

specified in Section 9.01 and 9.03 are otherwise satisfied, even if Seller cannot assign the American Tower Lease to Buyer at the Closing.

- (f) Within ten (10) days of the completion of the Relocation, Seller shall provide Buyer with a statement of the actual amount of the Cost Differential (the "Actual Cost Differential"). If the Actual Cost Differential is greater than the Estimated Cost Differential paid by Buyer to Seller pursuant to Section 7.06(b), then Buyer shall pay to Seller the amount of such excess. If the Actual Cost Differential is less than the Estimated Cost Differential paid by Buyer to Seller pursuant to Section 7.06(b), then Seller shall pay to Buyer the amount of such difference. All payments pursuant to this Section 7.06(f) shall be made in immediately available funds to an account designated in writing by the receiving party, together with interest on such amount from the date of payment by Buyer of the Estimated Cost Differential to the date of payment of the amount contemplated by this Section 7.06(f) at a rate equal to the prime rate at the Wells Fargo Bank, Dallas, Texas, on the date of payment by Buyer of the Estimated Cost Differential.
- (g) The Buyer acknowledges that equipment used by Seller in connection with its operation of Station KERA-FM is located in the same space at the Richland Tower as equipment used in connection with the operation of Station KDTN-DT. The parties hereby agree to work together to secure approval from the landlord of the Richland Tower and to partition the space so that, except as otherwise contemplated by this Agreement or any Ancillary Agreement, Buyer shall have exclusive access to the equipment used for Station KDTN-DT, and Seller shall have exclusive access to the equipment used in connection with the operation of Station KERA-FM. Each party shall bear its own expense for efforts to implement the partitioning and for any compensation or rent due the landlord as a result of the partitioning of the space.

ARTICLE VIII

TAX MATTERS

SECTION 8.01. Transfer Taxes.

All Transfer Taxes arising out of or in connection with the transactions effected pursuant to this Agreement shall be divided equally between (i) Buyer and (ii) Seller. The party that has the primary responsibility under applicable Law for the payment of any particular Transfer Tax shall prepare and file the relevant Tax Return and notify the other party in writing of the Transfer Taxes shown on such Tax Return provided that such other party shall have the right to reasonably review and approve any such Tax Return prior to the filing of same (such approval to not be unreasonably withheld or delayed). The other party shall pay the first party an amount equal to one-half of such Transfer Taxes in immediately available funds no later than the date that is the later of (i) five Business Days after the date of such notice or (ii) two Business Days prior to the due date for such Transfer Taxes. The first party shall promptly remit the Transfer Taxes to the proper Governmental Authority.

ARTICLE IX
CONDITIONS TO CLOSING

SECTION 9.01. Conditions to Obligations of Buyer and Seller.

The obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by both Buyer and Seller, at or prior to the Closing, of each of the following conditions:

- (a) No Governmental Order shall prohibit the consummation of the Closing.
- (b) The FCC Consent shall have been granted and shall be in full force and effect, and shall have become a Final Order, provided, however, that Seller will, at Buyer's request, waive the requirement that the FCC Consent shall have become a Final Order if no petitions to deny or informal objections are filed with respect to the application to assign the FCC License.

SECTION 9.02. Conditions to Obligations of the Seller.

The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver, at or prior to the Closing, of each of the following further conditions:

- (a)
 - (i) Buyer shall have performed and complied in all material respects with all of its obligations hereunder required to be performed by it at or prior to the Closing Date; and
 - (ii) the representations and warranties of Buyer contained in this Agreement and in any certificate delivered by Buyer pursuant hereto (A) that are qualified by materiality or material adverse effect shall be true and correct and (B) that are not qualified by materiality or material adverse effect shall be true and correct in all material respects, in each case at and as of the Closing Date as if made at and as of such date (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date need be true and correct, or true and correct in all material respects, as the case may be, only as of such specified date).
- (b) Buyer shall have delivered or caused to be delivered to Seller the documents, each properly executed and dated as of the Closing Date required pursuant to Section 2.08(d). Buyer shall have made the payments described in Section 2.08(b) and the Escrow Agent shall have made the payments described in Section 2.08(a).
- (c) Seller shall have received the consent of the lessor under the Lease to the Leasehold Mortgage, substantially in the form of Exhibit I.

