

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of June 13, 2013 (the "Effective Date"), by and among Tidewater TV LLC, a Virginia limited liability company ("Buyer"), and Sky Television, L.L.C. ("Seller"). Buyer and Seller are each referred to herein as a "Party" and collectively as the "Parties."

### **RECITALS:**

WHEREAS, Seller holds licenses and other authorizations from the Federal Communications Commission (the "FCC") for commercial digital television station WSKY-TV, Manteo, North Carolina (FCC Facility ID Number 76324) (the "Station"), and Seller owns, leases, licenses or has the contractual right to all of the other tangible and intangible assets used or useful in connection with the operation of the Station; and

WHEREAS, subject to the terms and conditions set forth herein, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the FCC licenses and other tangible and intangible assets and properties used or useful in the business and operation of the Station,

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

### **SECTION 1: SALE AND PURCHASE**

#### **1.1 Transfer of Station Assets and Assumption of Liabilities.**

(a) Subject to the provisions of this Agreement, Seller agrees to convey, transfer, assign and deliver to Buyer, and Buyer agrees to acquire and accept from Seller, on the Closing Date (as defined in Section 1.3 hereof), free and clear of all liens, deeds of trust, security interests, pledges and encumbrances of any kind or type whatsoever (collectively, "Liens"), other than Permitted Liens (as defined in Section 2.5 hereof), all assets, properties, interests and rights of Seller used or useful in connection with the operation of the Station and any replacements of or additions to such assets made between the Effective Date and the Closing (collectively, the "Station Assets"), but excluding the Excluded Assets (as defined in Section 1.1(b)). The Station Assets shall include, without limitation, the following:

(i) All tangible personal property and physical assets used or useful primarily in connection with the business and operation of the Station, including, without limitation, all towers, antenna, transmitters, transmission lines, auxiliary generators, ancillary equipment, studio equipment, racks, spare parts, maintenance tools, auxiliary broadcast equipment (including both transmit and receive ends), vehicles, vehicle trailers, inventory, fixtures, and other tangible property and equipment, the material items of which are set forth on Schedule 1.1(a)(i) hereto (collectively, the "Tangible Assets");

(ii) All of Seller's right, title and interest in and to the leasehold interests in real property used by the Station in connection with the business and operations of the Station and described in Schedule 1.1(a)(ii), including all easements, licenses, rights to access, and all buildings, towers, fixtures, and other improvements thereon (collectively, the "Real Estate");

(iii) All licenses and other authorizations issued by the FCC (the "Licenses"), as well as other approvals, certificates, permits, antenna structure registrations and other authorizations, including renewals or modifications thereof between the Effective Date and Closing, issued by the FCC, the Federal Aviation Administration, or any other federal, state, or local governmental authorities to Seller used primarily in connection with the conduct of the business and operation of the Station, all as set forth on Schedule 1.1(a)(iii) hereto, and all pending applications before the FCC and any other governmental authority for any renewal or modification of the foregoing;

(iv) All engineering and other books, papers, files, correspondence and records pertaining to the operations of the Station, including the log books, FCC-required local public inspection and political files, and copies of all filings and correspondence with the FCC which are in the possession of Seller; provided, that Seller may retain copies thereof (collectively, the "Books and Records");

(v) The following contracts, commitments, agreements, leases, licenses, understanding and obligations used or held for use in connection with operating the Station (collectively, the "Station Agreements");

(A) All equipment leases, real estate leases (the "Real Estate Leases"), network affiliation agreements, syndication agreements, programming agreements, retransmission consent agreements, and other contracts, the material items of which are identified on Schedule 1.1(a)(v)(A) (certain of which will require the consent of one or more third parties in order for such contracts to be assigned and transferred by Seller to Buyer, with those consents hereinafter referred to as the "Required Consents");

(B) All agreements for the sale of advertising time on the Station for cash, billed at rates consistent with Seller's past practices; and

(C) All agreements for the sale of advertising time on the Station at rates then charged to unaffiliated third parties consistent with Seller's past practices in exchange for merchandise or services (the "Trade Agreements"), all of which are identified on Schedule 1.1(a)(v)(C).

(vi) All of Seller's rights in and to intellectual property used, usable, or useful for the business or operation of the Station (the "Intangible Property"), including without limitation, all internet domain names, websites, the content located and publicly accessible from such domain names and websites, "visitor" email databases, trade secrets, confidential business information, customer and suppliers lists, pricing and cost information, business and marketing plans and proposals, software, trade names, logos, trademarks, service marks, patents,

copyrights, programs, programming materials, slogans, jingles, the call letters "WSKY", including common law rights, and any and all registrations, pending registrations, and applications for registration of any trade name, logo, trademark, or service mark under federal or state law identified on Schedule 1.1(a)(vi);

(vii) All of Seller's rights, claims, causes of action or rights of setoff against third parties relating to the Station Assets, including unliquidated rights under manufacturers' and vendors' warranties ("Third Party Claims"), in each case only to the extent that such access to or invocation of such Third Party Claims are necessary for Buyer's use of the Station Assets or operation of the Station after Closing (and subject to any prorations that may be warranted under Section 1.6 hereof);

(viii) All deposits, reserves and prepaid expenses relating to the Station Assets and prepaid taxes relating to the Station Assets, pro-rated as of Closing;

(ix) All of Seller's rights and interests to the use of the call letters of the Station as call letters or as part of a trade name;

(x) All keys, passcards, and other similar items necessary to access or operate any of the Station Assets;

(xi) All of Seller's cash and barter accounts receivable from the sale of advertising or time on the Station prior to the Closing Date (the "Accounts Receivable"); and

(xii) All of Seller's notes receivable, cash, and cash equivalents, including, but not limited to, tax deposits, marketable securities, money market instruments, unprocessed checks, savings and other deposits and certificates of deposit, on hand or in accounts as of the Closing Date.

(b) There shall, however, be excluded from such conveyance and transfer the following property (the "Excluded Assets"):

(i) Seller's company records, including minutes of meetings of the board of directors, and such other records relating exclusively to Seller's organization or capitalization;

(ii) Any insurance policies and contracts of insurance, and proceeds therefrom, except as provided for in Section 8.4;

(iii) Any assets of any pension, profit sharing, or employee benefit plans, including Seller's interest in any welfare plan, pension plan, or benefit arrangement;

(iv) All tax returns and supporting materials, all original financial statements and supporting materials, all books and records that Seller is required by law to retain, all records of Seller relating to the sale of the Station Assets, and duplicate copies of the books and records necessary to enable Seller to file tax returns and reports;

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

(vi) Other than the Station Agreements, any contract, lease, or agreement;

(vii) all property within the Station Assets disposed of or consumed in the ordinary course of business consistent with the past practices of Seller, and the terms and conditions of this Agreement, between the Effective Date and the Closing Date; and

(viii) any of the rights of Seller under this Agreement and the other agreements, certificates and documents delivered in connection herewith.

