

**ASSET PURCHASE AGREEMENT**

By and between

Caroline K. Powley d/b/a Unicorn/Springville

and

EBC Buffalo, Inc.

for the Sale and Purchase of

WNGS, Springville, New York

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT ("Agreement") made and entered into as of this 11<sup>th</sup> day of February 2004 ("Effective Date"), by and between Caroline K. Powley, an individual ("Seller") and EBC Buffalo, Inc., an Arkansas Corporation ("Buyer").

### **WITNESSETH:**

WHEREAS, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission") for the operation of Station WNGS, Springville, New York (the "Station");

WHEREAS, Buyer and Seller acknowledge that the tangible personal property contemplated herein is owned or leased by B & C Communications, LLC ("B & C"), which is equally owned by William M. Smith and Caroline K. Powley, and that prior to Closing, B & C shall assign the ownership and/or lease of such property free and clear of any liens to the Seller; and

WHEREAS, the Seller owns or leases and desires to sell and/or assign, and Buyer desires to purchase and/or assume certain of the assets, property and business used in the operation of the Station.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

### **SECTION 1**

#### **ASSETS TO BE SOLD**

1.1 **Assets.** On the Closing Date, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the following (hereinafter collectively the "Assets"), free and clear of all liens, charges, pledges, security interests, mortgages or other encumbrances (except as hereinafter expressly permitted):

1.1.1 **Authorizations.** All licenses, permits and authorizations issued or granted by the Commission for the operation of, or used in connection with the operation of the Station (hereinafter "Commission Authorizations") as listed in Schedule 1.1.1, but including any and all such authorizations and applications therefor, whether or not listed in Schedule 1.1.1, and any other authorizations or permits issued by any other governmental agency or authority pertaining to the Station.

1.1.2 **Real Property.** All of Seller's rights in and to the land, buildings, improvements, and other real property and all leaseholds and other interests in real property and the buildings and improvements thereon (hereinafter collectively the "Real Property"), consisting of all real property and leases, contracts and agreements creating such interests listed and described in Schedule 1.1.2.

1.1.3 **Tangible Personal Property.** All of Seller's rights in and to the fixed and tangible personal property used in the operation of the Station, including, but not limited to the physical assets and equipment, microwave links, leasehold improvements, furniture, fixtures, receivers, programming, tapes, transmitters, switches and related equipment, and music libraries listed in Schedule 1.1.3, together with replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property").

1.1.4 **Agreements.** All Seller's rights to and in the contracts and agreements, and leases to which Seller or the Station are a party and are listed in Schedule 1.1.4 (hereinafter collectively "Agreements"), together with all contracts, agreements and leases, entered into or acquired by the Seller between the date hereof and the Closing Date in accordance with the terms and provisions of this Agreement.

1.1.5 **Intangibles.** All right, title and interest of Seller in and to the call letters "WNGS" together with other intangible property of Seller used or useful in the operation of or otherwise pertaining to the Station as set forth on Schedule 1.1.5 attached hereto and made a part hereof (hereinafter collectively the "Intangibles").

1.1.6 **Business Records.** All of Seller's financial records, engineering reports, advertising reports, programming studies, consulting reports, computing software, marketing data, ledger sheets, customer lists and business and personnel records relating to the business or operation of the Station (hereinafter collectively "Business Records") or to assets or agreements purchased by Buyer.

1.2 **Excluded Assets.** The Assets shall not include the following assets along with all rights, title and interest therein which shall be referred to as the "Excluded Assets":

1.2.1 All cash, cash equivalents or similar type investments of Seller, such as certificates of deposit, Treasury bills and other marketable securities on hand and/or in banks;

1.2.2 All tangible and intangible personal property disposed of or consumed in the ordinary course of business between the date of this Agreement and the Closing Date, or as permitted under the terms hereof;

1.2.3 Subject to the terms of Section 11.1 of this Agreement, any Accounts Receivable of the Station as of 11:59 p.m., local time, on the day prior to the Closing Date;

1.2.4 All agreements that have terminated or expired prior to the Closing Date in the ordinary course of business and as permitted hereunder, or any other agreements not being assumed under Section 1.1.4 and as set forth in Schedule 1.1.4 attached hereto;

1.2.5 Seller's minute books, charter documents, stock record books and such other books and records as pertaining to the organization, existence or share capitalization of Seller and duplicate copies of such records conveyed to Buyer as are necessary to enable Seller to file its tax returns and reports as well as any other records or materials relating to Seller generally and not involving specific aspects of the Station's operation;

1.2.6 Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date;

1.2.7 Any and all other claims made by Seller with respect to transactions prior to the Closing Date and the proceeds thereof to the extent the Station has been made whole for any loss or damage they or their assets may have suffered or incurred as a result of the item, event or occurrence giving rise to such claim; and

1.2.8 All pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller.

## **SECTION 2**

### **PURCHASE PRICE**

2.1 **Purchase Price.** In consideration of Seller's performance of this Agreement, the sale, assignment, transfer, conveyance, setting over, and delivery of the Assets as defined hereinabove to Buyer, the total purchase price (the "Purchase Price") to be paid by Buyer shall be the sum of FIVE MILLION DOLLARS (\$5,000,000.00). The purchase price shall be reduced to Four Million Dollars (\$4,000,000.00) if one of the following would occur (1) if the digital application BPCDT-19991101AKN, either as on file or amended, is either denied, dismissed or not acted upon by the commission within thirty-six (36) months from the date of this Agreement or (2) an amendment to BPCDT-19991101AKN would reduce the population to be served by 10% or more. If the Commission's action or non-action as specified in the previous sentence occurs prior to closing as specified herein, then the purchase price shall be reduced by \$4 million at such closing. Should the Commission's action or non-action as specified herein occur after closing, as defined herein, then, within 30 days thereafter, the Seller shall either pay to the Buyer \$1 million in cash or return to the Buyer Equity Broadcasting Stock owned by the Seller at a price of \$10 per share totalling \$1 million in value.

