

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") made as of July 1st, 2019, is entered into by and among BDJ Radio Enterprises, LLC, a Missouri limited liability company ("**BDJ**"), 920 AM, LLC, a Missouri limited liability company ("**920 AM**"), 104 License, LLC, a Missouri limited liability company ("**104 License**"), 106 License, LLC, a Missouri limited liability company ("**106 License**"), Radio Property Ventures, LLC, a Missouri limited liability company ("**RPV**"), and What's wGNU, LLC, a Missouri limited liability company ("**WhatswGNU**") (BDJ, 920 AM, 104 License, 106 License, RPV and WhatswGNU may be collectively referred to as "**Sellers**") and Berry Broadcasting, LLC ("**Buyer**").

Recitals

BDJ holds licenses and other authorizations issued by the Federal Communications Commission (the "**FCC**") for AM radio station KXEN, St. Louis, Missouri (Facility ID No. 54739) ("**KXEN**") and a construction permit for FM translator K264CY St. Louis, Missouri (Facility ID No. 202918) ("**K264CY**").

920 AM, an affiliate of BDJ, holds licenses and other authorizations issued by the FCC for radio station WGNU, St. Louis, Missouri (Facility ID No. 49042) ("**WGNU**").

104 License and 106 License, each an affiliate of BDJ and 920 AM, hold FCC-issued licenses and related assets used in the operation of FM translator stations: 104 License is the licensee of FM translator station K283CI St. Louis, Missouri (Facility ID No: 140630) ("**K283CI**"), which rebroadcasts KXEN. 106 License is the licensee of FM translator station K295CQ, St. Louis, Missouri (Facility ID No: 142045) ("**K295CQ**"), which rebroadcasts WGNU. (K295CQ and K283CI, together, are hereafter referred to as the "**Translator Stations**").

RPV and WhatswGNU, each an affiliate of BDJ and 920 AM, own assets that are used in the operation of KXEN and WGNU.

Sellers desire to sell, transfer, and assign to Buyer, and Buyer desires to purchase, acquire, and assume from Sellers, the licenses and other authorizations issued by the FCC for KXEN, WGNU, K264CY and the Translator Stations (collectively, the "**Stations**"), along with certain assets used in the operation of the Stations, for the price on the terms and conditions set forth in this Agreement, subject to prior consent of the FCC.

Prior to the consummation of the transactions contemplated in the preceding paragraph, Sellers wish to make available to Buyer, and Buyer wishes to use, airtime on KXEN and/or WGNU for programming that Buyer will supply, on the terms and conditions set forth below.

Agreement

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: PURCHASE OF ASSETS

1.1. Stations Assets. On the terms and subject to the conditions hereof, at Closing (defined below), Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Sellers, all right, title and interest of Sellers in and to the following assets and personal properties of Sellers, tangible and intangible, that are primarily used in the operation of the Stations (other than the Excluded Assets, defined below) **(the "Station Assets")**:

- (a) All transferable FCC licenses, permits, authorizations, and applications with respect to the Stations **("the FCC Licenses")** described on **Schedule 1.1(a)**; including any renewals or modifications thereof between the date hereof and Closing;
- (b) All equipment, transmitters, antennas and other tangible physical assets or personal property used in the operation of the Stations, including, without limitation the personal property shown on the First Set of Photographs (as defined in **Schedule 1.1(b)**) taken by Buyer and Sellers under the procedures described in **Schedule 1.1(b)**, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business in accordance with Section 4(c) hereof **(the "Tangible Personal Property")**;
- (c) To the extent assignable, that certain Lease Agreement between RPV, as lessee, and Sinclair Communications, LLC, as lessor, dated January 9, 2012, and amended by that First Amendment dated March 10, 2016, and Second Amendment, dated February 1, 2017 (the "KDNL Tower Lease") relating to the use of the broadcast tower located at 1215 Cole Street, St. Louis, Missouri, for the transmitting facilities of the Translators and the KXEN night-time operation (a copy of which is attached as **Schedule 1.1 (c)**);
- (d) All equipment, transmitters, antennas and other tangible physical assets or personal property owned by Sellers and used at 1215 Cole Street, St. Louis, Missouri, for the transmitting facilities of the Translators and the KXEN night-time operation;
- (e) Seller's rights to use and, to the extent owned by Sellers, ownership of current trademarks, jingles, slogans, and all rights in and to the Stations' call letters and all other rights in and to the trademarks, trade names, service marks, copyrights, domain names, websites, web content, computer software, programs and programming material, jingles, slogans, logos, client lists, client sales records, archives and any other intangible property, and in each case exclusively used in operation of the Stations and identified by, although not limited to, **Schedule 1.1(e)**, **(the "Intangible Property")** and
- (f) all files, documents and records exclusively relating to the Stations Assets or required by the FCC to be kept by the Stations, including public inspection files, political files, and engineering data and logs, but excluding records included in or related to Excluded Assets (defined below).