(c) Effective as of 12:00:01 am on the Closing Date (the "Effective Time"), Buyer shall assume all of Seller's obligations and liabilities, whether accrued or unaccrued, absolute or contingent, known or unknown, under or with respect to ownership or holding of the Station Assets, including the Licenses and the Station Agreements, to the extent that such liabilities or obligations of Seller (i) are listed on Schedule 1.1(c), *provided, however*, that Seller shall keep the amounts owed to those creditors listed in Schedule 1.1(c) current through the Effective Time and Buyer shall assume up to, and no more than, the outstanding amount listed as owed in Schedule 1.1(c) less negotiated discounts; or (ii) pertain to the period of time commencing on or after the Effective Time, *except for* obligations and liabilities which arise after the Closing Date as a result of a default by Seller under any Station Agreement prior to the Closing Date (collectively, the "Assumed Liabilities"). Except for the Assumed Liabilities, Buyer does not hereby, and shall not have any obligation to, assume responsibility for any liability or obligation of Seller, including, without limitation, any liability and responsibility for severance payments to Seller's former employees, accrued vacation and sick days for Seller's former employees, "COBRA" healthcare continuation coverage required to be offered and provided under Section 4980B of the Code and Sections 601-608 of ERISA to employees and former employees of Seller and any other COBRA qualified beneficiaries under Seller's health plan(s) who have elected or are eligible to elect COBRA continuation coverage as of or prior to the Closing Date or who incur a COBRA qualifying event in connection with the transactions contemplated by this Agreement. For the avoidance of any doubt, except as listed on Schedule 1.1(c), the Assumed Liabilities shall not include any deferred liabilities for programming expenses or otherwise that Seller may have negotiated with program suppliers or other vendors and Seller shall pay any such deferred liabilities at or before Closing. Schedule 1.1(c) shall also include details of any payment plans in place for listed items, including the total amount owed, amount and frequency of payments, beginning date and ending date and current payment status of payment plans. All payments due on payment plans up to and including the Effective Date should be paid as agreed.

**1.2 Purchase Price, Escrow Deposit, and Allocation.** The purchase price for the Station Assets shall be One Million One Hundred Four Thousand Nine Hundred Forty-Four Dollars and Twenty Cents (\$1,104,944.20) cash plus the amount of Assumed Liabilities on Schedule 1.1(c), subject to adjustment as provided in Section 1.6 (the "Purchase Price"), it being

understood and agreed that One Million One Hundred Three Thousand Nine Hundred Forty-Four Dollars and Twenty Cents (\$1,103,944.20) of the Purchase Price shall be used to pay off of that certain loan represented by and described in Third Addendum to 2011 Amendment to Commitment Letter/Loan Agreement dated May 27, 2011, secured by the assets of Seller held by BB&T (the "BB&T Loan"). Payment of the Purchase Price for the Station Assets shall be made as follows:

(a) Simultaneously with the execution of this Agreement, Buyer is delivering to Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. (the "Escrow Agent") the sum of One Thousand Dollars (\$1,000) as a deposit (the "Deposit") to secure Buyer's performance hereunder, and to be held by the Escrow Agent pursuant to the terms of the Escrow Agreement executed on the date hereof by and among Buyer, Seller and the Escrow Agent (the "Escrow Agreement").

(b) On the Closing Date:

(i) Buyer and Seller shall cause the Escrow Agent to cause the Deposit, plus or minus the adjustments made pursuant to Section 1.6, to be delivered to a bank account designated in writing by Seller as payment against the Purchase Price; and

(ii) Buyer shall pay by wire transfer of immediately available funds the outstanding amount of the BB&T Loan to BB&T; *provided* that (A) such payoff amount shall not exceed One Million One Hundred Three Thousand Nine Hundred Forty-Four Dollars and Twenty Cents (\$1,103,944.20), and (B) Seller shall obtain and deliver to Buyer, prior to the Closing Date, a payoff letter from BB&T setting forth the amount of the indebtedness as of the Closing Date.

(c) If the Closing does not occur due to termination by Seller pursuant to Section 1.7(a)(iv), provided Seller has satisfied its obligations hereunder, and provided further, that all conditions precedent to Buyer's obligations to close the transactions contemplated herein have been satisfied (except to the extent the failure to satisfy such conditions precedent was caused by Buyer's material breach of any representation, warranty, covenant or other obligation under this Agreement), the Deposit and earnings thereon shall be delivered to Seller as liquidated damages, and not as a penalty, which shall be the sole remedy of Seller (the Parties recognizing that ascertainment of Seller's damages in that event will be difficult, if not impossible, to quantify and that the Deposit and earnings thereon reflect a reasonable estimation of such damages), and Seller shall have no other recourse against Buyer or any of its affiliates under or on account of this Agreement. In any other case, if the Closing does not occur and this Agreement is terminated, then, pursuant to the Escrow Agreement, the Deposit and earnings thereon shall be delivered to Buyer. All payments by the Escrow Agent shall be made in accordance with the procedures and provisions set forth in the Escrow Agreement.

(d) The Purchase Price shall be allocated among the Station Assets as set forth on Schedule 1.2(d), which schedule shall be finalized to the mutual satisfaction of the Parties no later than sixty (60) days after the Effective Time. The Parties shall report all information regarding the sale and purchase of the Station Assets, and the allocation of the Purchase Price

among the Station Assets, to any taxing authority having jurisdiction over the Parties, or the Station Assets only in accordance with the allocation of the Purchase Price prepared in accordance with this Section, and, if applicable, shall prepare and file Form 8594. In the event that any taxing authority disputes or challenges such allocation of the Purchase Price, the Parties shall immediately notify the other Parties hereto of such dispute or challenge. In the event of such a dispute or challenge, the Party/Parties to such dispute or challenge shall be free to settle such dispute or challenge in its/their sole discretion.

**1.3 Time, Place and Date of Closing.** The consummation of the purchase and sale of the Station Assets as provided for in this Agreement (the "Closing") shall be effectuated by the delivery of documents through emails, overnight courier and facsimile; provided, that if the Parties agree that it shall be effectuated in person, the Closing shall take place on the Closing Date at the offices of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., 1600 Wachovia Capitol Center, Raleigh, North Carolina and shall be effective as of the Effective Time. The "Closing Date" shall occur within fifteen (15) days following the satisfaction or waiver of the condition set forth in Section 5.1(a) or on such other date as shall be agreed to by the Parties, subject to the satisfaction or waiver of the other conditions set forth in Sections 5.1, 5.2, and 5.3.

**1.4 Closing.** At the Closing:

(a) The Parties shall execute and deliver such instruments of conveyance, transfer, and assignment, in form and substance reasonably satisfactory to the Parties and their respective counsel, as shall be sufficient to convey, transfer and assign to Buyer all of Seller's right, title and interest in and to all the Station Assets, in each case free and clear of all Liens (other than Permitted Liens), such instruments to include (to the extent applicable) a bill of sale, an assignment of FCC authorizations, an assignment and assumption agreement, certificates of title, and customary consents and estoppel certificates executed by the landlords of the Real Estate Leases, in each case in form consistent with the terms of this Agreement;

(b) Seller and Buyer shall deliver to the Escrow Agent a joint notice instructing it to release the Deposit in accordance with Section 1.2(b)(i) hereof;

(c) Buyer shall deliver to Seller the Purchase Price less the Deposit and plus or minus the adjustments made pursuant to Section 1.6;

(d) Seller shall deliver such documents as may be necessary to assign and otherwise convey to Buyer all of the Station Assets;

(e) Seller and Buyer shall deliver the certificates and other documents required to be delivered pursuant to this Agreement; and

(f) Seller shall terminate each of Seller's employees at the Station and shall be responsible for all obligations or liabilities relating to Seller's employees, including, but not limited to compensation, severance and accrued vacation and sick days. As of the Closing Date, Buyer may hire any of the Station's employees on such terms and conditions satisfactory to Buyer in its sole and absolute discretion. In accordance with applicable law, Seller shall, upon

Buyer's request, transfer to Buyer that distinct and severable portion of any unemployment insurance account that relates solely to those employees of the Station whom Buyer decides, in the exercise of its discretion, to hire as of the Closing.

**1.5 Covenants to Be Performed After the Closing.** After Closing, each Party shall, from time to time upon another Party's request, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, all such further deeds, assignments, documents, instruments, transfers, conveyances, discharges, releases, assurances and consents, and to take or cause to be taken such further actions, as such other Party may reasonably request to carry out the transaction and the purposes of this Agreement. After the Closing, Seller and Buyer shall allow the other Party reasonable access, upon reasonable notice and during normal business hours, to such of the files and records (including financial records) as relate to the Station Assets or the Station.