2.2 **Payment of Purchase Price.** The Purchase Price shall be paid to Seller as follows:

2.2.1 Within ten days of the execution of this Agreement, Buyer shall deposit into a mutually agreeable escrow account One Hundred and Eighty Seven Thousand and Five Hundred Dollars (\$187,500) as an Earnest Money deposit and shall execute the Escrow Agreement attached as Exhibit 2.2.1. Interest shall accrue in favor of the Buyer. The Earnest Money shall be returned to Buyer, except under the circumstances as defined under subparagraph 17.3.

2.2.2 The Closing Date shall mean a date no later than fifteen (15) business days immediately following the date upon which there is a Commission order authorizing, without materially adverse conditions to either Buyer or Seller, the assignment of the Commission Authorizations to Buyer ("Commission Order") and such Commission Order is no longer subject to reconsideration or review by any court or administrative body ("Final Order"); except, however, Buyer may set a Closing Date within (15) business days of a Commission Order that is not a Final Order, upon 10-business-days written notice to Seller. On the Closing Date Buyer will pay Seller Five Million Dollars (\$5,000,000) via certified check or wire transfer.

2.3 **Allocation of Purchase Price.** The parties agree to allocate the Purchase Price in accordance with the requirements of the Internal Revenue Code ("Allocation"). In the event that the parties are unable to reach such an agreement as to Allocation prior to the Closing Date, they will select a qualified, independent and nationally recognized appraiser of broadcast properties and that firm's decision shall be binding upon the parties and the fees and expenses shall be borne equally by Buyer and Seller. The parties also agree to use such Purchase Price allocation in completing and filing the necessary Internal Revenue Code Forms for federal income tax purposes.

2.4 **Spectrum Clearing Effort.** Should Buyer turn in the Channel 67 spectrum, Seller shall receive:

- a) 50% of the amount received for surrendering the channel if surrendered within 12 months of the execution of this Agreement;
- b) 33% of the amount received for surrendering the channel if surrendered in the 13<sup>th</sup> month through the 24<sup>th</sup> month of the execution of this Agreement;
- c) 25% of the of the amount received for surrendering the channel if surrendered in the 25<sup>th</sup> month through the 36<sup>th</sup> month of the execution of this Agreement;
- d) 0% if surrendered from 37<sup>th</sup> month and beyond of the execution of this Agreement.

This provision shall survive should Buyer sell the station within three years of the execution of this Agreement.

2.5 Springville Real Property. Buyer agrees to grant Seller the right of first refusal on the real property (including both land and buildings) located at 9279 Dutch Hill Road, West Valley, New York 14171 ("Office Building"). Pursuant to Section 19 hereof, Buyer shall provide notice to Seller of any offer that it received for the Office Building and is willing to accept. Seller shall have fifteen days, from receipt of notice, to advise Buyer that it intends to match any such offer. The Seller shall then have thirty days from the date Seller makes such an offer to tender the purchase price for the purchase of Office Building.

### SECTION 3

#### ADJUSTMENTS

3.1 Adjustment Time. The "Adjustment Time" as used herein shall be 12:01 A.M. current local time on the Closing Date.

3.2 Adjustment Items. The following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, paid in cash at Closing in accordance with Section 3.3 herein below.

3.2.1 Rentals or other charges, payable or paid in respect of leasehold interests or tenancies, or leased transmitter sites, studios, offices or other Real Property or equipment under any lease or tenancy of Real Property, and any and all equipment leases described in Schedule 1.1.2.

3.2.2 Real and personal property taxes and assessments (including sewerage assessments and fees), levied or assessed against or otherwise paid or payable with respect to any of the Assets.

3.2.3 Transferable license, permit, and registration fees, and like items.

3.2.4 Charges for utilities (including but not limited to electricity, fuel, water, basic monthly telephone charges, long distance telephone calls, and sanitation and garbage disposal) furnished to or in connection with the Station.

3.2.5 License agreements with music performance licensing societies.

3.2.6 Unpaid obligations of Seller with respect to any lease, contract, or agreement which Buyer assumes, including, without limitation, unpaid prepaid premiums on any insurance policies that Seller has agreed to assign to Buyer and Buyer elects to assume.

3.2.7 Other similar items applicable to the Assets and/or attributable to the operations and/or the business of the Station, it being the intention of the parties that all operations and the business of the Station prior to the Adjustment Time shall be for the account of Seller, and all operations and business of the Station after the Adjustment Time shall be for the account of Buyer.

3.2.8 If the amount of any real or personal property tax to be prorated is not known on the Closing Date, such tax shall be apportioned on the basis of the most recent tax assessment.

3.2.9 Buyer shall have no obligation to employ any of the employees of Seller. On execution of this Agreement, Seller shall deliver to Buyer a detailed list of all employees of the Station, their salaries, benefits and any other job-related matters for Buyer's review.

3.3 **Adjustments After Closing Date.** The party proposing the amount of the item to be adjusted must give proper notification to the other prior to the Closing Date. If the amount of any items to be adjusted cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within thirty (30) days after the Closing Date and payment therefor shall be made to the party entitled thereto within five (5) days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section 3.3 and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

## **SECTION 4**

### **APPLICATION TO AND CONSENT BY COMMISSION**

4.1 **Commission Consent.** Consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the Commission shall have issued a Commission Order (as defined in Section 2.2.1 hereof)

4.2 **Application For Commission Consent.** (a) Seller and Buyer agree to proceed expeditiously and with due diligence and to use their best efforts and to cooperate with each other in seeking the Commission's approval of the transactions contemplated hereunder. After the Buyer has resolved the interference issue in connection with Channel 51 relating to W51BA, which is a condition to that certain Asset Purchase Agreement by and between Ithaca 52, Inc. and EBC Buffalo, Inc. for the sale and purchase of Stations WNYI, Ithaca, New York and KWWF(TV), Waterloo, Iowa, within ten (10) business days thereafter, the parties shall prepare and file with the Commission the Assignment Application and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application, including but not limited to any waiver request that is necessary to effectuate ownership of the Station by Buyer. Each party further agrees expeditiously to prepare amendments to the Assignment Application whenever such amendments are required or requested by the Commission or its rules. Each party agrees to keep the execution of this Agreement confidential until the application for assignment has been filed with the FCC.

(b) 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 the Assignment Application. All filing fees imposed by the Commission should be paid one-half (1/2) each by Seller and Buyer.