SECTION 9.03. Conditions to Obligations of Buyer.

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver, at or prior to the Closing, of each of the following further conditions:

- (a) (i) Seller shall have performed and complied in all material respects with all of its obligations hereunder required to be performed by it at or prior to the Closing Date; and
- (ii) the representations and warranties of Seller contained in this Agreement and in any certificate delivered by Seller pursuant hereto (A) that are qualified by materiality or Material Adverse Effect shall be true and correct and (B) that are not qualified by materiality or Material Adverse Effect shall be true and correct in all material respects, in each case at and as of the Closing Date as if made at and as of such date without giving effect to any modification or supplement to the disclosure Schedules permitted by Section 5.03 (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date need be true and correct, or true and correct in all material respects, as the case may be, only as of such specified date).
- (b) Seller shall have delivered or caused to be delivered to Buyer the documents, each properly executed and dated as of the Closing Date required pursuant to Section 2.08(c) and the Escrow Agent shall have made the payments described in Section 2.08(a).
- (c) The Seller shall have received all Material Consents.

ARTICLE X

TERMINATION

SECTION 10.01. Termination.

This Agreement may be terminated at any time prior to the Closing as follows:

- (a) by the mutual written consent of Seller and Buyer;
- (b) either by Seller or by Buyer:
 - (i) if the Closing shall not have occurred on or before nine (9) months following the acceptance by the FCC of the FCC Applications for assignment of the FCC Licenses from Seller to Buyer (the "Termination Date");

- (ii) if there shall be any Law that restrains or prohibits consummation of the transactions contemplated hereby or if an enforceable Governmental Order is issued restraining or otherwise prohibiting consummation of the transactions contemplated hereby; or
- (iii) if the FCC has denied the FCC Applications and such denial has become a Final Order.
- (c) by Seller upon a breach of any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, or if any representation or warranty of Buyer shall have become untrue, in either case such that the condition set forth in Section 9.02(a) would not be satisfied, unless such breach or untruth can be cured within 30 days after receipt of notice thereof and Buyer proceeds in good faith to cure such breach or untruth as promptly as practicable;
- (d) by Buyer upon a breach of any representation, warranty, covenant or agreement on the part of Seller set forth in this Agreement, or if any representation or warranty of Seller shall have become untrue, in either case such that the condition set forth in Section 9.03(a) would not be satisfied, unless such breach or untruth can be cured within 30 days after receipt of notice thereof and the Seller proceeds in good faith to cure such breach or untruth as promptly as practicable;
- (e) by Buyer as set forth in Section 5.05; or
- (f) by Buyer if (i) Station KDTN-TV shall have (A) ceased broadcasting on its authorized frequency for a period of seventy-two (72) consecutive hours or more, or (B) been broadcasting at a reduced power level for more than a period of ten (10) consecutive days, which cessation or reduction is reasonably likely to materially and adversely affect the operations or business of the Station KDTN-TV, except where any cessation of operation or operation at reduced power occurs in connection with the relocation of the transmission facilities of Station KDTN-TV provided for under Section 7.06; or (ii) Station KDTN-TV shall have, after commencing DTV operation, ceased broadcasting on its authorized frequency for a period of seventy-two (72) consecutive hours or more, provided that, in either case, Buyer must exercise its termination right under this Section 10.01(f) within fifteen (15) days after the date on which Station KDTN-TV or Station KDTN-DT, as the case may be, has resumed uninterrupted broadcasting on its authorized frequency or resumed broadcasts at full power. Notwithstanding the foregoing, Seller's operation of Station KDTN-DT at less than full power pursuant to a special temporary authorization issued by the FCC shall not constitute a basis for Buyer to terminate this Agreement pursuant to this Section 10.01(f).

Notwithstanding the foregoing, neither party may terminate this Agreement pursuant to clause (c) or (d) of this Section 10.01 if any representation or warranty of the party seeking to terminate is materially inaccurate or breached or such party has failed to comply with or satisfy, in all material respects, its covenants and agreements made hereunder.