**1.6 Proration of Expenses; Adjustments to Purchase Price.**

(a) All income, costs and expenses arising from or attributable to the ownership or use of the Station Assets up to the Effective Time will be prorated between Seller and Buyer so that Seller shall be entitled to all income and responsible for all expenses and costs allocable for the period prior to the Effective Time, and Buyer shall be entitled to all income and responsible for all expenses and costs allocable for the period on and after the Effective Time; however, Buyer has agreed to assume certain liabilities which relate to the period prior to the Effective Time, as listed in Schedule 1.1(c) attached hereto. Items to be apportioned pursuant to this Section 1.6 shall include, without limitation (i) all taxes (other than income taxes arising from the sale of the Station Assets pursuant to this Agreement which shall be Seller's sole responsibility, and taxes arising from the sale and transfer of the Station Assets which shall be paid in accordance with Section 8.1) relating to the Station Assets; (ii) business and license fees including any FCC regulatory fees (and any retroactive adjustments thereof); and (iii) Trade Agreements.

(b) The prorations and adjustments contemplated by this Section 1.6, to the extent practicable, shall be made at the Closing. Not less than three (3) business days prior to the Closing Date, Seller shall submit to Buyer a written estimate of adjustments and prorations to be made in accordance with this Section. Prior to the Closing, the Parties will attempt in good faith to agree on an amount of any adjustments not capable of being ascertained by the Closing Date, which adjustments and prorations shall be made within forty-five (45) days of the Closing Date. In the event of any disputes between the Parties as to such prorations and adjustments, the amounts not in dispute shall nonetheless be paid at the time provided herein, and such disputes shall be determined by an independent certified public accountant or other party mutually acceptable to the Parties whose determination shall be final. The fees and expenses of such accountant or other party shall be paid one-half by Buyer and one-half by Seller.

**1.7 Termination.**

(a) This Agreement may be terminated at any time prior to the consummation of the Closing by:

- (i) the mutual written consent of all of the Parties;
- (ii) either Buyer or Seller, if the Closing does not occur within twelve (12) months from the date the Assignment Application (as defined in Section 4.1) is accepted for filing by the FCC and such acceptance is placed on Public Notice;
- (iii) Buyer, if Seller shall have breached any of its representations, warranties or obligations hereunder and such breach shall not have been cured or waived prior to the earlier of the Closing Date or within thirty (30) days after Buyer has given written notice to Seller of such breach (and, to the extent applicable, the time period set forth in clause (ii) hereof shall be extended accordingly);
- (iv) Seller, if Buyer shall have breached any of its representations, warranties or obligations hereunder which are qualified by a standard of materiality, or if Buyer shall have breached in any material respect any other representation, warranty or obligation hereunder and, in either case, such breach shall not have been cured in all material respects or waived prior to the earlier of the Closing Date and thirty (30) days after Seller has given written notice to Buyer of such breach (except in the case of Buyer's failure to pay the Purchase Price under Section 1.2, which is not subject to any cure period but, in all other cases to the extent applicable, the time period set forth in clause (ii) hereof shall be extended accordingly);
- (v) either Buyer or Seller, if the FCC for any reason designates for hearing of the Assignment Application;
- (vi) Buyer, pursuant to Section 4.2(a); or
- (vii) Buyer, subject to and in accordance with Section 8.4 of this Agreement.

(b) In the event of the termination of this Agreement by a Party pursuant to this Section, written notice thereof shall promptly be given by such terminating Party or Parties to the other Party or Parties and, except as otherwise provided herein, (a) this Agreement shall become null and void and of no further force or effect, (2) the Deposit shall be disbursed in accordance with Section 1.2(c), and (iii) such termination shall relieve each Party from any and all breaches of any obligation such Party has under this Agreement that occurred prior to termination, other than breaches that resulted in or caused the failure of the Closing to occur.

(c) Notwithstanding the provisions of Sections 1.7(a) and (b) above, no Party may terminate this Agreement if such Party (or a Party affiliated with it) is in material default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such Party (or a Party affiliated with it) to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by such Party (or a Party affiliated with it) of incorrect, inaccurate or incomplete information to the FCC; or (iii) by any other action taken by such Party



(or a Party affiliated with it) or such Party's (or a Party affiliated with it) failure to act for the purpose of delaying the FCC's decision or determination respecting the Assignment Application.

## **SECTION 2: REPRESENTATIONS AND WARRANTIES OF SELLER**

In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer that:

**2.1 Organization.** Seller was duly formed and is validly existing and in good standing under the laws of the State of North Carolina.

**2.2 Authority.** Seller has the necessary company power and authority to execute, deliver and perform this Agreement and all other agreements, documents and instruments to be executed and delivered by it pursuant hereto (collectively, the "Seller Agreements") and to own the Station Assets and operate the Station prior to the consummation of the transaction. Seller has taken all necessary company action to authorize their execution, delivery and performance of this Agreement and the Seller Agreements.

**2.3 Binding Effect.** This Agreement constitutes, and upon execution and delivery the other Seller Agreements will constitute, Seller's legal, valid and binding obligations enforceable in accordance with their terms subject to bankruptcy, reorganization and similar laws affecting the rights of creditors generally.

**2.4 No Violation / No Conflict.** Subject to the consents and approvals of the FCC referred to in Section 4.1 and the Required Consents, to Seller's knowledge, neither its execution and delivery of this Agreement and the Seller Agreements, nor their compliance with any of the provisions hereof, nor the consummation of the transaction, will (i) violate any provision of law or any order, judgment or decree of any court or other agency of government, including, without limitation, the FCC, (ii) violate any provision of their articles of organization or operating agreement, or (iii) conflict with or will result in any breach of any term, condition or provision of, or constitute or will constitute (with due notice or lapse of time or both) a default under, or will result in the creation or imposition of any Lien, other than Permitted Liens, upon any of the Station Assets.

### **2.5 Title to Station Assets; Liens; Condition and Sufficiency of Station Assets**

(a) Seller owns or has a valid right to, as applicable, all of the Station Assets free and clear of all Liens, except for Liens for taxes not yet due and payable, Liens that will be removed at or prior to Closing, and the Liens which are identified on Schedule 2.5(a).

(b) To Seller's knowledge, the Tangible Assets are in good operating condition and repair, ordinary wear and tear accepted, taking into account age and normal usage, and are in material compliance with applicable rules and regulations of the FCC. Schedule 1.1(a)(i) contains a list of all material items of Tangible Assets.

(c) Schedule 1.1(a)(vi) contains a description of the material Intangible Property as of the date of this Agreement included in the Station Assets. To the best of Seller's knowledge, Seller's use of the Intangible Property does not infringe upon any third party rights in any material respect and none of the Intangible Property is being infringed by any third party. Seller has not received any written notice that its use of the Intangible Property at the Station is unauthorized or violates or infringes upon the rights of any other party or challenging the ownership, use, validity or enforceability of any Intangible Property.

(d) To Seller's knowledge, the Station Assets are sufficient for the operations of the Station and the Station Assets, including the Excluded Assets, constitute all the assets used or held for use by Seller primarily in the business or operation of the Station.