(c) Each party agrees to comply with any condition imposed on it by the Commission in granting the Assignment Application, except that no party shall be required to comply with a condition that would have a material adverse effect upon it. Buyer and Seller shall oppose any efforts for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section shall limit any party's right to terminate this Agreement pursuant to Section 17 of this Agreement).

4.3 **Notice of Application.** Seller shall, at its expense, give due public notice of the assignment as be required by the rules and regulations of the Commission.

4.4 **Delay in Approval of Application.** Either party at its option may terminate this Agreement by five (5) business days prior written notice to the other party, and without liability to the other party, at any time after one (1) year after the Assignment Application has been accepted for filing if the Commission has not granted the Assignment Application within that time, provided that the party requesting termination has not committed a material breach under this Agreement that has resulted in the Commission failing to timely grant the Assignment Application. In the event of such termination, each party shall bear its own expenses and there shall be no liability on the part of either party.

## SECTION 5

### **ASSUMPTIONS**

5.1 **Buyer's Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge following the Closing all of the unperformed duties of the Seller, accruing after Closing, under the leases and the Agreements listed in Schedules 1.1.2 and 1.1.4.

5.2 **Seller's Liability.** Seller shall remain liable for and covenants to pay, satisfy, or discharge, all liabilities, payments, obligations, and duties under (a) the Agreements set forth in Schedule 1.1.4, and any leases or other instruments transferred or assigned to Buyer hereunder, accruing prior to or by reason of events occurring prior to the Closing Date, and (b) all Agreements not being transferred to Buyer no matter when the obligations occur.

## SECTION 6

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

#### **6.1 Organization and Standing.**

6.1.1 Seller is an individual residing in the State of Florida and is fully qualified to enter into this Agreement.



6.1.2 Seller has the full power and authority to enter into this Agreement and all of Seller's Closing Documents that require Seller's signature. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Seller's Closing Documents (on the Closing Date) are or will be authorized by all necessary action of Seller.

6.2 **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms. The execution, delivery, and performance of this Agreement or any of the Closing Documents do not violate any contract provision or other commitment to which Seller or the Station is a party or under which it or its property is bound, or any judgment or order, and will not result in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets.

6.3 **Business Records and Financial Statements.**

6.3.1 Seller has maintained and will maintain until Closing the business records of the Station in the usual, regular and ordinary manner in accordance with good business practices.

6.3.2 Seller has provided Buyer with its financial statements for the Station (the "Financial Statements") for the previous three years. The Financial Statements have been prepared on an accrual basis in accordance with generally accepted accounting principles. The Financial Statements accurately reflect the books, records and accounts of the Station in all material respects and present fairly the financial condition and results of the operation of the Station, as of the dates and for the periods indicated. Upon written request from Buyer, Seller shall provide updated quarterly financial reports for the Station from the date of effective date of this Agreement until Closing.

6.4 **Real and Tangible Personal Property.**

6.4.1 **Real Property.** Schedule 1.1.2 attached hereto accurately lists and describes all of the Real Property leased or otherwise held or used by the Station which is being assigned or transferred to the Buyer. The Real Property listed in Schedule 1.1.2 comprises all of the real property interests necessary to conduct the business or operations of the Station as now conducted. Seller has, and following the Closing, Buyer will have, good and marketable fee simple title, insurable at standard rates, to all of the fee estates (including the improvements thereon) included in the Real Property, free and clear of all liens, mortgages, pledges, covenants, easements, restrictions, encroachments, leases, charges, and other claims and encumbrances of any nature whatsoever, and without reservation or exclusion of any mineral, timber, or other rights or interests, except for liens for real estate taxes not yet due and payable. To the extent the property is subject to any easements, restrictions, encroachments and/or state and local zoning ordinances, these are listed in Schedule 1.1.2. Buyer accepts existing easements, restrictions, encroachments and state and local zoning ordinances, provided none of them prevent the use of the properties for their present purpose.

6.4.2 **Patents, Trademarks, Copyrights.** The Intangible Property includes all call signs, slogans, and logos owned by Seller and used to promote or identify the Station. All computer software located at the Seller's premises and used in Seller's business or operation of the Station is properly licensed to Seller, and all of Seller's uses of such computer software are authorized under such licenses.

6.4.3 **Tangible Personal Property.** Schedule 1.1.3 attached hereto accurately lists all the material Tangible Personal Property owned, leased, or otherwise held by the Station and/or Seller which is intended to be conveyed hereunder, except as otherwise disclosed in Schedule 1.1.3. Seller is the owner of and has, and following the Closing, Buyer will have, good, clear, marketable, and indefeasible title to all of the Tangible Personal Property listed in Schedule 1.1.3, free and clear of all liens, charges, encumbrances, restrictions, debts, demands, or claims of any kind or nature whatsoever.

6.4.4 **Condition of Tangible Personal Property.** The Tangible Personal Property listed in Schedule 1.1.3 (except as expressly noted therein) is in good maintenance, operating condition, and repair in accordance with generally accepted standards of practice in the broadcast industry, and to Seller's knowledge, is free from defects in materials and workmanship in all material respects. Seller is in compliance with all aspects of Section 6.9.4 hereof.

## 6.5 **Agreements.**

6.5.1 Schedule 1.1.4 accurately lists all agreements and other contracts (or, when the same are oral, a complete and correct description thereof) with respect to the Station to be conveyed hereby (except for contracts for the sale of advertising time for cash) to which, as of the date hereof, Seller and/or the Station is a party or by which Seller and/or the Station may be bound or obligated in any way (collectively, the "Agreements").

6.5.2 The Agreements listed in Schedule 1.1.4 are in full force and effect and valid, binding, and enforceable in accordance with their terms, and except as stated in Schedule 1.1.4, are assignable by Seller to Buyer on the same terms and conditions as Seller now enjoys, and to the best of Seller's knowledge, Seller has performed in all material respects, all the obligations imposed upon Seller under any such Agreements or other obligations that are to be performed as of the making of this warranty. Notwithstanding any other Section of this Agreement, to the extent that the consent or approval of any third person is required under any Agreement in order to assign such Agreement from Seller to Buyer, Seller shall in good faith endeavor to obtain such consents and approvals. If any such consent or approval is not obtained, then Buyer shall have no obligation to assume that Agreement at Closing.

