date hereof until the Closing or earlier termination of this Agreement without a closing Sellers shall have complete control and supervision of and ultimate responsibility for the Stations and their operation and during such period:

- (a) Operate the Stations in the normal and customary manner in the ordinary course of business.
- (b) Continue to operate the Stations in accordance with the terms of the FCC Authorizations and in material compliance with all applicable laws and FCC Laws; and, not sell or dispose of any Purchased Assets.
- (c) Maintain the Purchased Assets it as good or better condition than they exist on the date of this Agreement.
- (d) From the date of this Agreement until the Closing or other termination as provided pursuant to the terms of this Agreement, Sellers shall not, directly or indirectly, (i) solicit, initiate or encourage submission of any proposal or offer from any person relating to any acquisition or purchase of all or any of the Purchased Assets or any equity interest in Sellers (an "**Acquisition Transaction**") or (ii) participate in any discussion or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way, or assist or participate in, facilitate or encourage, any effort or attempt by any person to enter into an Acquisition Transaction.
- (e) Cooperate with Civic Media, Inc. to complete the call sign change from WEZY to WCFW by or before Closing.

## 9. JOINT COVENANTS

**9.1 Confidentiality.** Subject to requirements of applicable law, Sellers and Buyers shall each keep confidential all information obtained by it with respect to the other parties hereto in connection with this Agreement and the negotiations preceding this Agreement (“**Confidential Information**”); provided that, either party hereto may furnish such Confidential Information to its employees, agents, and representatives who need to know such Confidential Information (including its, tax, financial, and legal advisers, its banks and other lenders) (“**Representatives**”); provided however, the disclosing party shall be responsible for all actions or omissions of such Representatives with regard to Representatives’ breach of this Section. Each party hereto shall, and shall cause each of such party’s Representatives to, use the Confidential Information solely in connection with the transactions contemplated by this Agreement, and not for any competitive purpose or advantage detrimental to the other party hereto or any of its affiliates.

**9.2 Disclosures.** Sellers and Buyers shall have a continuing obligation to promptly notify the other party in writing with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be disclosed to the other party, but no such disclosure shall cure any breach of any representation or warranty which is inaccurate. Further, Sellers and Buyers shall give prompt notice to the other party at any occurrence that comes to its attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of Sellers or Buyers contained in this Agreement. Sellers and Buyers both agree to use their best efforts prior to Closing to obtain all consents necessary for the consummation of the transaction contemplated hereby, including consent and approval from the FCC.

## 10. CONDITIONS PRECEDENT TO BUYERS’ OBLIGATIONS

Each and every obligation of Buyers to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of each of the following conditions:

**10.1 Representations and Warranties True on the Closing Date.** Each of the representations and warranties made by Sellers in this Agreement, and the statements contained in any instrument, list, certificate or writing delivered by Sellers pursuant to this Agreement, shall be true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date.

**10.2 Compliance with Agreement.** Sellers shall have performed and complied in all material respects with all of its agreements and obligations under this Agreement which are to be performed or complied with by Sellers prior to or on the Closing Date, including the delivery of the closing documents specified in Section 13.2 hereof.

**10.3 Absence of Litigation.** No litigation shall have been commenced, and no investigation by any Government Entity shall have been commenced, against Buyers, Sellers or any of the affiliates, officers, members or Shareholders of any of them, with respect to the transactions contemplated hereby.

**10.4 Consents and Approvals.** The FCC Consent and all other approvals, consents and waivers that are required to authorize the assignments of the Stations FCC Authorizations contemplated hereby shall have been received and the FCC Consent shall have become a Final Order (as hereinafter defined), provided that the condition that the FCC Consent be a Final Order may be waived by mutual agreement between the parties. “**Final Order**” means a grant, consent or authorization by the FCC which is no longer subject to reconsideration or review by the FCC or a court of competent jurisdiction, and in regards to the Assignment Application, consents to the assignment of the FCC Authorizations contemplated by this Agreement without the imposition of any conditions that could have a material adverse effect on Sellers or Civic Media, Inc. with respect to the assignment of the FCC Authorizations from Sellers to Civic Media, Inc. as detailed in Section 6 above.