The Station Assets shall be transferred to Buyer free and clear of debt, liens, claims and encumbrances **("Liens")**.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein (the “**Excluded Assets**”):

- (a) The parcels of real property on which the Stations’ broadcast towers are located, as well as the transmitter buildings located on the parcels;
- (b) All cash and cash equivalents, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts, and all such similar accounts of investments;
- (c) All tangible or intangible personal property retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;
- (d) All employment contracts between Sellers and persons employed at the Stations, as well as Stations’ contracts that are terminated or expire prior to Closing in accordance with Article 4;
- (e) All contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premiums payments to the extent related to such insurance policies (except as provided in Section 3.4 of the Facility License Agreement (See Schedule 4));
- (f) All pension, profit sharing plans and trusts and the assets thereof any other employee benefit plan or arrangement and the assets thereof, if any;
- (g) All accounts receivable of Sellers and any other rights of Sellers to payment of cash consideration for goods and services sold or provided by Sellers prior to the Closing Date (defined below) or otherwise arising during or attributable to any period prior to the Closing Date (the “**A/R**”), except as provided in Article 11 of this Agreement;
- (h) All deposits (including lease and service deposits) and prepaid expenses (and all rights arising therefrom or related thereto);
- (i) All rights and claims, whether mature, contingent or otherwise, primarily related to the Retained Obligations (defined below);
- (j) All business records, including, without limitation, financial records, charter documents, and books and records relating to the organization, existence or ownership of Sellers, duplicate copies of the records of the Stations, and all records not relating to the operation of the Stations; and,
- (k) all rights and claims of any Sellers, whether mature, contingent or otherwise, against third parties with respect to the Stations and the Station Assets prior to the Closing Date; and
- (l) The surplus equipment described on the attached **Schedule 1.2(l)**.

1.3 No Assumption of Obligations. On the Closing Date, Buyer shall assume the obligations under the FCC Licenses arising during, or attributable to, any period of time on or after the Closing Date. Buyer does not assume, and will not be deemed by execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Sellers (the “**Retained Obligations**”).

1.4. Purchase Price. In consideration for the sale of the Station Assets to Buyer, Buyer shall pay Sellers the total sum of Six Hundred and Fifty Thousand Dollars (\$650,000.00) (the “**Purchase Price**”). The Purchase Price shall be paid as follows:

(a) A nonrefundable down payment in the amount of Fifty Thousand Dollars (\$50,000.00) (the “**Down Payment**”) shall be paid to Sellers upon the execution of this Agreement. Buyer acknowledges that Sellers may use the Down Payment prior to the Closing (as defined below) to defray professional fees attendant to the proposed transaction and to pay the expenses of preserving the Stations. At Closing, the Down Payment shall be applied to the Purchase Price.

(b) At Closing, Buyer shall pay to Sellers the sum of Four Hundred Thousand Dollars (\$400,000.00) (the “**Closing Payment**”) by wire transfer of immediately available funds to Sellers pursuant to the wire transfer instructions set out on **Schedule 1.4(b)**.

(c) At Closing, Buyer shall execute and deliver two promissory notes, each in the amount of One Hundred Thousand Dollars (\$100,000.00). Note A shall bear interest at the rate of 6% per annum, and will be paid through quarterly principal payments of \$12,500 plus accrued interest commencing January 1, 2020. Note B shall bear interest at the rate of 7% per annum, and will be paid through quarterly principal payments of \$12,500 plus accrued interest commencing January 1, 2022. Notes A and B shall be secured by an irrevocable letter of credit (the “**Letter of Credit**”) in form and substance reasonably acceptable to Sellers. Buyer shall have the right to prepay either or both Notes A and B at any time without penalty.

1.5 Prorations and Adjustments. This Agreement shall not produce any transfer of liability between Buyer and Sellers of any expenses relating to the Station Assets and arising from the operation of the Stations prior to the Closing Date, other than what may be provided to Sellers pursuant to the Facility License Agreement attached as **Schedule 4**, except any expense associated with electricity utility service associated with KXEN Daytime Tower License and WGNU Tower License shall be prorated between Buyer and Sellers in accordance with generally accepted accounting principles (“GAAP”) as of 12:01am on the day of Closing.

1.6 Allocation. Prior to Closing, Buyer and Sellers shall allocate the Purchase Price for tax purposes in accordance with the respective fair market values of the Station 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**”). If Buyer and Sellers have not mutually agreed on an allocation prior to the Closing, and after Closing, the parties cannot agree on an allocation of the Purchase Price, the parties shall hire a professional experienced in the evaluation of broadcast properties to determine such allocation, which shall be binding on the parties. The parties shall mutually agree on such an appraiser and shall instruct the appraiser to deliver a report within ninety (90) days after Closing. Buyer and Sellers shall each be responsible for one-half of the cost of such appraisal.

1.7 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “**Closing**”) shall take on the last business day of the calendar month in which the FCC issues a public notice of the FCC Consent (defined below), subject to the satisfaction or waiver of the conditions set forth in Article 6 or 7 below. In the event that the FCC Consent is issued on or after the 25th day of the month, the Closing shall occur on a date agreed to by the parties, but in no event more than twelve (12) calendar days after the issuance of the FCC Consent with any prorations agreed

to by the parties to be made as of the last business day of the calendar month in which the FCC issues a public notice of the FCC Consent. The date on which the Closing is to occur is referred to herein as the "Closing Date".

1.8 **FCC Consent.** Within five (5) business days of the date of this Agreement, Buyer and Sellers shall file applications with the FCC (the "**FCC Applications**") requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC action granting the FCC Applications without any material adverse conditions other than those of general applicability is referred to herein as the "**FCC Consent**". Buyer and Sellers shall diligently prosecute the FCC Applications and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Sellers shall cooperate and take all action, including making any filings at the FCC, as may be necessary to extend the FCC Consent in order to consummate the transactions contemplated hereby. Buyer and Sellers shall notify each other and provide copies of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Sellers shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of each of the FCC Applications. Neither Buyer nor Sellers shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent.