**2.6 Licenses.** Schedule 1.1(a)(iii) contains a true and complete list of the Licenses and other licenses, permits and governmental authorizations and approvals which are required for the lawful operation of the Station as presently conducted. Seller is the duly authorized holder of the Licenses, all of which are in full force and effect. There are no applications or proposals pending before or approved by the FCC that would change the Station's community of license or result in any other material change to the operations of the Station or the Licenses. The Licenses have been issued for the full terms customarily issued to a broadcast television station in the state of license. Seller is in material compliance with each of the Licenses. There are no investigations, proceedings, or material complaints pending or, to Seller's knowledge, threatened, at the FCC which might adversely affect the business or operations of the Station in any material respect, or might materially impair Seller's ability to assign the Licenses to Buyer or which would materially impede its ability to prosecute the Assignment Application or seek the grant of the FCC Consent, other than proceedings of a general nature affecting or concerning the television industry. Except as listed on Schedule 1.1(c), all reports and fees required to be filed or paid by Seller for the Station with the FCC have been filed and paid and all such reports are materially accurate. Such items as are required to be placed in the Station's local public inspection files have been placed in such file and all proofs of performance and measurements that are required to be made with respect to the Station's transmission facilities have been completed and are on file at the Station. To the best of Seller's knowledge, Seller has operated the Station, its physical facilities, electrical and mechanical systems and transmitting and studio equipment substantially in compliance with the FCC's rules.

**2.7 Employee Relations.** In the conduct of the Station's affairs, Seller has complied in all material respects with all applicable laws and government regulations relating to the employment of labor, including those relating to collective bargaining and other unfair labor practices, wages, hours, discrimination, and the withholding and payment of social security and similar taxes, and Seller is not liable for any arrears or penalties relating thereto which would have a material adverse effect upon the operations of the Station or which could result in liability to Buyer following the Closing. Seller shall be solely responsible for, and hold Buyer harmless from, any and all employment compensation, personnel benefits, accrued benefits and bonuses up to the Effective Time with respect to the operation of the Station. No labor union is certified, or otherwise recognized, as the collective bargaining representative for any of Seller's employees; Seller has no knowledge of any labor strike, union organizing efforts, equal employment opportunity or

discrimination allegation or other employee or labor controversy or dispute pending which could affect Buyer's operation of the Station. Seller has not promised to any employee of the Station that Buyer will be hiring any such employee or otherwise made any offer of employment on behalf of Buyer, and Buyer shall not have any obligation to employ any Station employee. Seller shall be fully responsible for all severance and other obligations owing to any of their employees. Seller has provided to Buyer its applicable state unemployment insurance rate effective on the date of this Agreement.

**2.8 Compliance with Laws; Litigation.** Seller has operated the Station and the Station Assets in compliance with all Licenses and applicable federal, state and local laws, including, without limitation, compliance with the Communications Act of 1934, as amended, the Telecommunications Act of 1996, the Children's Television Act of 1990, and the rules and regulations of the FCC (collectively, the "Communications Act"), except in each case as would not have a material adverse effect upon the financial condition of the Station. Except as listed on Schedule 2.8, there is no judgment outstanding and no litigation or proceeding before any court, administrative agency, arbitrator or mediator of any nature pending or, to Seller's knowledge, threatened which might materially and adversely affect the continued operation or earnings of the Station or materially and adversely affect the enjoyment and use by Buyer of the Station Assets to be purchased hereunder. Should any finding, order, complaint, citation or notice allege that any aspect of the Station's operation violates any rule or regulation of the FCC or any other governmental agency prior to Closing, Seller shall promptly notify Buyer and use reasonable best efforts to remove or correct such violation and be responsible for all costs associated therewith, including payment of any fines that may be assessed.

**2.9 Performance of Station Agreements.** Schedule 1.1(a)(v)(A) is a true, correct, and complete listing of all material Station Agreements, and Seller has delivered to Buyer true, correct and complete copies of all such Station Agreements. Seller has performed all of its obligations pursuant to each of the Station Agreements in all material respects and are not in default or breach of any Station Agreement in any material respect. Seller has not received notice from any party to any Station Agreement that such party contends that Seller is in default or breach under any Station Agreement. Each of the Station Agreements is in full force and effect and, to the knowledge of Seller, there has not been, and is not, any default or breach under any Station Agreement by the other party to any Station Agreement in any material respect. There have been no modifications, extensions, or amendments of any of the material Station Agreements that have not been delivered to Buyer, whether oral or written, except as may be contemplated by this Agreement. Seller has not been notified by any other party to any Station Agreement that such party has a present intent to terminate or not to renew any Station Agreement. None of the Station Agreements has as the other party an entity controlled by any affiliate of Seller.

#### **2.10 Cable and Satellite Matters.**

(a) Schedule 2.10 contains a list, including channel positions, of all cable television systems and satellite carriers (the "market systems") in the Station's Nielsen Designated Market Area (the "DMA"). To Seller's knowledge, the Station is carried by all cable systems and satellite carriers that provide service within the DMA to more than 1,000

subscribers. Seller has timely made must-carry elections or entered into retransmission consent agreements with respect to the market systems. Both DirecTV and Dish Network, each a satellite carrier, provide local-into-local service in the DMA. Except as set forth in Schedule 2.10, (i) no market system has provided written notice to Seller of any signal quality issue or failed to respond to a request for carriage or sought any form of relief from carriage of the Station from the FCC, and (ii) Seller has not received any written notice of any market system's intention to delete the Station from carriage or to change the Station's channel position on such system. Seller has no petition pending before the FCC to extend the Station's market for cable or satellite carriage purposes beyond the DMA. Schedule 2.10 contains a list of cable systems and satellite carriers that, to the knowledge of Seller, carry the Station, including the Station's channel position, where known, on such cable systems or satellite carriers outside the DMA. Except as disclosed on Schedule 2.10, there are no unresolved disputes with cable systems or satellite carriers with respect to the carriage of the Station.

(b) Schedule 1.1(a)(v)(A) or Schedule 2.10 contains a list of all retransmission consent, channel positioning or other agreements with cable systems or satellite carriers with respect to the Station, and Seller has previously furnished Buyer with true and correct copies of all such agreements.

**2.11 Real Estate.** Schedule 1.2(a)(ii) contains a true and correct description of all Real Estate. True and correct copies of all documents evidencing any Lien upon the Real Estate have been delivered to Buyer. The Real Estate Leases are the only real property interests used by the Seller in the operation of the Station. Seller has access to the Real Estate pursuant to valid easements, leasehold rights, or pursuant to public rights of way in all material respects. There are no material impairments or structural defects on the Real Estate, and there are no proceedings (condemnation or otherwise) pending or, to Seller's knowledge, threatened, with respect to the Real Estate, that would materially impair Buyer's full use thereof after Closing. To Seller's knowledge, the Real Estate is zoned for the various purposes for which the buildings, towers, and other improvements located thereon (the "Improvements") are presently being used, or, otherwise, the current use of the Real Estate and Improvements constitute a preexisting nonconforming use in compliance with zoning requirements. To Seller's knowledge, all improvements and all uses thereof are in material compliance with all applicable zoning and land use laws, ordinances and regulations. To Seller's knowledge, all Improvements, including mechanical systems included therein, are in good repair and in good operating condition, ordinary wear and tear excepted, and sufficient for the operation of the business of the Station as currently conducted, and comply in all material respects with all applicable rules and regulations of the FCC, the Federal Aviation Administration, and other federal, state, and local governing jurisdictions, including but not limited to those rules and regulations relating to registration, lighting, painting, fencing, radio frequency emissions, posting of warning signs, and access restriction requirements. To Seller's knowledge, all of the towers, guy anchors, guy wires, cables, driveways, parking lots, ground systems, transmitting equipment, buildings and other Improvements relating to the Station's operations are located entirely on and wholly within the lot limits and metes and bounds of the real property subject to the Real Estate Leases, complies in all material respects with all set back laws and other requirements of any governmental authority with jurisdiction over the Real Estate, complies in all material respects with all license and permit requirements, does not otherwise encroach on any adjoining premises,

and is not subject to any encroachments by any improvements located on any adjoining real property. To Seller's knowledge, all utilities that are necessary for Seller's present use of the Real Estate, including without limitation, electric power, water, sewer, and telephone services, have been connected to the Real Estate and are sufficient for the operation of the Station as presently conducted. There are no parties in possession of any portion of the Real Estate other than Seller, whether as lessees, sublessees, licensees or tenants at will.