6.5.3 To Seller's knowledge, there is no default by or claim of default against the Seller or any other party to the Agreements listed in Schedule 1.1.4 or any event occurring that, with or without notice, lapse of time or the occurrence of any other event, would result in a default under any such Agreement by Seller or any other party. There are no contracts or agreements to which the Seller and/or the Station is a party which may be binding upon the Assets to be sold hereunder other than the Agreements expressly set forth in Schedule 1.1.4, and other contracts and agreements entered into in the usual course of business between the date of this Agreement and the Closing Date, provided, however, copies of such contracts and agreements entered into shall be delivered to Buyer within five (5) business days of being executed, and Buyer shall be under no obligation to assume such contract or agreement if the obligation to Seller is in excess of One Thousand dollars (\$1,000).

6.5.4 **Leases.** Schedule 1.1.2 accurately describes all of the leases which Buyer has agreed to assume to which the Seller and/or the Station are a party or under which Seller and/or the Station are bound for the rental of real property. All such leases are in full force and effect and valid, binding, and enforceable in accordance with their terms, and Seller has duly performed all of its material obligations under such leases. To the best of Seller's knowledge, there is no default by or claim of default against Seller or any other party to such leases, or any event or circumstance that with the passage of time or the giving of notice or both would result in a default by Seller or any other party, or any notice of termination existing with respect to any of such leases. Seller's leases are assignable to Buyer on the same terms and conditions as Seller now enjoys, except as stated in Schedule 1.1.2.

6.5.5 **Digital Lease.** Seller and Buyer will work together to obtain a lease for the site listed in BPCDT-19991101AKN. Seller knows of no reason or encumbrance that would prevent Seller or Buyer from obtaining a lease.

## 6.6 **Authorizations.**

6.6.1 Seller is an individual and has the full power to own the assets, which include all licenses, permits, and authorizations, and applications, including digital, necessary to carry on the business of the Station as it now is being conducted, including, without limitation, all Commission Authorizations listed in Schedule 1.1.1. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended, and all other authorizations and permits are validly existing and in good standing with the issuing authority. The Authorizations constitute all of the licenses and authorizations required under the Communications Act of 1934, as amended, or the current rules, regulations and policies of the FCC for the operation of the Stations, including without limitation, the conversion to digital. The digital application is a valid application and has no known defects. Seller shall take all actions necessary to protect all digital applications and rights of the Station. There is no action pending nor to Seller's knowledge, threatened, before the Commission or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations or other governmental authorizations permits, or any action which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation, except as required to transfer same to Buyer.

6.6.2 All reports, applications and other documents required to be filed by Seller with the Commission or any other governmental body with respect to the Station or its operations have been filed and all such reports, applications and documents are true and correct in all material respects. There are no matters that might result in the suspension or revocation of any Commission Authorizations or any other governmental authorization or permit pertaining to the Station.

6.7 Compliance with Law and Regulations. The Stations, the Assets, and the Seller are in compliance with all requirements of federal, state and local law and all requirements of all federal, state and local governmental bodies or agencies having jurisdiction over any of them, the operations of the Stations, the use of the Seller's properties and assets (including the Assets) and the Leased Real Property. Without limiting the foregoing, the Seller has paid all monies and obtained all FCC licenses, permits, certificates and authorizations and all other material licenses, permits, certificates and authorizations needed or required for its operations, and the use of the Leased Real Property. The Seller has properly filed all reports and other documents required to be filed with any federal, state or local government or subdivision or agency thereof. Neither the Seller nor the Parent has received any notice from any federal, state or municipal authority or any insurance or inspection body that any of its properties, facilities, equipment or business procedures or practices fails to comply with any applicable law, ordinance, regulation, building or zoning law or requirement of any public authority or body

6.7 Litigation and Insurance.

6.7.1 Litigation; Compliance With Law. The Station is in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to, compliance with the Communications Act and all rules and regulations issued thereunder. Other than proceedings affecting the broadcasting industry in general, there is no complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending, or to the best of Seller's knowledge, threatened, against the Station, Seller, or any of the Assets being sold or transferred to Buyer, including, without limitation, any proceeding which may (a) adversely affect the Assets or the Commission Authorizations to be assigned hereunder, or the operation of the Station, or the ability of Buyer to own and operate the Station, or the use, ownership, or operation of any of the Assets by Buyer, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of the Commission Authorizations, or the issuance or imposition of any administrative sanction that might adversely affect the Assets or the Commission Authorizations, or the operation of the Station or the ability of Buyer to own and operate the Station or the use, ownership, or operation of any of the Assets by Buyer. In addition, to Seller's knowledge, no such litigation, investigation, or proceeding has been threatened. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Station.

6.7.2 **Insurance.** All of the Tangible Personal Property listed in Schedule 1.1.3 is insured under the policies listed and described in Schedule 6.7.2, including, without limitation, public liability and broadcaster's liability insurance for the Station. All such policies are in full force and effect, and all premiums for all such fire, flood, and extended coverage insurance and such public liability and broadcaster's liability insurance have been paid when due, and Seller will maintain insurance policies from the date of this Agreement until the Closing Date.

6.8 **Employees and Labor Relations.**

6.8.1 Seller: (a) is not a party to any collective bargaining agreement covering or relating to any of Station's employees and has not recognized, and to Seller's knowledge, is not required to recognize, and has received no demand for recognition by any contract with any of the employees of the Station or to any other employment contract, labor agreement, or union agreement, written or oral; (b) other than as disclosed in the Schedules, has not promulgated any policy or entered into any agreement relating to the payment of pensions, profit sharing, or bonuses to any of its employees whose employment, if terminated or suspended, for which Buyer will be liable; and (c) has not committed any unfair labor practices.

6.8.2 Seller has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those relating to rates, hours, equal employment opportunity, collective bargaining, and the withholding and payment of taxes and contributions and has withheld all amounts required by law or agreement to be withheld from the wages or salaries of the Station's employees and is not liable to the employees or any government body for arrears of wages or for any tax or penalty for failure to comply with the foregoing.