**10.5 Third Party Consents and Approvals.** Sellers shall have obtained all third-party consents and approvals, if any, required for the transfer or continuance, as the case may be, of the Assumed Contracts, including but not limited those included on Schedule 1.1(c) (and contracts that would have been on Schedule 1.1(c) attached hereto had they been in existence on the date of this Agreement provided that Buyers have consented to entering the new contract) and Schedule 1.1(d) attached hereto.

**10.6 Station Operation.** The Stations are now and will be operating in material conformance with the terms of its respective FCC Authorizations and all applicable laws including FCC Laws as of the Closing.

**10.7 Closing Certificates.** Buyers shall have received a certificate, dated as of the Closing Date, from Sellers certifying that the conditions set forth in Sections 10.1 and 10.2 hereof have been fulfilled.

**10.8 Copies of Documents.** Sellers shall have delivered to Buyers true and complete copies of all written leases, commitments, contracts, licenses, and other agreements referred to in Schedule 1.1(c) and Schedule 1.1(d) attached hereto.

## **11. CONDITION PRECEDENT TO SELLERS’ OBLIGATIONS**

Each and every obligation of Sellers to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following conditions:

**11.1 Representations and Warranties True on the Closing Date.** Each of the representations and warranties made by Buyers in this Agreement, and the statements contained in any instrument, certificate or writing delivered by Buyers pursuant to this Agreement, shall be true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date.

**11.2 Compliance with Agreement.** Buyers shall have performed and complied in all material respects with all of Buyers’ agreements and obligations under this Agreement which are to be performed or complied with by Buyers prior to or on the Closing Date, including the delivery of the closing documents and the Purchase Price specified in Section 3 of this Agreement.

**11.3 Consents and Approvals.** The FCC Consent and all other approvals, consents and waivers that are required to effect the assignment of the Licenses shall have been received.

**11.4 Absence of Litigation.** No litigation shall have been commenced or threatened, and no investigation by any Government Entity shall have been commenced, against Buyers, Sellers or any of the affiliates, officers, members or Shareholders of any of them, with respect to the transactions contemplated hereby.

**11.5 Certifications.** Sellers shall have received a certificate, dated as of the Closing Date, from the Buyers, executed by a duly authorized officer of Buyers, certifying that the conditions set forth in Sections 11.1 and 11.2 hereof have been fulfilled.

## **12. INDEMNIFICATION**

**12.1 By Sellers.** Subject to the terms and conditions of this Section 12 and Section 15, Sellers hereby agree to indemnify, defend and hold harmless Buyers, and their directors, officers, employees, members and controlled and controlling persons (hereinafter “**Buyers’ Affiliates**”), from and against all Claims asserted or instituted by any third party or Governmental Entity (“**Third Party Claims**”) against Buyers or any Buyers’ Affiliate, and all Losses incurred by Buyers or such Buyers’ Affiliate as a result of such Claims, directly or indirectly, by reason of, or resulting from:

(a) the inaccuracy or breach of any representation or warranty of Sellers contained in or made pursuant to this Agreement;

(b) the breach of any covenant of Sellers contained in this Agreement;

(c) any Third-Party Claim brought by or on behalf of any broker or finder retained, employed or used by Sellers or any of Sellers’ directors, officers, employees, members or agents in connection with the transactions provided for herein or the negotiation thereof, whether or not disclosed herein;

(d) any Third-Party Claim with respect to the ownership or operation of the Stations or the Purchased Assets prior to the Closing Date including, without limitation, any Liabilities arising under the FCC Authorizations or the Contracts which relate to events occurring prior to the Closing Date; or

(e) any Third-Party Claim, whether arising before or after the Closing Date, with respect to any of the liabilities that are not assumed by Buyers, as more specifically described in Section 2.2.

As used in this Section 12, the term “**Claim**” shall include all demands, claims, suits, actions, causes of action, proceedings and assessments, whether or not ultimately determined to be valid, and the term “**Losses**” shall include (i) all Liabilities; (ii) all losses, damages, judgments, awards, penalties and settlements; and (iii) all costs and expenses (including, without limitation, interest (including prejudgment interest in any litigated or arbitrated matter), court costs and fees and expenses of attorneys and expert witnesses) of investigating, defending or asserting any of the foregoing or of enforcing this Agreement.