ARTICLE 2: SELLERS' REPRESENTATIONS AND WARRANTIES

Sellers make the following representations and warranties to Buyer:

2.1 **Organizations.** All Sellers are duly organized, validly existing and in good standing under the laws of the State of Missouri. Sellers have the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by any of the Sellers pursuant hereto (collectively, the "**Sellers Ancillary Agreements**") and to consummate the transactions contemplated hereby.

2.2 **Authorization.** The execution, delivery and performance of this Agreement and the Sellers Ancillary Agreements by Sellers have been duly authorized and approved by all necessary action of the Sellers and do not require any further authorization or consent of Sellers.

2.3 **No conflicts.** Except for the FCC Consent and consents to assign certain of the Assumed Contracts, the execution, delivery and performance by Sellers of this Agreement and the Sellers Ancillary Agreements and the consummation by Sellers of any of the transactions contemplated hereby do not conflict with any organizational documents of Sellers or any other contract or agreement to which any of the Sellers is a party or by which it is bound, or any law, judgment, order or decree to which any of the Sellers is subject, or require the consent or approval of, or a filing by any of the Sellers with, any governmental or regulatory authority or any third party.

2.4 **FCC Licenses.** BDJ, 920 AM, 104 License and 106 License (collectively, "**Seller Licensees**"), are the holders of the FCC Licenses described on **Schedule 1.1 (a)**, which are all of the governmental licenses, permits and authorizations required for the present operation of the Stations. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or

terminated and have not expired. There is not pending, or, to Sellers' knowledge (defined below), threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against any of the Stations or against any of the Seller Licensees with respect to the Stations that could result in any such action. The Stations (i) are operating in compliance with the FCC Licenses, the Communications Act of 1934, as amended (the "**Communications Act**") and the rules, regulations and policies of the FCC; (ii) all material reports and filings required to be filed with the FCC by Seller Licensees with respect to the Stations have been timely filed; and (iii) all such reports and filings are accurate and complete in all material respects. As used in this Agreement, "Seller's knowledge" means the actual knowledge of Burt W. Kaufman, Sellers' sole manager.

2.5 Personal Property. **Schedule 1.1(b)** describes the process for identifying all items of Tangible Personal Property included in the Station Assets. Sellers have good title to or a valid leasehold or license interest in such Tangible Personal Property free and clear of Liens. To Seller's knowledge, all items of Tangible Personal Property are in operating condition. Notwithstanding the foregoing, it is specifically understood that none of the Sellers are warranting the continued operation of said equipment after the Closing Date, and Buyer is to rely solely on its own due diligence and engineering report(s) with respect to the equipment's state of repair. This is a sale of used broadcast equipment, office furniture and office equipment on an "as is, where is basis".

2.6 KDNL 30 Tower Lease. **Schedule 1.1(c)** contains a true and accurate copy of that certain Lease Agreement between Sellers' affiliate, Radio Property Ventures, LLC ("RPV"), as lessee, and Sinclair Communications, LLC, as lessor, dated January 9, 2012, and amended by that First Amendment dated March 10, 2016, and Second Amendment, dated February 1, 2017 (the "KDNL Tower Lease").

2.7 Intangible Property. To Sellers' knowledge, one or more of the Sellers have sufficient right, title and interest in and to all of the Intangible Property identified in **Schedule 1.1 (e)** and all other intangible property necessary to the conduct of the Stations are presently operated. Within the past three years, Sellers have received no notice of any claim that any Intangible Property or the use thereof conflicts with, or infringes upon, any rights of any third party (and there is no basis for any such claim of conflict). No intangible Property is the subject of any pending, or, to Sellers' knowledge, threatened legal proceedings claiming infringement or unauthorized use by Sellers.

2.8 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 Station Assets, other than commercially available solvents and cleaning supplies. To Sellers' knowledge, Sellers have complied in all material respects with all environmental, health and safety laws, regulations and ordinances applicable to the Stations.

2.9 Insurance. One or more of the Sellers maintain insurance policies with respect to the Stations and the Station Assets in commercially reasonable amounts and will maintain such policies until the Closing Date.

2.10 Compliance with Law. Except as set forth on **Schedule 2** hereto, and except as would not likely have a material adverse effect on Buyer, the Station Assets, or the transactions contemplated by

this Agreement, Sellers have complied with all laws, rules and regulations, including without limitation all FCC and Federal Aviation Administration rules and regulations applicable to the operation of the Stations, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Stations. To Sellers' knowledge, there are no governmental claims or investigations pending or threatened against Sellers in respect of the Stations except those affecting the broadcast industry generally.

2.11 Litigation. There is no action, suit or proceeding pending or, to Sellers' knowledge, threatened against any Sellers in respect of the Stations that will subject Buyer to liability or which will affect Sellers' ability to perform their respective obligations under this Agreement. Sellers are not operating under or subject to any order, writ, injunction or decree relating to the Stations or the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Stations or any of the Station Assets or on the ability of Sellers to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

2.12 No Undisclosed Liabilities. There are no liabilities or obligations of Sellers with respect to the Stations, including Sellers' employees, that will be binding upon Buyer after the Closing.

2.13 Station Assets. The Station Assets include all assets that are owned or leased by Sellers and used in the operation of the Stations in all material respects as currently operated, except for the Excluded Assets.