6.8.3 Seller has delivered to Buyer a list of all employees, their salaries, benefits and other job related matters for Buyer's review employed as of the date of this Agreement. Buyer shall have no obligation to employ any of Seller's employees but shall not be prohibited from offering employment to any such employee, with the understanding that in the event Buyer hires such employee they shall be treated as new with no preexisting obligation, liability or payment owed to employee by Buyer based on the employee's previous employment by Seller.

6.9 **Taxes and Other Matters.**

6.9.1 **Payment of Taxes.** All returns and reports concerning franchise taxes, unemployment insurance, withholding and payroll taxes, sales taxes, personal property taxes, license taxes, social security taxes, and all other reports required to have been filed by the Seller relating to the Assets, the Station, and/or its operation pursuant to any law or regulation have been duly filed, and all taxes, interest, assessments, and penalties which are due to any taxing authority, federal, state, or local, with respect to any tax period ending on or prior to the making of this warranty have been duly paid.

6.9.2 **Insolvency Proceedings.** No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Purchased 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.

6.9.3 **Intangibles.** Seller has full and exclusive right, title to or interest in and to all of the Intangibles, including, without limitation, the call letters "WNGS" and all copyrights, patents, program rights, trade names, trade marks, logos, service marks, proprietary information, and other similar rights or symbols associated therewith, together with all goodwill associated therewith and all intellectual properties, as described on Schedule 1.1.5, free from infringements, interferences, litigation and disputes of any kind or nature whatsoever.

6.9.4 **Environmental Matters.**

(a) To the best of Seller's knowledge, 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, including but not limited to compliance with all Commission requirements pertaining to RF radiation, and has obtained all environmental, health and safety permits necessary for the operation of the Station, and all such permits are in full force and effect. No charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Seller alleging any failure to comply with any such law, rule or regulation. Seller has not performed an environmental assessment of the site, but is not aware of any environmental problems.

(b) To the best of Seller's knowledge, after due investigation, Seller has no liability and neither Seller, nor to Seller's knowledge any predecessor owner or occupant, has handled or disposed of any substance, arranged for the disposal of any substance, or owned or operated or leased any property or facility in any manner that could form the basis for any present or future charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand (under the common law or pursuant to any statute) against Seller giving rise to any liability for damage to any site, location, or body of water (surface or subsurface) or for illness or personal injury.

6.9.5. **Information Held in Confidence.** From the date hereof until the Closing Date, Seller and other representatives of Seller if any, will hold in strict confidence, and will not disclose to any third party, any data and information obtained in connection with this transaction with respect to the business of Buyer, including any information as to the EBC Stock, except insofar as it is required by a lender to Seller and is any such data and information as may be required by law to be publicly disclosed or submitted to the Commission. If the transactions contemplated by this Agreement are not consummated, Seller will return to Buyer all such data and information, including, but not limited to, all documents, copies of documents and memoranda or other materials prepared by Seller which incorporate data or information obtained from Buyer that is otherwise not publicly available and all other data and information made available to Seller in connection with this transaction which would otherwise not be publicly available, except that which may be required to be submitted to the Commission.

6.9.6 **No Untrue Statements or Omission.** No statement, representation or warranty made by Seller in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Seller, or on its behalf, to Buyer and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Seller set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

## SECTION 7

### **WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER**

Buyer covenants, represents, and warrants as follows:

7.1 **Organization and Standing.** Buyer is now and on the Closing Date will be a corporation validly existing and in good standing under the laws of the State of Arkansas.

7.2 **Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into this Agreement and to execute all of Buyer's Closing Documents that require Buyer's signature. Appropriate resolutions to that effect shall be provided at closing. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary action of Buyer. This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement. Upon execution, the Buyer's closing documents will constitute valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms.

7.3 **No Contravention.** The execution, delivery and performance of this Agreement or any of Buyer's Closing Documents do not violate any provision of the Articles of Incorporation or By-laws of Buyer, or any contract provision or other commitment to which Buyer or any of its officers or directors or its parent entities are bound, or any judgment or order.

7.4 **Litigation.** Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint, before the Commission, other governmental body, or court, of any nature pending or, to the best of Buyer's knowledge, threatened against or affecting it which would affect Buyer's authority or ability to carry out its obligations under this Agreement.

7.5 **Information Held in Confidence.** From the date hereof until the Closing Date, Buyer and other representatives of Buyer, including Buyer's lenders, if any, will hold in strict confidence, and will not disclose to any third party, any data and information obtained in connection with this transaction with respect to the business of Seller, except insofar as it is required by a lender to Buyer and is any such data and information as may be required by law to be publicly disclosed or submitted to the Commission. If the transactions contemplated by this Agreement are not consummated, Buyer will return to Seller all such data and information, including, but not limited to, all documents, copies of documents and memoranda or other materials prepared by Buyer which incorporate data or information obtained from Seller that is otherwise not publicly available and all other data and information made available to Buyer in connection with this transaction which would otherwise not be publicly available, except that which may be required to be submitted to the Commission.

7.6 **Access.** Seller and its authorized representatives shall have, after the Closing Date, the right to obtain within twenty-four (24) hours of making a request, reasonable access to originals or copies of all logs, books, relevant records, contracts and documents necessary and solely for the preparation of Seller's tax returns and other required governmental filings.

7.7 **Buyer's Qualifications.** Other than as set forth in Schedule 7.7, there is no fact that would, under present law (including the Communications Act of 1934, as amended) and the present rules and regulations of the Commission, disqualify Buyer from being the assignee of the Station or that would delay Commission approval of the Assignment Application. Should Buyer become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such disqualification.

7.8 **Insolvency Proceedings.** No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition, or arrangement with creditors, voluntary or involuntary, affecting Buyer are pending or threatened.

7.9 **Restrictions on Seller.** Nothing contained in this Agreement shall give Seller any right to control the programming or operations of the Station after the Closing Date, as Buyer shall have complete control of the programming and operation of the Station as of the Closing Date. Pursuant to Section 73.1150 of the Commission Rules, Seller shall have no reversionary interest in the Station or any other interest relating to ownership after the Closing Date.

7.10 **No Untrue Statements or Omission.** No statement, representation or warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading.

## **SECTION 8**

### **SELLER'S CONDUCT OF BUSINESS PRIOR TO CLOSING AND BUYER'S ACCESS TO INFORMATION**



8.1 **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Station and their operation, and during such period, Seller shall:

8.1.1 Operate the Station in good faith and, in a manner consistent with the normal and prudent operation of commercial broadcast Station and in accordance with the rules and regulations of the Commission, and the Commission Authorizations.