**12.2 By Buyers.** Subject to the terms and conditions of this Section 12, Buyers hereby agree to indemnify, defend and hold harmless Sellers and Sellers' shareholders, directors, officers, employees, members and controlled and controlling persons (hereinafter "**Seller Affiliates**"), from and against all Third Party Claims asserted or instituted against Sellers or any Seller Affiliate, and all Losses incurred by Sellers or such Seller Affiliates as a result of such Claims, directly or indirectly, by reason of or resulting from:

(a) the inaccuracy or breach of any representation or warranty of Buyers contained in or made pursuant to this Agreement;

(b) the breach of any covenant of Buyers contained in this Agreement;

(c) any Third-Party Claim brought by or on behalf of any broker or finder retained, employed or used by Buyers or any of its directors, officers, employees, members or agents in connection with the transactions provided for herein or the negotiation thereof, whether or not disclosed herein;

(d) any Third-Party Claim with respect to the ownership or operation of the Stations or the Purchased Assets on or after the Closing Date including, without limitation, any Liabilities arising under the FCC Authorizations or the Contracts which relate to events occurring on or after the Closing Date; or

(e) any Third-Party Claim arising after the Closing Date with respect to any assumed liabilities.

**12.3 Notice and Defense.** The party or parties to be indemnified (whether one or more, the "**Indemnified Party**") will give the party from whom indemnification is sought (the "**Indemnifying Party**") prompt written notice of any such Claim, and the Indemnifying Party will undertake the defense thereof by representatives chosen by it. The assumption of defense shall constitute an admission by the Indemnifying Party of its indemnification obligation hereunder with respect to such Claim, and its undertaking to pay directly all costs, expenses, damages, judgments, awards, penalties and assessments incurred in connection therewith. Failure to give such notice shall not affect the Indemnifying Party's duty or obligations under this Section 12, except to the extent the Indemnifying Party is prejudiced thereby. So long as the Indemnifying Party is defending any such Claim actively and in good faith, the Indemnified Party shall not settle such Claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials required by them and in the possession or under the control of the Indemnified Party, for the use of the Indemnifying Party and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense.

**12.4 Failure to Defend.** If the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim actively and in good faith, the Indemnified Party will (upon further notice) have the right to undertake the defense, compromise or settlement of such Claim or consent to the entry of a judgment with respect to such Claim, on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall thereafter have no right to challenge the Indemnified Party's defense, compromise, settlement or consent to judgment.

**12.5 Indemnified Party's Rights.** Anything in this Section 12 to the contrary notwithstanding,

(i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, compromise or settle such Claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Liability in respect of such Claim.

**12.6 Payment.** The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Section 12. Upon judgment, determination, settlement or compromise of any third-party Claim, the Indemnifying Party shall pay promptly on behalf of the Indemnified Party, and/or to the Indemnified Party in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other Claims of the Indemnified Party with respect thereto, unless in the case of a judgment, an appeal is made from the judgment. If the Indemnifying Party desires to appeal from an adverse judgment, then the Indemnifying Party shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. Upon payment in full by the Indemnifying Party, the Indemnifying Party shall succeed to the rights of such Indemnified Party, to the extent not waived in settlement, against the third party who made such Third-Party Claim.

### **12.7 Certain Limitations.**

(a) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) neither party shall have any liability to the other under this Section 12, as applicable, until such party's aggregate Damages (exclusive of attorney's fees and expenses, and court cost) exceeds Ten Thousand Dollars (\$10,000.00) (the "**Threshold Amount**"), provided, however, that once the Threshold Amount has been reached, the Indemnifying Party shall be liable for all claims from the first dollar, and (ii) the maximum liability of either party for indemnification under this Section 12 shall be Three Hundred and Sixty-Five Thousand Dollars (\$365,000.00).

(b) Payments by an Indemnifying Party under this Section 12 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such Claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(c) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(d) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(e) Sellers shall not be liable under this Section 12 for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement if Buyers had knowledge of such inaccuracy or breach prior to the Closing.

(f) The obligations of the parties under Section 12 shall survive Closing for twelve (12) consecutive months.