2.15 No Other Representations or Warranties. Buyer agrees that neither Sellers nor any of their representatives have made and shall not be deemed to have made, nor has Buyer or any of its representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Sellers, their business, the Stations or the Station Assets, other than those representations, warranties, covenants and agreements explicitly set forth in Article 2. Buyer further acknowledges and agrees that (a) it has made its own investigation into the Stations and the Station Assets, and based thereon has formed an independent judgment concerning same, and (b) Sellers have made available such information about the Stations and the Station Assets as Buyer has reasonably requested.

ARTICLE 3: BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Sellers:

3.1 Organizations. Buyer is duly organized, validly existing and in good standing under the laws of the State of Missouri. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the "**Buyer Ancillary Agreements**") and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of the Buyer and do not require any further authorization or consent of Buyer.

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby do not conflict with any organizational documents of Buyer, or any other contract or agreement to which Buyer is a party or by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer that questions the legality of propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualifications. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Act and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations, or that would reasonably be expected to delay the FCC's processing of the FCC Applications because of Buyer's qualifications. No waiver of or exemption from any existing FCC rule or policy on the part of Buyer is necessary for the FCC Consent to be obtained.

3.6 Financing. Buyer has on hand (or from committed funds) financial resources sufficient to consummate the transactions contemplated by this Agreement and to operate the Stations after the Closing Date.

3.7 No Other Representations or Warranties. Seller agrees that neither Buyer nor any of its representatives have made and shall not be deemed to have made, nor have Sellers or any of their representatives relied on, any representation, warranty, covenant or agreement, express or implied, or any statement or information, with respect to Buyers, their business, the Stations or the Station Assets, other than those representations, warranties, covenants and agreements explicitly set forth in Article 3.

ARTICLE 4: ADDITIONAL SELLERS' COVENANTS

Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Sellers shall:

- (a) operate the Stations in the ordinary course of business and in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;
- (b) not adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;
- (c) not sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, and not dissolve, liquidate, merge or consolidate with any other entity;
- (d) maintain the Tangible Personal Property in the ordinary course of business;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Stations;

(f) not enter into new contracts that will be binding upon Buyer after Closing, unless Buyer provides prior written consent.

(g) arrange for the current owner of the KXEN daytime transmitter site ("KXEN Lessor") located at 1445 East Chain of Rocks Road, Pontoon Beach, IL 62040 (the "KXEN Daytime Site") to license the KXEN Daytime Site to Buyer pursuant to a license agreement (the "**KXEN Daytime Tower License**") in the form of the Facility License Agreement attached as **Schedule 4** that will be executed at Closing;

(h) arrange for the current owner of the WGNU transmitter site ("WGNU Lessor") located at 1630 East Chain of Rocks Road, Edwardsville, IL 62025 (the "WGNU Site") to license the WGNU Site to Buyer pursuant to a license agreement (the "**WGNU Tower License**") in the form of the Facility License Agreement attached as **Schedule 4** that will be executed at Closing;

(i) use commercially reasonable efforts to arrange for the assignment to Buyer of that certain Lease Agreement between Sellers' affiliate, Radio Property Ventures, LLC ("**RPV**"), as lessee, and Sinclair Communications, LLC, as lessor, dated January 9, 2012, and amended by that First Amendment dated March 10, 2016, and Second Amendment, dated February 1, 2017 (the "**KDNL Tower Lease**"), relating to the use of the broadcast tower located at 1215 Cole Street, St. Louis, Missouri, for the transmitting facilities of the Translators and the KXEN night-time operation; and

(j) arrange for RPV to license the use of office and studio space at Seller's offices at 1300 Hampton, St. Louis, Missouri (the "**Office Facility**") pursuant to a license agreement (the "**Office Facility License**") in the form of the Facility License Agreement attached as **Schedule 4** that will be executed at Closing.

ARTICLE 5: JOINT COVENANTS

Buyer and Sellers hereby covenant and agree as follows:

5.1 Confidentiality. Subject to the requirements of applicable law and the FCC Application, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including without limitation all financial information provided by Sellers to Buyer) shall be kept confidential, shall not be used except in connection with this transaction, and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transactions contemplated by the Agreement.

5.2 Announcements. No party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by the Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except as necessary to enforce rights under or in connection with this Agreement. Notwithstanding the foregoing, the parties acknowledge that this Agreement and the terms hereof will be filed with the FCC Applications and thereby become public.

5.3 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of Stations prior to Closing shall remain the responsibility of Sellers as the holder of the FCC Licenses.

5.4 Risk of Loss.

(a) Sellers shall bear the risk of any loss of or damage to Tangible Personal Property at all times until the Closing Date, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Closing Date any item of Tangible Personal Property is damaged or destroyed, then Sellers shall use commercially reasonable efforts to replace or repair such item in the ordinary course of business substantially to its condition prior to any such damage or destruction (unless such damage or destruction is caused by Buyer or its agents or invitees, in which case Sellers shall not be responsible to repair or replace the damaged or destroyed item(s)). If such loss or damage is not be restored, replaced or repaired by the Closing Date, Buyer shall, at its option, either:

(i) proceed with the Closing and receive all insurance proceeds to which Sellers would be entitled as a result of such loss or damage; or

(ii) proceed with the Closing (with Sellers' representations and warranties deemed modified to take into account any such condition) and Sellers shall promptly repair or replace such item in all material respects after Closing (and Buyer will provide Sellers access and any other reasonable non- monetary assistance requested by Sellers with respect to such obligation), except that if such damage or destruction materially disrupts any of the Stations' operations, then Buyer may postpone Closing until the date ten (10) business days after operations are restored in all material respects, subject to Section 10.1.