**2.12 Environmental Matters.** To the best of Seller's knowledge:

(a) Seller has complied in all material respects with all laws, rules, and regulations of all federal, state, and local governments (and all agencies thereof) concerning the environment, public health and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Seller in connection with Seller's ownership or operation of the Station alleging any failure to comply with any such law, rule, or regulation.

(b) The Real Estate is in material compliance with all, and is not in material violation of any, applicable federal, state or local statute, ordinance, code, order, requirements, law, rule or regulation relating to environmental, occupational health or safety, building, zoning and other matters. Without limiting the generality of the foregoing, neither Seller nor, to its knowledge, any of its past or present officers, employees and agents have generated, stored, disposed of and released hazardous waste, hazardous substances and/or oil on the Real Estate in material violation of any statutes, ordinances, codes, orders, requirements, laws, rules or regulations relating to environmental matters, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Clean Water Act 33 U.S.C. §§ 1251 et seq., and the Occupational Safety and Health Act, 29 U.S.C. §§ 665 et seq., as such statutes may be amended (collectively, the "Environmental Laws"). There has been no generation, storage, disposal or release of any such hazardous waste, hazardous substances and/or oil on the Real Estate by any other person or entity since Seller acquired the Real Estate that would violate any of the Environmental Laws in any material respect. There has been no generation, storage, disposal or release of any hazardous waste, hazardous substances and/or oil on the Real Estate by any prior owner or lessee of the Real Estate. For the purposes of this Section, "hazardous waste" and "hazardous substance" shall have the meanings set forth in the Environmental Laws. "Oil" shall be defined as petroleum, or any petroleum products, in any form. The Real Estate has not been used by Seller at any time in such a manner as to cause a material violation of or to give rise to a removal or restoration obligation under any statute, ordinance, order, decree or under the law of any state, federal, municipal or other governmental body or agency having jurisdiction over the Real Estate, including, without limitation, the Environmental Laws or any similar law, rule, regulation, order, judgment or decree; nor has any such violation or obligation been created by the removal of any hazardous waste, hazardous substance and/or oil from the Real Estate by Seller or by the disposition of such removed hazardous waste, hazardous substance and/or oil by Seller.

**2.13 Insolvency; Payment of Taxes.** No insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Station Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings. All federal, state, county and local tax returns required to be filed by Seller, if any, with respect to the Station or the Station Assets have been duly and timely filed (after taking into account any extensions therefor). Except as listed on Schedule 1.1(c), Seller has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by it with respect to the Station or the Station Assets. Seller has paid all installments of estimated tax due with respect to the Station or the Station Assets for periods prior to the Effective Date. Except as listed on Schedule 1.1(c), any applicable taxes upon the Station or the Station Assets, including property, sales or use taxes or any other tax however designated arising from the subject matter of this Agreement and applicable to any events or time periods prior to the Closing, shall be the responsibility of Seller.

**2.14 Insurance.** All of the Station Assets which are of an insurable character are insured by reputable insurance companies against loss or damage by fire and other risks to the extent and in the manner customary for properties and assets of that nature.

**2.15 No Undisclosed Liabilities.** There are no liabilities or obligations of Seller that will be binding upon Buyer after the Effective Time other than the Assumed Liabilities.

**2.16 Broker.** No broker is entitled to a brokerage fee, commission or other payment due from Buyer in connection with the transactions contemplated by this Agreement.

### **SECTION 3: REPRESENTATIONS AND WARRANTIES OF BUYER**

In order to induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that:

**3.1 Organization.** Buyer was duly organized and is validly existing and in good standing under the laws of the Commonwealth of Virginia.

**3.2 Authority.** Buyer has the necessary company power and authority to execute, deliver and perform this Agreement and all other agreements, documents and instruments to be executed and delivered by it pursuant hereto (collectively, the "Buyer Agreements") and to own the Station Assets and operate the Station after the consummation of the Transactions. Buyer has taken all necessary company action to authorize the execution, delivery and performance by it of this Agreement and the Buyer Agreements.

**3.3 Binding Effect.** This Agreement constitutes, and upon execution and delivery the other Buyer Agreements will constitute, its legal, valid, and binding obligations enforceable in accordance with their terms subject to bankruptcy, reorganization and similar laws affecting the rights of creditors generally.

**3.4 No Violation / No Conflict.** Subject to the consents and approvals of the FCC referred to in Section 4.1 and the Required Consents, to Buyer's knowledge, neither the execution and delivery by it of this Agreement and the Buyer Agreements, nor compliance by it with any of the provisions hereof, nor the consummation of the Transaction will (i) violate any provision of law or any order, judgment or decree of any court or other agency of government, including, without limitation, the FCC, (ii) violate any provision of its articles of organization or operating agreement, or (iii) conflict with or will result in any breach of any term, condition or provision of, or constitute or will constitute (with due notice or lapse of time or both) a default under, any agreement or instrument to which it is a party.

**3.5 Buyer Qualifications.** Buyer is qualified under the Communications Act and the rules and policies of the FCC to be a licensee of the Station and, the assignee of the Licenses without any waiver thereof, and the owner and/or operator of the Station or the Station Assets, and Buyer will not take, or unreasonably fail to take, any action which would cause such non-qualification.

#### **SECTION 4: CERTAIN MATTERS PENDING THE CLOSING**

The Parties covenant and agree that from the Effective Date until the Closing Date:

**4.1 FCC Approval.** Promptly upon the execution of this Agreement, and upon obtaining a commitment for financing acceptable to Buyer, Buyer and Seller shall each prepare for filing with the FCC their respective portions of the application for FCC consent to the assignment of the Licenses to Buyer (the "Assignment Application"), which shall be filed within ten (10) business days after the Effective Date. The Parties shall diligently prosecute the Assignment Application and use all reasonable efforts to obtain the FCC's consent and grant of the Assignment Application (the "FCC Consent") as expeditiously as practicable; provided, however, that no Party hereto shall be required to take any action which such Party reasonably determines would have a material adverse effect upon such Party. No Party shall intentionally take or omit to take any action that will cause the FCC to deny, delay, or fail to approve the Assignment Application or cause the FCC Consent not to become Final Action; provided, however, that no Party hereto will be required to take any action which such Party reasonably determines would have a material adverse effect upon such Party. A "Final Action" shall mean an order of the FCC with respect to which no appeal, no petition for re-hearing, reconsideration, or stay, and no other administrative or judicial action contesting such consent or approval, is pending and as to which the time for filing any such appeal, petition or other action has expired or, if filed, has been denied, dismissed, or withdrawn and the time for instituting any further legal proceeding has expired under the Communications Act and FCC rules. Without limiting the foregoing, to the extent the FCC's Enforcement Bureau has placed an assignment hold (an "Enforcement Hold") on the Station due to a pending complaint, investigation, or otherwise (a "Pending Complaint"), Seller shall use commercially reasonable efforts to have such Enforcement Hold removed at the earliest practicable date to facilitate a grant of the Assignment Application, including, if necessary, entering into an escrow agreement with the FCC or other agreements required by the FCC. Buyer shall have no obligation to assume any liability with respect to a Pending Complaint and shall otherwise not be required to enter into any agreement with the FCC relating to the Enforcement Hold or a Pending Complaint.