8.1.2 Maintain all of the Authorizations and applications listed or referred to in this Agreement.

8.1.3 Make reasonable efforts to endeavor to protect the primary service area of the Station from interference from other stations, as interference is defined under the Commission's Rules in relation to the protection afforded to analog and digital commercial television broadcast stations, existing or proposed, of which Seller has actual knowledge, and promptly shall give Buyer notice of any such proposed or actual interference.

8.1.4 Maintain all of the Real Property and the Tangible Personal Property, as specified in Schedules 1.1.2 and 1.1.3, so, that when the same are delivered to Buyer, they shall satisfy all the warranties in all material respects on the part of Seller set forth herein, subject to reasonable wear and tear.

8.1.5 Maintain the existing inventory levels of the Station (including office supplies, spare parts, tubes, equipment and the like) and replace inventory items expended, depleted or worn out.

8.1.6 Deliver to Buyer, within five (5) business days after filing thereof with the Commission, copies of any and all reports, applications, and/or responses relating to the Station which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller will furnish a written summary thereof).

8.1.7 Give prompt notice to Buyer of any occurrence that comes to Seller's attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of the Seller or Buyer contained in this Agreement.

8.1.8 Keep and preserve the Business Records in accordance with good business practice.

8.2 **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets, the Station, or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld:

8.2.1 Cancel, modify, alter, amend, encumber, or any way discharge, terminate, or impair any material Agreements or leases pertaining to the Station, except for those contracts and agreements not being assumed by Buyer.

8.2.2 By any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms the Commission Authorizations with respect to the Station or give the Commission grounds to institute any proceeding for the revocation, suspension or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations.

8.2.3 Other than in the usual and ordinary course of business, sell or dispose of any of the Assets. Seller shall replace all Assets thus disposed of in the usual and ordinary course of business with assets having an aggregate value at least equal to the aggregate value of the Assets sold or otherwise disposed of.

8.2.4 Create or suffer or permit the creation of any mortgage, conditional sales agreement, security interest, lien, hypothecation, pledge, encumbrance, restriction, liability, charge, claim or imperfection of title on any of the Assets or with respect thereto.

8.2.5 Take any action that would prevent Seller from consummating the transactions contemplated in this Agreement.

### 8.3 Access to Information.

8.3.1 Access to the Assets. Between the date hereof and the Closing Date, upon reasonable notice Seller will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers, and other representatives, reasonable access during reasonable business hours to the Assets. Such access shall remain subject to the reasonable availability of representatives of Seller to accompany Buyer's representatives. Seller shall furnish to Buyer such information and materials concerning the Station's affairs as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Station.

8.4 Restrictions on Buyer. Nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Station prior to the Closing Date and Seller shall have complete control of the programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity with the public interest, convenience and necessity and with all other requirements of law and this Agreement.

8.5 Buyer's Covenants. From the date of this Agreement until the Closing Date, and other than the actions being taken and subject to the terms and conditions set forth under Schedule 7.7 herein, Buyer covenants that it will take no action, or fail to take any action, that would disqualify it from becoming the licensee of the Station or delay the grant of the Assignment Application by the Commission. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

## SECTION 9

### CONDITIONS FOR CLOSING

9.1 **Closing.** The Closing of this Agreement shall take place at the offices of Irwin, Campbell & Tannenwald, in Washington DC, Counsel to Buyer, or such other place as shall be mutually agreed upon by Buyer and Seller, on the Closing Date.

9.2 **Conditions Precedent to Obligations of Buyer.** The performance of the obligations of the Buyer under this Agreement is subject to the satisfaction of each of the following express conditions precedent, provided that Buyer may, at its election, waive any of such conditions:

9.2.1 Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.2.2 Each of the Seller's representations and warranties contained in this Agreement or in any Schedule, certificate, or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty were made at and as of such time, except with respect to such changes as are contemplated or permitted by this Agreement.

9.2.3 Seller shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date and shall be in full compliance therewith on the Closing Date.

9.2.4 Seller shall be the holder of the requisite Commission Authorizations, including digital, and shall be operating the Station substantially in accordance with the terms of the Commission Authorizations. The digital application shall be a valid application with no known defects.

9.2.5 All outstanding mortgages, liens, security agreements, and other charges and encumbrances on the Assets, shall have been discharged and satisfied, or arrangements made to discharge same at Closing.

9.2.6 Seller shall have delivered to Buyer an inventory of the Tangible Personal Property to be conveyed, current as of the Closing Date. There shall be no material changes between Schedule 1.1.3 and the inventory of Tangible Personal Property as of the Closing Date other than changes that have been agreed to and accepted by Buyer, in its reasonable discretion.

9.2.7 Seller shall have delivered to Buyer an opinion dated the Closing Date from counsel for Seller, in form and substance reasonably satisfactory to counsel for Buyer

9.2.8 Seller shall have obtained all consents, approvals, and waivers of other persons or parties as may be required for the consummation of the transactions contemplated by this Agreement and such consents shall contain terms no less favorable than now enjoyed by Seller, including consents to assign the Agreements listed in Schedules 1.1.2 and 1.1.4.

9.2.9 No material adverse change or destruction of the Station's Assets shall have occurred to be threatened to occur.

9.2.10 The Commission Order shall have been granted and be a Final Order.

9.3 **Conditions Precedent to Obligations of Seller.** The performance of the obligations of the Seller under this Agreement is subject to the satisfaction of each of the following express conditions precedent, provided that Seller may, at its election, waive any of such conditions:

9.3.1 Buyer shall have delivered to Seller the Buyer's Closing Documents (as defined in Section 10.2 below).

9.3.2 Each of Buyer's representations and warranties contained in this Agreement or in any Schedule, certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true and correct in all material respects at and as of Closing Date, as though each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

9.3.3 Buyer shall have performed all of the obligations set forth in Section 2.2 of this Agreement with respect to the payment of the Purchase Price.

9.3.4 Buyer shall have agreed in a form reasonably acceptable to Seller to assume all obligations under the Agreements assigned to Buyer arising on or after the Closing Date.