(c) If prior to Closing any of the Stations is off the air or operating at a power level that results in a reduction in coverage (a "**Broadcast Interruption**"), then Sellers shall use commercially reasonable efforts to return the Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of 24 hours that results in a material reduction in coverage, then Buyer may postpone Closing until the date ten (10) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to Section 10.1.

5.5 Employees. Sellers have provided to Buyer a list of employees of the Stations ("**Station Employees**"). Buyer may, but is not obligated to, offer post-Closing Date employment to any of the Station Employees on terms and conditions established by Buyer. Within thirty (30) days of the date that this Agreement is signed, Buyer shall notify Sellers in writing which Station Employees it is hiring. For the purposes hereof, all Station Employees who accept Buyer's offer of employment are hereinafter referred to collectively as, "Transferred Employees". Buyer shall not assume any liabilities of Sellers for unpaid, accrued vacation, sick leave and personal days of Transferred Employees prior to the Closing Date.

5.6 Accounts Receivable Procedure.

(a) Except as provided by Section 11 of this Agreement, Seller shall be entitled to any A/R payment and debt from advertising sales revenue generated from commercial spot and paid content

distribution on the Stations that airs prior to and on the Closing Date, and Buyer shall be entitled to any A/R payment and debt from advertising sales revenue generated from commercial spot and paid content distribution on the Stations that airs starting at midnight on the day after the Closing Date.

(b) After the Closing Date, any A/R payment received by Buyer but payable to any of the Sellers from any third-party shall be delivered to RPV on a weekly basis.

(c) After the Closing Date, any A/R payment received by Sellers but payable to Buyer from any third-party shall be delivered to Buyer on a weekly basis.

(d) After the Closing Date, any A/R payment addressed to and received by either Buyer or Sellers, to which, is partially entitled to both Buyer and Sellers as compensation for commercial spot and/or paid content distribution that aired on behalf of such third-party prior to and after the Closing Date shall be reconciled between Buyer and Sellers by delivery of such A/R payment to Buyer or RPV on the first day of the calendar month following Buyer and/or Sellers' receipt of same A/R payment from such third-party advertiser, except Sellers shall provide Buyer credit in the sum amount of same A/R payment towards any payment due by Buyer to RPV related to KXEN Daytime Tower License and WGNU Tower License monthly fees.

(e) To facilitate this procedure, for a period of one year following the Closing Date (or such shorter time as Sellers may designate, all mail received by Buyer shall be opened by Buyer's office manager, who shall distribute any payments received in accordance with this Section 5.6. In the event that Anne Kaufman is not then employed as Buyer's office manager, this function shall be undertaken by a person agreed upon between Buyer and Sellers. In the event that any payments are received by means other than mail, Buyer shall account for and deliver any payments due to Sellers pursuant to this Section 5.6.

5.7 Actions. After Closing, if reasonably requested by Sellers, Buyer shall cooperate with Sellers in the investigation, defense or prosecution of any action which is pending or threatened against Sellers or its affiliates with respect to the Stations, whether or not any party has notified the other of a claim for indemnification with respect to such matter; provided, however, that Sellers shall reimburse Buyer for the out of pocket costs (including reasonable attorneys' fees), if any, reasonably incurred by Buyer to comply with this Section.

ARTICLE 6: SELLERS' CLOSING CONDITIONS

The obligation of Sellers to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Sellers):

6.1 Representations and Covenants.

(a) The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Sellers shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1 (a) and (b) have been satisfied.

6.2 Proceedings. Neither any Sellers nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consents shall have been obtained.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in Section 8.2.

ARTICLE 7: BUYER'S CLOSING CONDITIONS

The obligation of the Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

7.1 Representations and Covenants.

(a) The representations and warranties of Sellers made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be compiled with and performed by Sellers at or prior to Closing shall have been compiled with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Sellers executed by authorized officers of Sellers to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

7.2 Proceedings. Neither any of the Sellers nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorizations. The FCC Consent shall have been obtained.

7.4 Deliveries. Sellers shall have complied with their obligations set forth in Section 8.1.

7.5 KDNL Tower Lease. In the event that the KDNL Tower Lease is not assignable, Buyer shall have reached a new lease agreement with Sinclair Communications, LLC for the transmitting facilities of the Translators and the KXEN nighttime operation.

ARTICLE 8: CLOSING DELIVERIES

8.1 Sellers Documents. At Closing, Sellers shall deliver or cause to be delivered to Buyer:

(a) the certificate described in Section 7.1(c);

(b) Assignments of FCC authorizations assigning the FCC Licenses from Sellers to Buyers;

(c) (*intentionally blank*);

- (d) Assignment and assumption of intangible assets assigning the Intangible Assets from one or more of the Sellers to Buyer;
- (e) Bills of sale conveying the Tangible Assets from one or more of the Sellers to Buyer;
- (f) (i) the Facility License Agreement executed by RPV, Decathlon Development Group III, LLC and Esskay Enterprises, LLC; and (iii) the Assignment and Assumption of the KDNL Tower Lease executed by RPV (if assignable); and
- (g) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Sellers to Buyer, free and clear of any Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Sellers:

- (a) the Closing Payment in accordance with Section 1.4 hereof;
- (b) Note A and Note B, executed by Buyer, along with the Letter of Credit;
- (c) the certificate described in Section 6.1(c);
- (d) (*intentionally blank*);
- (e) Assignment and assumptions of intangible assets assuming the Intangible Assets from Sellers to Buyer;
- (f) (i) the Facility License Agreement executed by Buyer; and (ii) the Assignment and Assumption of the KDNL Tower Lease executed by Buyer (if assignable); and
- (g) (*intentionally blank*).