## **4.2 Access and Confidentiality.**

(a) At any time prior to the Closing, Buyer shall have the right, itself or through its counsel, accountants, engineers, lender(s), and other authorized representatives (collectively, "Buyer's Representatives"), during normal business hours and after reasonable written notice, to inspect the Station Assets, including the Tangible Assets, the Station Agreements, the Real Estate, and to inspect and make abstracts and reproductions of the Books and Records and the Station applications and reports to the FCC ("Seller's Information"), and Seller shall furnish Buyer with such information respecting the Station Assets as Buyer may, from time to time, reasonably request. Without limiting the foregoing, Buyer may conduct surveys and environmental assessments (collectively, "Assessments") of the Real Estate; provided that (i) Buyer shall initiate such Assessments within thirty (30) days of the Effective Date, and Buyer's failure to initiate such Assessments within that time period shall constitute a waiver of Buyer's right to conduct such Assessments, and (ii) such Assessments are conducted at reasonable times without interfering with Seller's operation of the Station. Buyer shall give Seller prompt notice (along with a copy of any report or survey) if its Assessments disclose a material defect that must be remedied in order to satisfy the conditions to Buyer's obligation to Close in Section 5.2. Seller shall then have the option to remedy such material defect(s), and the Closing Date shall be extended, if necessary, to allow Seller to do so. In the event (i) Seller elects not to remedy the material defect(s), Seller shall so advise Buyer within five (5) business days of receiving Buyer's notice (along with a copy of any report or survey) or (ii) Seller does not remedy the material defect(s) within sixty (60) days of receiving Buyer's notice, then Buyer may elect to proceed to Closing without any remedy of the material defect(s) or terminate this Agreement, in which case no Party will have any liability to any other Party, and Buyer shall be entitled to the immediate return of the Deposit plus all interest accrued thereon.

(b) Buyer, and any other person to whom Seller delivers the Seller's Information at Buyer request, shall keep confidential any and all the Seller's Information and shall not deliver all or any portion thereof, or permit access to all or any portion thereof, to any third party without the prior written consent of Seller, except to the extent that the Seller's Information has previously been made public by a person or entity other than the Buyer or any of Buyer's Representatives or as otherwise required by law. In the event that the Closing does not occur, Buyer shall either destroy or return to Seller, all of Seller's Information and any material that contains all or any part of the Seller's Information. Buyer shall not use the Seller's Information for any purpose other than for evaluation of the transaction contemplated hereby.

**4.3 Conduct of Business of the Station Pending Closing.** Except for those changes or actions expressly implemented by mutual consent of the Parties, and for those changes or actions which are in the usual and ordinary course of operating the Station, Seller shall, to the extent permitted by the Communications Act and FCC rules and policies:

(a) refrain from making any sale, lease, transfer or other disposition of any of the Station Assets;

(b) refrain from modifying, amending, altering or terminating, any other material right relating to or included in the Station Assets (including the Station Agreements);



(c) maintain insurance on the Tangible Assets against loss or damage by fire and all other hazards and risks in an amount consistent with ordinary business practices;

(d) maintain the Station Assets in accordance with past practices, ordinary wear and tear excepted;

(e) refrain from changing its governing documents in any way which would adversely affect its power or authority to enter into and perform this Agreement or which would otherwise adversely affect its performance of this Agreement;

(f) operate the Station in accordance with the Licenses and in material compliance with all laws, rules and regulations applicable to the Station, including the rules and regulations of the FCC;

(g) refrain from subjecting any of the Station Assets to any new Lien;

(h) provide to Buyer, concurrently with filing thereof, copies of all reports to and other filings with the FCC relating to the Station ;

(i) provide to Buyer, promptly upon receipt thereof by Seller, a copy of (i) any notice from the FCC or any other governmental authority of the revocation, suspension or limitation of the rights under, or of any proceeding for the revocation, suspension or limitation of the rights under (or that such authority may in the future, as the result of failure to comply with laws or regulations or for any other reason, revoke, suspend or limit the rights under) any License, and (ii) all protests, complaints, challenges or other documents filed with the FCC by third parties concerning the Station and, promptly upon the filing or making thereof, copies of Seller's responses to such filings;

(j) notify Buyer in writing immediately upon learning of the institution or written threat of any action against Seller involving the Station in any court, or any action against Seller involving the Station before the FCC or any other governmental agency, and notify Buyer in writing promptly upon receipt of any administrative or court order relating to the Station Assets or the Station;

(k) refrain from filing any application for any construction permit or modification of any License or otherwise changing any of the Station's facilities;

(l) use commercially reasonable efforts to maintain the Licenses in full force and effect; and

(m) timely make must-carry/retransmission elections with respect to cable systems and satellite carriers; provided, that Seller shall not elect must-carry (by default or otherwise) or enter into a retransmission consent agreement without Buyer's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

**4.4 Notice of Commencement of Proceedings or Change in Condition.** Each Party shall notify the other in writing immediately upon obtaining knowledge of the occurrence of any of the following events, stating in detail the nature thereof: (a) any proceedings instituted against such Party by or in any federal or state court or before any commission, board or other regulatory body, federal, state or local, which, if adversely determined, would have a material adverse effect upon such Party's ability to perform any of its obligations under this Agreement, and (b) any material adverse change in the condition, financial or otherwise, of such Party or the collective assets of such Party to be transferred hereunder.

**4.5 No Inconsistent Act.** No Party shall (a) knowingly take any action which is materially inconsistent with its respective obligations hereunder, or which would reasonably be expected to materially hinder or delay the consummation of the transactions contemplated by this Agreement, except as specifically required or permitted herein, or (b) knowingly take or fail to take any action which would render any of its representations and warranties set forth hereunder no longer accurate; provided, however, that no Party hereto shall be required to take any action before the FCC which such Party reasonably determines would have a material adverse effect on such Party.

**4.6 Cooperation; Satisfaction of Conditions.** The Parties will cooperate in all respects in connection with and use commercially reasonable efforts to cause all of the conditions set forth in Sections 5.1, 5.2, and 5.3 to be fulfilled (but not waived).

**4.7 Public Announcement.** Seller, at its own expense, shall publish and broadcast (if applicable) public notices concerning the filing of the applicable Assignment Application in accordance with the requirements of Section 73.3580 of the FCC's rules. As to any other announcements prior to Closing, no Party shall issue any press release or public announcement or otherwise divulge the existence of this Agreement or the transactions contemplated hereby without prior written approval of the other Party (which shall not be unreasonably withheld or delayed) except as and to the extent that a Party shall be obligated by law, in which case the other Party shall be so advised and the Parties shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued.

**4.8 Consents.** Prior to the Closing, Seller shall proceed with all reasonable diligence and shall use commercially reasonable efforts to obtain all Required Consents. If requested by Seller, Buyer shall execute and deliver to the applicable third party and/or either Seller an assumption agreement with respect to Seller's obligations and liabilities under each Station Agreement to commence as of the Effective Time, which assumption agreement may also contain a release of Seller by the applicable third party to such Station Agreement.

**4.9 Construction and Updating of Schedules.** Any information disclosed by a Party in this Agreement or pursuant to any one or more of the Schedules hereto shall be deemed to be disclosed to the other Party for all purposes of this Agreement and the Schedules. Prior to the Closing, a Party may update and modify the Schedules hereto as necessary to cause the information contained therein to be accurate and complete, including, for example, to reflect changes in the relevant assets; provided, that such revised Schedules shall not be considered in determining whether the condition in Section 5.2(a) or 5.3(a) have been satisfied.