9.3.5. The Commission Order shall have been granted and be a Final Order.

## **SECTION 10**

### **OBLIGATIONS AT CLOSING**

10.1 **Closing Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following ("Seller's Closing Documents"):

10.1.1 An executed Bill of Sale in form and substance reasonably satisfactory to Buyer transferring to Buyer all Tangible Personal Property to be transferred hereunder.

10.1.2 An executed Assignment and Assumption Agreement in form and substance reasonably satisfactory to Buyer assigning to Buyer the Agreements to be assigned hereunder.

10.1.3 An executed Assignment and Transfer in form and substance reasonably satisfactory to counsel for Buyer assigning and transferring to Buyer all of the Commission Authorizations and the Intangibles.

10.1.4 A certified copy of the resolutions of Seller authorizing the execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions provided for herein, attested to by the Secretary of Seller.

10.1.5 An opinion of Seller's communications counsel, dated as of the Closing Date.

10.1.6 A certificate executed by Seller stating that (a) all of the representations and warranties of Seller set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Seller on or prior to the Closing Date have been performed in all material respects.

10.1.7 All Business Records not retained by Seller pursuant hereto.

10.1.8 Possession and/or ownership of and all right, title and/or interest in and to the Assets.

10.1.9 Consents referred to in Section 9.2.8.

**10.2 Closing Documents to be Delivered by Buyer.** At the Closing, Buyer shall deliver to Seller the following ("Buyer's Closing Documents"):

10.2.1 The Purchase Price as provided in Section 2.2.

10.2.2 A certificate executed by an Buyer stating that; (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects.

10.2.3 An Assignment and Assumption Agreement executed by Buyer, in form and substance reasonably satisfactory to Seller.

10.2.4 A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein, attested to by the Secretary of Buyer.

## **SECTION 11**

### **ACCOUNTS RECEIVABLE**

11.1 **Collection Procedures.** Upon Closing, Seller shall assign to Buyer all of the Accounts Receivable for purposes of collection only. For a period of one hundred twenty (120) days from Closing, Buyer shall collect such Accounts Receivable on Seller's behalf and will remit receipts to Seller not less than once each month during the 120 day period (the "Collection Period"). So long as the Accounts Receivable are in Buyer's possession, neither Seller nor its agents shall make any solicitation of them for collection purposes nor institute litigation for the collection of any amounts due thereunder. All payments received by Buyer during the Collection Period from any person obligated with respect to any of the Accounts Receivable shall be applied to Seller's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any Account Receivable, then Buyer may return that Account Receivable to Seller after which Seller shall be solely responsible for the collection thereof. Any of the Accounts Receivable that are not collected during the Collection Period shall be reassigned to Seller after which Buyer shall have no further obligation to Seller with respect to the Accounts Receivable; provided, however, that all funds subsequently received by Buyer (for an additional 90 days) that can be specifically identified, whether by accompanying invoice or otherwise, as a payment on any Account Receivable shall be promptly paid over or forwarded to Seller. Buyer shall not have the right to compromise, settle, or adjust the amounts of any of the Accounts Receivable without Seller's prior written consent, or to withhold any proceeds of the Accounts Receivable or to retain any uncollected Accounts Receivable after the expiration of the Collection Period for any reason whatsoever.

## SECTION 12

### **BROKERAGE**

12.1 **Brokerage Fee.** Seller and Buyer each represent and warrant to the other that neither Buyer nor Seller has engaged any broker, finder or agent in connection with the transactions contemplated by this Agreement, ("Broker"). Neither Seller nor Buyer have incurred any unpaid liability or agreed to pay any broker's, finder's or consultant's fee in connection with the transactions contemplated by this Agreement.

## SECTION 13

### **INDEMNIFICATIONS**

13.1 **Breach of Seller's Agreements, Representations, and Warranties.** Seller shall reimburse Buyer for, and indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees of any kind or nature), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Buyer by reason of:

(a) any material breach of any warranty, representation, or agreement of Seller contained under this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) the operation of the Station or the ownership of the Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed prior to the Closing Date under this Agreement, or any other lease, contract, or agreement);

(c) any transaction entered into by Seller or arising in connection with the Station or the operation of the business thereof or any of the Assets prior to the Closing; or

(d) any and all liabilities or obligations of Seller not specifically assumed by Buyer pursuant to this Agreement; or

(e) any and all actions, suits, or proceedings, incident to any of the foregoing.

**13.2 Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall reimburse Seller for, and indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without being limited to, payments, fines, penalties, interest, taxes, assessments, reasonable attorneys' fees and accounting fees of any kind or nature), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Seller by reason of:

(a) any material breach of any warranty, representation, or agreement of Buyer contained under this Agreement or any certificate or other instrument furnished by Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) the operation of the Station or the ownership of the Assets subsequent to Closing (including, but not limited to, any and all claims, liabilities and obligations first arising or required to be performed subsequent to the Closing Date under the Agreement);

(c) any transaction entered into by Buyer or first arising in connection with the Station or the operation of the business thereof or any of the Assets subsequent to the Closing;

(d) any and all liabilities or obligations of Seller specifically assumed by Buyer pursuant to this Agreement and that accrue or occur subsequent to the Closing Date under the Agreement; or

(e) any and all actions, suits, or proceedings incident to any of the foregoing.

13.3 **Notice of Claim.** Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 13.1 or 13.2 hereof ("Notice of Claim"), which amount is believed to be required to discharge the obligations of the indemnifying party resulting therefrom. Within ten (10) days after having been given the Notice of Claim, the indemnifying party may deliver to the other party (i) a written notice of objection to the payment of such claim ("Notice of Objection"), which Notice of Objection shall set forth the basis for such objection; or (ii) a written notice that the indemnifying party intends to defend against such claim in good faith ("Notice of Intention to Defend"). If such a Notice of Intention to Defend is delivered, the indemnified party shall hold in abeyance its claim for indemnification if and so long as such defense is conducted by the indemnifying party at the latter's expense in a manner effective to protect the indemnified party against such claim. If no Notice of Objection or Notice of Intention to Defend is given within the prescribed ten (10) day period, the indemnifying party shall promptly pay to the indemnified party the amount set forth in the Notice of Claim. If the parties are unable to resolve any Notice of Claim and corresponding Notice of Objection, either party may take whatever action it deems reasonable, including without limitation, the filing of a claim, petition, or other pleading in a court of competent jurisdiction. The indemnifying party shall not compromise or settle any claim without the prior written consent of the other party, which consent shall not be unreasonable withheld or delayed.