## 13. CLOSING

**13.1 Closing Date or Closing** means a date to be mutually designated by Parties which shall not be later than the tenth (10th) business day after the FCC Consent becomes a Final Order. If the Parties waive finality, the Closing will occur not later than the tenth (10th) business day after initial FCC Consent unless the parties mutually agree otherwise.

**13.2 Documents to be Delivered by Sellers.** At the Closing, Sellers shall deliver to Buyers the following documents, in each case duly executed or otherwise in proper form:

(a) Compliance Certificate. A certificate from Sellers that the representations and warranties made by Sellers in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and that Sellers have performed and complied in all material respects with all of Sellers' obligations under this Agreement which are to be performed or complied with on or prior to the Closing Date.

(b) Certified Resolution. A certified copy of the company resolution of the Sellers authorizing and approving this Agreement and the consummation of the transactions provided for in this Agreement.

(c) Assignment of FCC Authorizations. An Assignment of FCC Authorization sufficient in the opinion of Civic Media, Inc. and its counsel to assign the FCC Authorizations to Civic Media, Inc.

(d) Transfer Documents. Such bills of sale, assignments, and other good and sufficient instruments of transfer as Buyers may reasonably request in order to convey and transfer to Buyers title to the Purchased Assets free and clear of any Liens (collectively, the "**Transfer Documents**").

(e) Assignment of Assumed Contracts. An assignment and assumption of Assumed Contracts.

(f) General Warranty Deed and Title Insurance Commitment. A General Warranty Deed conveying clear fee simple title to Owned Real Property to appropriate Buyers in form and substance acceptable to Buyers and title commitment for Owned Real Property.

(g) Assignments of Lease Agreements. Assignments of each of the leases included in the Leased Real Property, and an Estoppel Certificate, in form and substance acceptable to Buyers, from each applicable Landlord showing that all payments due and owing by such Sellers on each lease have been paid

through the current month and that such Sellers are not in default of any of the terms and conditions of such leases.

(h) Lien Releases. Documentation establishing the release of Liens, if any, on the Purchased Assets.

(i) Joint Escrow Instruction. The written instruction to Escrow Agents for the release of the Escrow Deposit to Sellers and, unless otherwise instructed, any interest accrued thereon to Buyers, as required by Section 3.1 (b) of this Agreement.

(j) Other Documents. All other documents, instruments or writings required to be delivered at or prior to the Closing pursuant to this Agreement and other certificates of authority and documents as Buyers may reasonably request.

**13.3 Documents to be Delivered by Buyers.** At the Closing, Buyers shall deliver to Sellers the following documents, in each case duly executed or otherwise in proper form:

(a) Purchase Price. A wire transfer of immediately available funds for the balance of the Purchase Price as required by Section 3 as may be adjusted pursuant to Sections 3.1(b) and 3.3 of this Agreement.

(b) Compliance Certificate. A certificate signed by an officer of Buyers that the representations and warranties made by Buyers in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and that Buyers have performed and complied with all of Buyers' obligations under this Agreement which are to be performed or complied with on or prior to the Closing Date.

(c) Certified Resolutions. A certified copy of the corporate resolution of Buyers authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.

(d) Joint Escrow Instruction. The written instruction to Escrow Agents for the release of the Escrow Deposit to Sellers, and, unless instructed otherwise, any interest accrued thereon to Buyers, as required by Section 3.1 (b) of this Agreement.

(e) Other Documents. Any required countersigned documents required under Section 13.2 and all other documents, instruments or writings required to be delivered to Sellers at or prior to the Closing pursuant to this Agreement and such other documents as Sellers may reasonably request.

## **14. TERMINATION**

**14.1 Right of Termination Without Breach.** This Agreement may be terminated without further liability of any party at any time prior to the Closing by mutual written agreement of Buyers and Sellers, in which case the Escrow Deposit and any interest accrued thereon shall be returned to Buyers. Additionally, if this transaction has not consummated by one year from the filing of the FCC Application,

this Agreement may be terminated by written notice of either party to the other, provided that the terminating party is not in breach of its agreements, representations, or warranties contained in this Agreement. This Agreement will automatically terminate if the FCC denies the FCC Application pursuant to a Final Order. In the event of termination under this Section 14.1, the Escrow Deposit and any interest accrued thereon shall be returned to Buyer.