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of nine (9) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (i) those under Section 2.4, which shall survive Closing for a period of twelve (12) months from the Closing date, and those under Section 2.1 (Organization), Section 2.2 (Authorization), Section 2.5 (Personal Property), Section 2.6 (solely with respect to Sellers' satisfaction of any debt owed to Sinclair Broadcast Group related to KDNL 30 Tower Lease), Section 2.9 (Environmental), Section 3.1 (Organization) and Section 3.2 (Authorization) (collectively, the "**Fundamental Representations**"), all of which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive the Closing until performed.

9.2 Indemnification.

- (a) Subject to Section 9.2(b), from and after Closing, Sellers shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses,

including reasonable attorneys' fees and expenses ("**Damages**") incurred by Buyer arising out of or resulting from:

- (i) any breach by Sellers or their representatives and warranties made under this Agreement;
- (ii) any default by Sellers of any covenant or agreement made under this Agreement;
- (iii) the Retained Obligations; or
- (iv) the business or operation of the Stations before the Closing.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, Sellers shall have no liability to Buyer under Section 9.2(a) until Buyer's aggregate Damages exceed an amount equal to \$20,000, after which such threshold amount shall be included in, and not excluded from, any calculation of Damages. The aggregate amount of Damages for which Sellers may be liable pursuant to this Article shall not exceed \$50,000.00.

(c) Subject to Section 9.2(d), from and after Closing, Buyer shall defend, indemnify and hold harmless Sellers from and against any and all Damages incurred by Sellers arising out of or resulting from:

- (i) any breach by Buyer of its representatives and warranties made under this Agreement;
- (ii) any default by Buyer of any covenant or agreement made under this Agreement;
- (iii) *(intentionally blank)*;
- (iv) any claims arising from or relating to Buyer's sale of Air-Time as provided in Article 11 below; or
- (v) the business or operation of the Stations after the Closing.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, Buyer shall have no liability to Sellers under clause (i) of Section 9(c) until Buyer's aggregate Damages exceed an amount equal to \$20,000, after which such threshold amount shall be included in, and not excluded from, any calculation of Damage. The aggregate amount of Damages for which Buyer may be liable pursuant to this Article shall not exceed \$50,000.00.

9.3 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 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 9.1, 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 the 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 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;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and 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; and

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

ARTICLE 10: TERMINATION AND REMEDIES

10.1 Termination. Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

(a) by mutual written consent of Buyer and Sellers;

(b) by written notice of Buyer to Sellers if any of the Sellers breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below);

(c) by written notice of any of the Sellers to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not include Buyer's obligation to pay the Closing Payment; or

(d) by written notice of any of the Sellers to Buyer, or Buyer to any of the Sellers, as long as such party is not in breach of any of its representations, warranties or covenants hereunder, in the event the FCC Consent has not been granted within nine (9) months of the FCC-issued public notice of the FCC Applications.

10.2 Cure Period. Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein shall mean a period commencing on the date Buyer or Sellers receive from the other written notice of breach or default hereunder and continuing until the twenty (20) calendar days thereafter.

10.3 Survival. The termination of this Agreement shall not relieve any party of any liability for any breach or default under this Agreement prior to the date of termination.

10.4 Specific Performance. In the event of failure or threatened failure by Sellers to comply with the terms of this Agreement, Buyer shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement.

ARTICLE 11: SALE OF AIR-TIME

11.1 Sale of Air-Time. (a) Pending the Closing or the termination of this Agreement, and subject to the provisions of Sections 11.1(c) and (d), the rules and policies of the FCC and the limitations contained herein, and in consideration of the covenants and obligations undertaken below, Sellers hereby grant to Buyer the right to sell broadcast time ("**Air-Time**") on the Stations to new customers with full authority to sell for Buyer's own account and retain all revenues from the Air-Time that is sold by Buyer and broadcast on the Stations. The parties further agree that Sellers' sales staff shall continue to sell advertising airtime to the Stations' current or former customers, but shall not engage in the sale of advertising airtime to new customers of the Stations prior to Closing.

(b) All marketing materials used by Buyer shall be subject to Sellers' review and approval prior to dissemination to potential customers. All of Buyer's customers will be required to execute the form of contract provided and approved by Sellers. Buyer will not enter into barter or "trade out" agreements with customers, unless such agreements are terminable upon the Closing Date or the termination of this Agreement, whichever may occur first.

(c) Schedule 11.1(c) shows the times that are available to Buyer on KXEN for the sale of Air-Time. Nothing herein limits the ability of Buyer and Seller to agree to other times on KXEN that may be offered by Buyer;

(d) Schedule 11.1(d) shows the times that Buyer requires be made available to Buyer on WGNU for the sale of Air-Time. Upon notice from Buyer to Sellers that Buyer requires designated times, Sellers shall exercise its rights under its contracts with its customers broadcasting during those times to cancel the contracts to make the times available to Buyer.