## **SECTION 14**

### **RISK OF LOSS**

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or cause, reasonable wear and tear excepted, prior to the Closing Date, is assumed and shall be borne by the Seller at all times before the Closing Date. If any such loss or damage occurs, Seller shall give prompt written notice of the loss or damage to Buyer and the proceeds of any claim for such loss, payable under any insurance policy with respect thereto, shall promptly be used to rebuild, replace, restore or repair any such damaged property at its own cost and expense. In the event that Seller does not fully replace, repair or restore any such lost or damaged Asset or Assets by the time the Closing otherwise would be held, Buyer may, at its option, upon written notice to Seller, either (i) postpone the Closing until such time as such Assets has been completely repaired, restored or replaced; (ii) elect to close and accept the Assets in its then condition, in which event Seller will deliver all insurance proceeds paid or payable by reason of the loss or damage to Buyer; or (iii) terminate this Agreement. If Buyer terminates this Agreement under this Section, each party shall bear its own expenses. Buyer's option to terminate this Agreement under this Section 14 shall arise only if such damage to the Station is so substantial that it prevents the Station from operating in its normal and customary manner for a period of two (2) consecutive days. Buyer's failure to terminate this Agreement under Section 14 in the event damage to the Station is substantial does not affect its right to other remedies under this Section 14.

## **SECTION 15**

### **FEES AND EXPENSES**



Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. Real estate transfer and recording fees assessed or levied in connection with the sale of the Real Property to the Buyer hereunder shall be paid in accordance with the custom prevailing in the state where the property is located, on the Closing Date. All other expenses incurred in connection with this transaction shall be borne by the party incurring same.

## **SECTION 16**

### **BULK SALES LAW**

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and Seller agrees to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

## **SECTION 17**

### **DEFAULT AND TERMINATION**

17.1 A party shall "default" under this Agreement if it knowingly makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement, including the failure of any conditions precedent. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

17.2 If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings.

17.3 Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be entitled to keep as liquidated damages the Earnest Money Deposit, which shall constitute liquidated damages and shall be in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement. Buyer and Seller each acknowledge and agree that the liquidated damage amount is reasonable in light of the anticipated harm which will be caused by Buyer's breach of this agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder.



If to Buyer:  
EBC Buffalo, Inc.  
1 Shackleford Drive  
Suite 400  
Little Rock, Arkansas 72211  
(501) 221-1101 (Facsimile)  
Attention: Mr. Larry E. Morton

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

EBC Buffalo, Inc.  
#1 Shackleford Drive  
Suite 400  
Little Rock, AR 72211  
(501) 221-1101 (Facsimile)

Peter Tannenwald, Esq.  
Irwin Campbell & Tannenwald, PC  
1730 Rhode Island, Ave., NW Suite 200  
Washington, DC 20036-3101  
(202) 728-0354 (Facsimile)

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

## SECTION 20

### MISCELLANEOUS

20.1 **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret or construe the meaning of the sections themselves or the intentions of the parties.

20.2 **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and are intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed or modified in any respect or particular unless each such alteration, amendment, change or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. No provision, condition or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

20.3 **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and their respective, successors, heirs and assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the written consent of the other; provided, however, Buyer may assign this Agreement without Seller's consent to an entity which is a subsidiary or parent of Buyer or to another legal entity owned by Buyer or its principals, provided Buyer provides written notice to Seller. In the event of such a proposed assignment by Buyer, the provisions of this Agreement shall inure to the benefit of and be binding upon Buyer's assigns. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

20.4 Intentionally Omitted.

20.5 **Additional Documents.** The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Assets, and/or the successful processing by the Commission of the application to be filed with it, as provided in Section 4.

20.6 **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, all of which together shall comprise one and the same instrument. Counterpart signatures to this Agreement delivered by facsimile shall be acceptable and binding.

20.7 **Dispute Resolution.** If a dispute arises out of or relates to this Agreement or breach thereof, and the parties are unable to resolve the dispute through negotiation, the parties agree to submit the dispute to a sole independent, disinterested, arbitrator in Washington, D.C. selected by the parties within thirty (30) days after either party delivers in writing to the other party a notice of intent to seek arbitration. The arbitrator need not be a professional arbitrator, and persons such as lawyers shall be acceptable. (In the absence of agreement on such selection, a request shall be submitted to the American Arbitration Association for appointment of an arbitrator.) Before undertaking to resolve a dispute, the arbitrator shall be duly sworn faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of his or her understanding. The arbitration hearing shall be conducted in Washington, D.C., in accordance with the commercial arbitration rules of the American Arbitration Association. The written decision of the arbitrator shall be final and binding on the parties to this Agreement. Such decision may be entered as a judgment in any court of competent jurisdiction. Each party will bear its own attorneys' fees associated with the arbitration and will pay all other costs and expenses of the mediation and arbitration as the rules of the AAA provide.

20.8 Governing Law. The parties agree that to the extent not governed by federal law, this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of New York.

20.9 Counsel. Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

20.10 Time is of the Essence. Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

20.11 Severability. If any term or provision of this Agreement or its application, to any extent, is declared to be invalid or unenforceable, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable, provided that the position of neither party is materially adversely affected thereby in a manner not acceptable to that party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized as of the day and year first above written.

SELLER:

Caroline K. Powley d/b/a Unicorn/Springville

By: Caroline K. Powley  
Name CAROLINE K. POWLEY  
Title OWNER

BUYER:

EBC Buffalo, Inc.

By: \_\_\_\_\_  
Lori Withrow, Secretary

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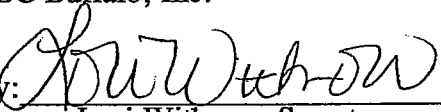
SELLER:

Caroline K. Powley d/b/a Unicorn/Springville

By: \_\_\_\_\_  
Name  
Title

BUYER:

EBC Buffalo, Inc.

By:   
Lori Withrow, Secretary