#### **14.2 Termination for Breach.**

(a) Termination by Buyers. If Sellers

(1) have failed to cure any material violation or breach of any of its agreements, representations or warranties contained in this Agreement within thirty (30) days after delivery of written notice of such violation or breach from Buyers then Buyers may terminate this Agreement.

(2) do not perform the obligations to be performed by it under this Agreement on the Closing Date and such breach or default is not cured within thirty (30) days after Seller receives notice of such breach or default from Buyer; or

(3) otherwise breach in any material respect any of its representations or warranties or defaults in any material respect in the performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within thirty (30) days after Sellers receive written notice of such breach or default from Buyer.

(b) Termination by Sellers. If Buyers

(1) have failed to cure any material violation or breach of any of its agreements, representations or warranties contained in this Agreement within thirty (30) days after delivery of written notice of such violation or breach from Sellers (except in the case of Buyers' breach for nonpayment of the Purchase Price on the Closing Date, in which case there shall be no cure period) then Sellers may terminate this Agreement.

(2) do not perform the obligations to be performed by it under this Agreement on the Closing Date and such breach or default is not cured within thirty (30) days after Buyers receive notice of such breach or default from Seller; or

(3) otherwise breach in any material respect any of its representations or warranties or defaults in any material respect in the performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within thirty (30) days after Buyers receive written notice of such breach or default from Sellers.

#### **14.3 Damages upon Termination, Specific Performance.**

(a) 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.

(b) Upon a termination of the Agreement by Sellers pursuant to Section 14.2(b) above, Sellers' sole remedy shall be delivery of the Escrow Deposit and any interest accrued thereon from the Escrow Agents, as liquidated damages. Sellers and Buyers acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyers' default of this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty. In the event of termination of the agreement for any other reason, the Escrow deposit and any interest accrued thereon shall be returned to Buyers.

(c) If this Agreement could be terminated pursuant to Sections 14.2(a), Buyers may, as an alternative to termination of this Agreement and return of the Escrow Deposit, bring an action for specific performance by the Sellers, each party hereby acknowledging that monetary damages would not be sufficient to compensate Buyers under such circumstances because the Stations are a unique asset not readily obtainable on the open market. If any action is brought to enforce this Agreement, Sellers shall waive the defense that there is an adequate remedy at law. The prevailing party in any litigation under this Agreement shall be entitled to receive from the non-prevailing party all court costs, attorney's fees and other out-of-pocket expenses incurred by the prevailing party in enforcing or defending its rights under this Agreement.

(d) Each Party shall execute and deliver joint written instructions to the Escrow Agents as required to give effect to this Section 14.3.

## **15. SURVIVAL OF REPRESENTATIONS, WARRANTIES, AND COVENANTS**

All representations and warranties of Sellers and Buyers and all covenants of Sellers and Buyers, individually and together, contained in this Agreement shall survive for twelve (12) consecutive months after the Closing Date; provided, however, that a willful breach of any of the representations, warranties and covenants contained in this Agreement shall survive for the applicable statute of limitations.

## **16. MISCELLANEOUS**

**16.1 Further Assurance.** From time to time, at Buyers' request and without further consideration, Sellers shall execute and deliver to Buyers such documents, instruments and consents and take such other action as Buyers may reasonably request in order to consummate more effectively the transactions contemplated hereby, to discharge the covenants of Sellers and to vest in Buyers good, valid and marketable title to the Stations and the Purchased Assets. Buyers shall likewise execute any document reasonably requested by Sellers to effectuate the intent of this Agreement.

**16.2 Disclosures and Announcements.** Both the timing and the content of all disclosure to third parties and public announcements concerning the transactions provided for in this Agreement by either Sellers or Buyers shall be subject to the approval of the other in all essential respects, except that neither party's approval shall be required as to any statements and other information which either party may submit to the FCC, or be required to make pursuant to any rule or regulation of the FCC, or otherwise required by law.

**16.3 Assignment; Parties in Interest.**

(a) Assignment. This Agreement may not be assigned without the written consent of the other party, and which assignment shall provide that Buyers and Buyers' assignee shall remain jointly and severally responsible to perform each and every of Buyers' obligations under this Agreement.