11.2 Studio Use and Studio Equipment. Buyer shall have access to the office and studio facilities (the "Studios") and the equipment located in the Studios (the "Studio Equipment") for purposes of selling, producing and recording Air-Time. Sellers shall make the Studios, Studio Equipment and Station staff available to Buyer for the production and recording of Air-Time, and Sellers' staff shall be responsible for inserting Air-Time into the Stations' programming in consultation with Buyer or Buyer's employees. Buyer shall not allow any personnel other than its employees known to Sellers' management to enter the Studios without the prior permission of Sellers' management.

11.3 Collection and Payment. Sellers will maintain records of all collections from Buyer's customers and will provide Buyer with monthly reports of those collections. Sellers shall be authorized to endorse all checks representing payment for Air-Time sold by Buyer and will deposit all proceeds of collections into a separate designated bank account from which Buyer may withdraw funds from time to time.

11.4 Buyer's Responsibility for Employees and Expenses. Buyer shall employ and be responsible for the salaries, taxes, insurance and related costs for all personnel employed by Buyer. Buyer shall maintain at its expense and with reputable insurance companies commercially reasonable coverage for broadcaster's liability insurance, worker's compensation insurance and commercial general liability insurance, and will provide Seller with copies of all policies. Where necessary or appropriate, the policies shall name Sellers as co-insureds.

11.5 Obligations and Rights of Sellers.

Buyer acknowledges and agrees that Sellers are and shall remain responsible for operating the Stations in the public interest and controlling the operations of the Stations in conformance with Sellers' FCC-issued licenses, permits and authorizations. Without limiting the generality of the foregoing, Sellers and Buyer agree as follows:

(a) **Right to Reject Air-Time.** Sellers shall have the absolute right to reject any Air-Time that Sellers, in their sole discretion, deem contrary to the interests of the public and/or Sellers, the Communications Act of 1934, as amended (the "Communications Act"), or the FCC's rules, regulations and policies (the "Rules", and together with the Communications Act, the "Communications Laws"). Sellers reserve the right to refuse to broadcast any Air-Time containing any matter that they, in their sole discretion, believe is, or may be determined by the FCC or any court of competent jurisdiction or other regulatory body with authority over the Stations to be, violative of any third-party intellectual property rights, defamatory, indecent, obscene, profane or otherwise in violation of law. Sellers may take any other actions necessary to ensure the Stations' operations comply with the laws of the United States, the laws of the State of Missouri, the Communications Laws, and the rules, regulations and policies of other federal government authorities, including the Federal Trade Commission and the Department of Justice.

(b) **Political Advertising.** The parties acknowledge that Sellers are ultimately responsible for complying with the Communications Laws with respect to the carriage of political advertisements. Accordingly, Buyer must obtain the prior consent of Sellers for any political Spot that it wishes to sell, and Sellers will use commercially reasonable efforts to expeditiously consider all such requests.

(c) **Right to Preempt Air-Time.** Sellers shall have the absolute right to preempt Air-Time in order to broadcast a program deemed by Sellers, in their sole discretion, to be of greater national, regional or local public interest or significance, or to provide public service programming, and to use part or all of the hours of operation of the Stations for the broadcast of events of special importance. In all such cases, Sellers will use commercially reasonable efforts to give Buyer advance notice of its intention to preempt the Air-Time.

11.6 Obligations and Rights of Buyer.

Buyer shall not take any action, or omit to take any action, inconsistent with Sellers' obligations under the Communications Laws to retain ultimate responsibility for all programming, including Air-Time, broadcast by the Stations. Whenever at the Studios or otherwise on the Station's premises, Buyer's personnel shall be subject to the supervision and the direction of Seller's management personnel. Without limiting the generality of the foregoing, Buyer agrees as follows:

(a) **Compliance with Laws and Station Policies.** All Air-Time shall conform in all material respects to all applicable provisions of the Communications Laws, all other laws or regulations applicable to the broadcast of programming by the Stations, and the programming standards prescribed in Schedule 11.6.

At no time during the Term shall Buyer or his employees or agents represent, hold out, describe or portray Buyer as the licensee or owner of the Stations.

(b) **Political Air-Time; Nondiscrimination.** Buyer shall maintain and deliver to Sellers' management all records and information in Buyer's possession pertaining to the broadcast of political Air-Time sold by Buyer so that such information may be timely placed in the Stations' political file after such political Air-Time have been broadcast. Buyer shall consult with Sellers' management and adhere strictly to all applicable provisions of the Communications Laws, with respect to political Air-Time and the charges that may be permitted for such Air-Time. Buyer further agrees that all contracts for Air-Time sold for broadcast on the Stations shall include a non-discrimination provision described in Schedule 11.6.

(c) **Compliance with the Copyright Act.** Buyer shall not produce or broadcast any Air-Time containing material that would violate the Copyright Act or the intellectual property rights of any Person. (When used herein, the term "**Person**" means any person, corporation, limited liability company or other business entity.) All music supplied in the Air-Time shall be (a) licensed by a music licensing agent such as ASCAP, BMI, or SESAC, (b) in the public domain or (c) cleared at the source by Buyer (Buyer will facilitate the gathering of any information necessary to provide for licensing by third-parties).