## SECTION 5: CONDITIONS TO CLOSING

**5.1 Mutual Conditions.** The obligations of the Parties to consummate the transactions contemplated at Closing is subject to satisfaction at the time of the Closing of each of the following conditions precedent, any of which the Parties may waive in their discretion:

(a) The FCC shall have issued the FCC Consent and any condition to the effectiveness of such FCC Consent which is specified therein shall have been met and the same shall have become Final Action.

(b) No action or proceeding shall have been instituted or threatened against a Party or any of its respective affiliates before any court or governmental agency or commission or any board of arbitration seeking to restrain or prohibit, or to obtain substantial damages against such Party or its respective affiliates in respect of, this Agreement or the consummation of the transaction contemplated hereby.

**5.2 Conditions to Obligations of Buyer.** Buyer's obligation to consummate the transactions contemplated at Closing is subject to satisfaction at the time of the Closing of each of the following conditions precedent, any of which may be waived by Buyer as to itself only:

(a) Each of Seller's representations and warranties contained in Section 2 of this Agreement shall be true and correct in all material respects, except that those which are qualified by a standard of materiality shall be true and correct in all respects, on the Closing Date as though made on and as of the Closing Date, except to the extent they are made as of another date, in which case they shall be true and correct in all material respects (or in all respects if qualified by a standard of materiality) as of such other date; and Seller shall have performed in all material respects all of its covenants and obligations hereunder which by the terms hereof are to be performed on or before the Closing Date.

(b) Seller shall have delivered to Buyer a certificate of an officer of Seller, dated as of the Closing Date, certifying as to the matters set forth in the foregoing paragraph (a) of this Section.

(c) Seller shall have delivered to Buyer a certificate dated as of the Closing Date, executed by an officer or manager thereof, certifying (i) that the resolutions, as attached to such certificate, authorizing and approving the execution and delivery of the Seller Agreements and the consummation of the transactions contemplated hereby, were duly adopted by the Board of Directors of Seller; (ii) that such resolutions have not been amended and remain in full force and effect; and (iii) as to the incumbency of each signatory of the Seller Agreements.

(d) Seller shall have obtained and delivered to Buyer the Required Consents.

(e) With respect to all Real Estate Leases, and whether or not required by the terms of such leases, Seller shall have obtained and delivered to Buyer customary estoppel certificates from each landlord consenting to the assignment of each Real Estate Lease to Buyer and certifying, among other customary certifications, that the lease is in full force and effect and

that there is no default in the payment of rent or any other amounts payable to the landlord under the lease.

(f) Buyer shall have obtained, at Buyer's expense, a commitment for a leasehold policy for the Real Estate, free and clear of all Liens except for Permitted Liens and the title company's standard printed exceptions.

(h) Buyer shall have obtained, at its cost, a report dated no earlier than fifteen (15) days prior to Closing, prepared by a firm reasonably acceptable to Seller, showing the results of searches in the recording offices of all applicable jurisdictions in which any Station Assets are situated and in the office of the Secretary of State or other appropriate governmental entity of such jurisdiction demonstrating that the Station Assets are free of Liens (other than Permitted Liens).

(i) There shall not have been any material adverse change to any of the Station Assets or the Station's business, in each case taken as a whole, since the Effective Date except for changes or effects resulting from (i) general economic, political, or social conditions or (ii) circumstances that are not likely to recur and have been substantially remedied without material cost or delay.

**5.3 Conditions to Obligations of Seller.** Seller's obligation to consummate the transactions contemplated at Closing is subject to satisfaction at the time of the Closing of each of the following conditions precedent, any of which may be waived by Seller as to itself only:

(a) Each of Buyer's representations and warranties contained in Section 3 of this Agreement shall be true and correct in all material respects, except that those which are qualified by a standard of materiality shall be true and correct in all respects, on the Closing Date as though made on and as of the Closing Date, except to the extent they are made as of another date, in which case they shall be true and correct in all material respects (or in all respects if qualified by a standard of materiality) as of such other date; and Buyer shall have performed in all material respects all of its covenants and obligations hereunder which by the terms hereof are to be performed on or before the Closing Date.

(b) Buyer shall have delivered to Seller a certificate of an officer of Buyer, dated as of the Closing Date, certifying as to the matters set forth in the foregoing paragraph (a) of this Section.

(c) Buyer shall have delivered to Seller a certificate dated as of the Closing Date, executed by an officer or manager thereof, certifying (i) that the resolutions, as attached to such certificate, authorizing and approving the execution and delivery of the Buyer Agreements to which it is a party and the consummation of the transactions contemplated hereby, were duly adopted by the Board of Directors/Managers of Buyer; (ii) that such resolutions have not been amended and remain in full force and effect; and (iii) as to the incumbency of each signatory of the Buyer Agreements.

(d) Buyer shall have tendered the Purchase Price pursuant to Section 1.2.

## **SECTION 6: SURVIVAL**

**6.1 Period for Bringing Claim for Breach of Certain Covenants and of Representations and Warranties.** Any right of indemnification for a breach of one or more covenants to be performed on or prior to the Closing or of one or more representations and warranties in this Agreement shall expire on the date that is eighteen (18) months following the Closing Date (the "Expiration Date"), after which no Party may seek indemnification, bring an action or present a claim for breach of any such representation, warranty or covenant; provided, that if the Party claiming breach has notified the alleged breaching Party of such breach prior to such Expiration Date, the Party claiming breach may continue to pursue its indemnification claim.

## **SECTION 7: INDEMNIFICATION**

### **7.1 Indemnification.**

(a) Following the Closing, Seller shall indemnify, defend, and hold Buyer and its affiliates and their respective employees, officers, members, managers, attorneys, and agents, harmless against all claims, demands and legal actions and will reimburse such parties for any losses or damages, including reasonable legal fees and costs incurred with respect to same, (collectively, "Damages") resulting from, or arising out of (i) subject to Section 6.1, the breach by Seller of any of its representations, warranties or covenants set forth herein or in any of the Seller Agreements; (ii) any and all liabilities and obligations of Seller other than the Assumed Liabilities; or (iii) the business or operation of the Station before the Effective Time.

(b) Following the Closing, Buyer shall indemnify, defend, and hold Seller and its affiliates and their respective employees, officers, members, managers, and agents, harmless against all Damages resulting from, or arising out of (i) subject to Section 6.1, the breach by Buyer of any of its representations, warranties or covenants set forth herein or in any of the Buyer Agreements to which it is a party; (ii) the Assumed Liabilities; or (iii) the business or operation of the Station after the Effective Time.

### **7.2 Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties or incurrence of Damages by the indemnified party that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 6.1 if applicable.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may

undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's prior written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim; and (iii) in the event that the indemnifying party undertakes the defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim.

**7.3 Limitation on Indemnification Obligations.** Claims for which indemnification may be obtained under Section 7.1 shall be limited to the extent of the actual Damages suffered by the indemnified parties. No indemnified party shall be entitled to recover from an indemnifying party any special, consequential, incidental, indirect or punitive damages, including for lost profits, business interruption or other similar items, nor shall any damages be calculated using a "multiplier" or any other method having a similar effect, except to the extent that a third party has claimed such damages against such indemnified party.

**7.4 Indemnification is Exclusive Remedy Following Closing.** Following the Closing, (a) a claim for indemnification pursuant to Section 7.1(a) or 7.1(b) shall be the sole and exclusive remedy which a Party shall have against another Party under or with respect to this Agreement, the Buyer Agreements, the Seller Agreements and the transaction contemplated hereby, whether for breach or misrepresentation of any representation, warranty, covenant, obligation, agreement or condition or otherwise; (b) any and all other rights and remedies at law or in equity are hereby waived by each Party; and (c) the only legal action that may be asserted by any Party with respect to any matter that is the subject of this Agreement shall be a breach of contract action to enforce or recover damages for breach of this Section; provided, however, that a Party shall have the right to seek equitable relief as may be required to enforce the covenants set forth in Sections 1.2(d), 1.5, 1.6, 4.2, 7, and 8.4; provided further, however, that this Section 7.4 shall not apply to any agreement between or among the Parties that is not delivered at the Closing, such that a Party to such agreement shall have all rights and remedies otherwise available to it under such agreement and at law.