(b) Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Nothing contained herein shall be deemed to confer upon any other person any right or remedy under or by reason of this Agreement.

**16.4 Access After the Applicable Closing Date.** After the Closing Date, Buyers shall make good faith efforts to accommodate any Sellers need to access the books, records, and documents of the Stations pertaining to transactions occurring prior to the applicable Closing Date when requested by Sellers for purposes of tax or litigation issues. Buyers shall retain such books and records for the normal document retention period of Buyers.

**16.5 Law Governing Agreement.** This Agreement shall be construed and interpreted according to the laws of the State of Wisconsin, with consideration given to the rules and policies of the FCC, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

**16.6 Amendment and Modification.** Buyers and Sellers may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

**16.7 Notice.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by electronic mail or facsimile transmission with delivery confirmation; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

If to Sellers:

**Magnum Communications, Inc.**  
**Magnum Radio, Inc.** and  
**David R. Magnum**

David R. Magnum  
P.O. Box 400  
Portage, WI 53901-0400  
Email: [magcom@chorus.net](mailto:magcom@chorus.net)

With a copy to:

John C. Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
200 S. Church Street  
Woodstock, VA 22664

Email: [fccman3@shentel.net](mailto:fccman3@shentel.net)

Anthony T. Lepore, Esq.  
Radiotvlaw Associates, LLC  
4101 Albemarle Street  
Suite 324  
Washington, D.C. 20016  
Email: [anthony@radiotvlaw.net](mailto:anthony@radiotvlaw.net)

If to Buyer: Sage Weil  
Civic Media, Inc.  
3535 University Ave  
Madison WI 53705  
Email: [sage@civicmedia.us](mailto:sage@civicmedia.us)

With a copy to: Kathleen Victory  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209-3801  
Email: [victory@fhhlaw.com](mailto:victory@fhhlaw.com)

Margaret C. Daun  
Email: [mdaun@daunlaw.com](mailto:mdaun@daunlaw.com)

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

**16.8 Entire Agreement.** This instrument embodies the entire agreement between the parties hereto and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the parties with respect to the transactions contemplated herein.

**16.9 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures or signatures delivered in PDF format shall be treated the same as original signatures.

**16.10 Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

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

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

**16.13 Schedules.** The Schedules and Exhibits attached to this Agreement and any other documents delivered to Buyers by Sellers pursuant hereto are hereby made a part of this Agreement as if set forth in full herein.

**16.14 Maintenance of Confidences.** Until after the Closing, Buyers agree to keep confidential all information it receives or has received during the course of the negotiations in connection with the transaction contemplated herein or relating to the business operations of Sellers, provided that Buyers may disclose such information to its professional advisors, agents and any financial institution which it may be dealing with in connection with the proposed financing of the transactions contemplated herein, or as required by law. In the event that the transaction contemplated hereby is not consummated for any reason, Buyers shall promptly return to Sellers all materials acquired by Buyers from Sellers with respect to the Stations and the associated assets and intangibles, and provide to Sellers the names and addresses of any and all persons, firms or other entities who have viewed or received information with respect to the proposed sale of the Stations (together with a meaningful description of the materials viewed or received by each of them).

[SIGNATURE PAGE FOLLOWS]

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

**SELLERS:**

**MAGNUM COMMUNICATIONS, INC.  
MAGNUM RADIO, INC.  
DAVID R. MAGNUM**

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

  
David R. Magnum, personally, and as President of  
Magnum Communications, Inc. and Magnum Radio, Inc.

**BUYERS:**

**CIVIC MEDIA, INC.**

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

  
Sage Weil  
Chief Executive Officer

**WI-RADIO REAL ESTATE RACINE LLC,  
WI-RADIO REAL ESTATE CHIPPEWA FALLS LLC,  
WI-RADIO REAL ESTATE LA CROSSE LLC**

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

  
Sage Weil  
Controlling Member of WI-Radio Real Estate Holdings LLC  
(Sole and Controlling Member of WI-Radio Real Estate  
Racine LLC, WI-Radio Real Estate Chippewa Falls LLC,  
WI-Radio Real Estate La Crosse LLC)