(d) **Payola and Plugola.** Buyer shall provide to Sellers in advance any information known to Buyer regarding any money or other consideration which has been paid or accepted, or has been promised to be paid or to be accepted, for the inclusion of any matter in the program content constituting Air-Time, unless the party making or accepting such payment is identified in the program content as having paid for or furnished such consideration in accordance with the Communications Laws. Commercial matter with obvious sponsorship identification will not require disclosure beyond the sponsorship identification contained in the commercial copy. Buyer shall at all times endeavor to proceed in good faith to comply with the requirements of Sections 317 and 507 of the Communications Act and the related FCC rules.

11.7 Termination Upon Change in FCC Rules/Policies. In addition to other provisions providing for termination herein, Buyer's right to sell Air-Time may be terminated by Sellers or Buyer by written notice to the other parties upon a change in FCC rules, policies or precedent that would cause Buyer's sale of Air-Time to be in violation thereof and such change is final, in effect and has not been stayed, and the parties are unable, after negotiating in good faith for at least thirty (30) days, to modify this Agreement to comply with the change in FCC rules, policies or precedent.

11.8 Effect of Termination. If this Agreement or Buyer's right to sell Air-Time is terminated for any reason (other than the sale of the Stations to Buyer), the parties shall cooperate in good faith to restore the status quo ante, including but not limited to the following:

(a) Sellers shall cooperate reasonably with Buyer to the extent necessary and take commercially reasonable actions to enable Buyer to fulfill advertising contracts and commitments for Air-Time then outstanding, in which event RPV shall be entitled to receive as compensation for the carriage of such Air-Time that consideration that shall have already been paid to Buyer, or which otherwise would have been paid to Buyer in respect of such Air-Time. Notwithstanding the foregoing, Buyer shall be responsible for all debts and obligations to third parties based upon the purchase of Air-Time on the Stations during the Term.

(b) Buyer shall return to Sellers any equipment or property of the Stations used by Buyer, its employees or agents, in the same condition as such equipment existed on the date hereof, reasonable and ordinary wear and tear excepted.

11.9 Required FCC Certifications.

(a) BDJ's and 920 AM's Certifications. BDJ and 920 AM hereby certify that they shall maintain ultimate control over the Stations' operations, including, specifically, control over the Station's finances, personnel, and programming.

(b) Buyer's Certification. Buyer hereby certifies that this Agreement complies with the provisions of Section 73.3555(a) of the FCC's rules and regulations.

11.10 Sunday Broadcasts. In the event that Sellers elect to terminate the contracts of Sellers' customers who broadcast on KXEN between the hours of 6:00 a.m. Central time Sundays and 6:00 a.m. Central time on Mondays to allow Buyer to sell Air-Time during such periods, Buyer will pay Seller \$1,400 a month in arrears, with payment due on the Monday following the last Sunday of each month.

ARTICLE 12: MISCELLANEOUS

12.1 Expenses. Each party shall be solely responsible for their filing fees applicable to the request for the FCC Consent, and any costs, expenses and legal fees incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The filing fees applicable to the request for the FCC Consent shall be paid one half by Buyer and one half by Sellers. All governmental taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement, if any, shall be paid one half by Buyer and one half by Sellers, provided that Buyer's liability under this sentence shall not exceed One Thousand Dollars (\$1,000.00).

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

12.3 Assignment. Neither Sellers nor Buyer may assign all or part of this Agreement without the prior written consent of the other parties hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

12.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Sellers:

Burt W. Kaufman, Manager
12 Rolling Rock Lane
St. Louis, MO 63124

with copies to:
(which shall not constitute notice)

Peter Kerth, Esq.
Jenkins and Kling, PC
150 North Meramec Ave.
St. Louis, MO 63105

and

Shelley Sadowsky, Esq.
Shelley Sadowsky, LLC
5938 Dorchester Way
Rockville, MD 20852

If to Buyer:

Paul Berry III
Berry Broadcasting, LLC
3456 McKelvey
Bridgeton, MO 63044

With a copy to
(which shall not constitute notice)

Albert Watkins, Esq.
Kodner Watkins, LC
7733 Forsyth, Suite 600
St. Louis, MO 63105

12.5 Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

12.6 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Stations, which shall remain in full force and effect. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Sellers makes no representation or warranty to Buyer with respect to any projections, budgets or other estimates of the Stations' revenues, expenses or results of operations, or, except as expressly set forth in Article 2, any other financial or other information made available to Buyer with respect to the Stations.

12.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

12.8 Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns. Notwithstanding the foregoing, it is understood and agreed that in the event that Burt W. Kaufman, Manager of each of the Sellers, is unable to execute this Agreement, the Sellers' Ancillary Agreements or any other document to be executed on behalf of Sellers in connection with the transactions contemplated by this Agreement, whether due to illness, disability or other reason, Anne Kaufman shall have the authority to execute such documents on behalf of Burt W. Kaufman, Manager.

12.9 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Missouri without giving effect to the choice of law provisions thereof. Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with this Agreement shall be brought in the state or federal courts located in Missouri. The prevailing party in a lawsuit brought to enforce the performance or compliance of any provision of this Agreement, may recover reasonable attorneys' fees and costs from the non-prevailing party.

12.10 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

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

SELLERS:

BDJ RADIO ENTERPRISES, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager

BUYER:

BERRY BROADCASTING, LLC

By: Paul Berry III
Paul Berry III, Chief Executive Officer

920 AM, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager

104 License, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager

106 LICENSE, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager

RADIO PROPERTY VENTURES, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager

What's wGNU, LLC

By: Burt W. Kaufman
Burt W. Kaufman, Manager