## SECTION 8: MISCELLANEOUS

### 8.1 Fees and Expenses.

(a) All governmental fees imposed on the assignment or transfer any Station Assets, including recordation, sales, "bulk sales," transfer and documentary taxes and fees, shall be borne one-half by Buyer and one-half by Seller. The FCC filing fees for the Assignment Application shall be borne one-half by Buyer and one-half by Seller.

(b) Each of the Parties shall bear its own expenses in connection with the negotiation of this Agreement and the consummation of the Transaction, including the Buyer Agreements and Seller Agreements.

**8.2 Law Governing.** This Agreement shall be construed under and governed by the laws of the Commonwealth of Virginia without regard to conflict of laws provisions.

**8.3 Notice.** Any notice or other communication required or permitted pursuant to this Agreement, or any agreement or instrument delivered pursuant hereto, shall be effective if, and only if, delivered personally, sent by facsimile transmission confirmed by the recipient (but not by automatic confirmation), sent by e-mail transmission confirmed by the recipient (but not by automatic confirmation), or sent by reputable overnight courier, such as "FedEx." A notice delivered personally shall be deemed given when delivered; a notice delivered via facsimile shall be deemed given upon confirmation of receipt by the recipient (but not by automatic confirmation); a notice delivered via e-mail shall be deemed given upon confirmation of receipt by the recipient (but not by automatic confirmation); and a notice delivered via overnight courier shall be deemed given the day after delivery to the overnight courier. If a notice is delivered by more than one of the foregoing methods, the notice shall be deemed given on the earliest date of the methods used. All such notices shall be effective only if delivered to the following (as the same be changed in accordance with this section):

If to Buyer:

Tidewater TV LLC  
220 Salters Creek Road  
Hampton, VA 23661  
Attn: David A. Hanna  
Facsimile: (757) 726-0136  
Email: dhanna@lockwoodbroadcast.com

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

Mark J. Prak  
Elizabeth Spainhour  
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.  
P.O. Box 1800 (ZIP 27602)  
150 Fayetteville Street

Suite 1600, Wells Fargo Capitol Center  
Raleigh, NC 27601  
Facsimile: (919) 839-0304  
E-Mail: mprak@brookspierce.com  
espainhour@brookspierce.com

If to Seller:

Sky Television, L.L.C.  
Attention: Ed Marlowe, General Manager  
920 Corporate Lane  
Chesapeake, VA 23320  
Facsimile: (757) 389-5215  
E-mail: edward@wsky4.com

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

David W. Woodard, Jr.  
Connor, Bunn, Rogerson & Woodard, PLLC  
Post Office Drawer 3299  
Wilson, NC 27895-3299  
Facsimile: (757) 243-8293  
E-mail: [dww@cbrw.net](mailto:dww@cbrw.net)

#### 8.4 Risk of Loss.

(a) The risk of loss or **damage** to the Station Assets by force majeure or for any other reason between the Effective Date and the Closing Date shall be borne by Seller. Seller shall take all commercially reasonable steps to repair, replace and restore such asset as soon as possible after any loss or damage, it being understood that all insurance proceeds shall be applied to or reserved for such replacement, restoration, or repair.

(b) In the case of any damage or destruction to the Station Assets, or if the Station has ceased broadcasting or been broadcasting at a reduced power level for more than forty-eight (48) hours, if full repair, replacement or restoration to or of all material Station Assets or restoration of the Station's broadcast service has not been made or achieved on or before the Closing Date, then Buyer may at its sole option (i) consummate the transactions contemplated at Closing, in which event Seller shall assign to Buyer all of Seller's rights under any applicable insurance policies and pay to Buyer the deductible under such insurance policies, or (ii) postpone the Closing for up to 90 days, at the conclusion of which period of postponement Buyer may terminate this Agreement if the Station has not been restored to its normal power level or if there has not been a full repair, replacement or restoration of the damaged Station Asset(s) (with the understanding that Buyer shall be obligated to provide such notice within five (5) days after expiration of such 90-day period, and Buyer's failure to provide such notice timely shall constitute a waiver of Buyer's right to terminate this Agreement). Any termination of this Agreement under this Section shall be without either party having any liability to the other.



**8.5 Construction.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. References to Sections shall be deemed references to Sections of this Agreement unless otherwise expressly indicated.

**8.6 Assignment; Binding Effect.** This Agreement shall not be assignable by any Party without the prior written consent of the other Parties, which shall not be unreasonably withheld or delayed; provided, however, that a Party may assign, without the consent of the other Parties, such Party's rights and obligations hereunder to one or more persons or entities controlling, controlled by or under common control with such Party, so long as such Party remains liable hereunder in addition to such assignee and such assignment shall not delay or adversely affect obtaining the FCC Consent. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their successors and permitted assigns.

**8.7 Amendment; Waiver.** This Agreement may be amended or modified only by a written instrument signed by all Parties. No provisions of this Agreement may be waived except by an instrument in writing signed by the Party sought to be bound, which waiver shall specify the provision being waived. No failure or delay by any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, and a waiver of a particular right or remedy on one occasion shall not be deemed a waiver of any other right or remedy or a waiver on any subsequent occasion.

**8.8 Entire Agreement.** This Agreement (including the Schedules hereto), the Buyer Agreements and the Seller Agreements constitute the entire understanding among the Parties relating to the subject matter hereof or thereof, and supersede all prior agreements and undertakings, both written and oral, between or among the Parties with respect to the subject matter hereof except as otherwise expressly provided herein or therein. No promises, covenants or representations of any character or nature other than those expressly stated herein have been made to induce a Party to enter into this Agreement. This Agreement, including this provision against oral modifications, may be modified only by a document executed by the Parties.

**8.9 Severability.** If any term or provision of this Agreement or the application thereof to any circumstance shall, to any extent, be invalid or unenforceable by any court or governmental authority of competent jurisdiction, the remainder of this Agreement or the application to other persons and circumstances shall not be affected thereby and each term and provision hereof shall be enforced to the fullest extent permitted by law.

**8.10 Counterparts.** This Agreement may be executed in multiple counterparts (including by means of facsimile or electronic mail), with the same force and effect as if all the signatures thereto appeared on the same instrument.

**8.11 Bulk Transfer.** The Parties hereby waive compliance with the Bulk Transfer provisions of the Uniform Commercial Code and all similar laws. Each Party transferring assets hereunder shall indemnify and hold harmless the Party receiving such assets from and against any and all liabilities which may be asserted against the receiving Party as a result of noncompliance with any such Bulk Transfer provisions.

**8.12 No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, this Agreement is for the sole benefit of the Parties hereto and their permitted assigns (after any permitted assignment) and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*[The Next Page is the Signature Page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers, as of the day and year first above written.

**TIDEWATER TV LLC**


By: \_\_\_\_\_  
Name: David A. Hanna  
Title: President

**SKY TELEVISION, L.L.C.**

By: William T. Lamm, III  
Name: William T. Lamm, III  
Title: President

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers, as of the day and year first above written.

**TIDEWATER TV LLC**

By:   
Name: David A. Hanna  
Title: President

**SKY TELEVISION, L.L.C.**

By: \_\_\_\_\_  
Name: William T. Lamm, III  
Title: President