The party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give notice of such termination to the other party.

SECTION 10.02. Effect of Termination.

- (a) In the event of the termination of this Agreement pursuant to Section 10.01 of this Agreement, this Agreement shall become void and have no effect, except that (i) the provisions of this Section 10.02, and Articles 11 and 12 of this Agreement shall survive any such termination, and (ii) subject to the provisions of Section 10.02(b), a termination pursuant to Section 10.01(c) or 10.01(d) of this Agreement shall not relieve the breaching party from Liability for an uncured breach of a representation, warranty, covenant, or agreement giving rise to such termination.
- (b)
 - (i) If the non-occurrence of Closing is the result of a material default by Buyer of its representations or warranties or any of its covenants or agreements hereunder, and Seller is not in material default on any of its representations or warranties or any of its covenants or agreements hereunder, then Seller shall be paid the Escrow Deposit, together with all interest earned thereon (collectively, the "Default Payment"), and Buyer shall take all such action as is necessary for the same to be paid to Seller, including, without limitation, promptly providing appropriate written notice to such effect to the Escrow Agent.
 - (ii) The Default Payment to be made to Seller pursuant to this Section 10.02(b) shall be deemed to be liquidated damages paid to compensate Seller for the damages resulting to Seller from Buyer's default. The parties agree that actual damages pursuant to a breach of this Agreement prior to the Closing would be impossible to measure. Receipt of the Default Payment shall be the sole and exclusive remedy that Seller shall have in the event of such default and shall constitute a waiver of any and all other legal or equitable rights or remedies that Seller may otherwise have as a result of a default by Buyer. In consideration of the receipt of the Default Payment as liquidated damages, Seller may not obtain any further legal or equitable relief, including specific performance, to which it may otherwise have been entitled and Buyer shall have no further liability to Seller as a result of any such default, except in the case of fraud or willful misfeasance on the part of Buyer.
 - (iii) If the Closing does not occur due to the nonfulfillment of any of the conditions in Article 9, without Buyer being in breach in the performance of any of its representations or warranties or performance of any of its covenants or agreements under this Agreement, Seller shall not be entitled to the Default Payment and, promptly after the termination of this Agreement, the Default Payment shall be returned to Buyer.
- (c) In the event of the termination of this Agreement pursuant to Section 10.01 (a), (b), (c) or (f), Seller shall retain ownership of any facilities constructed pursuant to Section 7.06 and Buyer shall have no claim to any such facilities and shall not be entitled to any refund of any amount paid by Buyer to Seller pursuant to Section 7.06(b).

ARTICLE XI

SURVIVAL; INDEMNIFICATION

SECTION 11.01. Survival.

The representations and warranties of the parties hereto contained in or made pursuant to this Agreement or in any certificate or other writing furnished pursuant hereto or in connection herewith shall survive in full force and effect until the first anniversary of the Closing Date; provided that (i) any and all covenants and agreements shall survive indefinitely until performed or satisfied in full, (ii) the representations and warranties in Sections 3.01, 3.02, 3.15, 4.01, 4.02 and 4.07 shall survive indefinitely; and (iii) the representations and warranties in Section 3.12 shall survive until the third (3rd) anniversary of the Closing Date. Notwithstanding the preceding sentence, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

SECTION 11.02. Indemnification by Buyer.

- (a) Buyer shall indemnify against and hold the Seller, its Affiliates and its employees, officers and directors (collectively, the "Seller Indemnified Parties") harmless from, and agrees to promptly defend any Seller Indemnified Party from and reimburse any Seller Indemnified Party for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including any Action brought by any Governmental Authority or Person and including reasonable attorneys' fees and expenses) (collectively, "Losses"), which such Seller Indemnified Party may at any time suffer or incur, or become subject to, as a result of or in connection with:
 - (i) any failure of any representation or warranty of Buyer (whether made in or pursuant to this Agreement or in any instrument or certificate delivered by Buyer at the Closing in accordance herewith) to be true when made and at and as of the Closing Date as if made at and as of such date (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date need be true only as of such specified date), in each case determined without regard to any material adverse effect qualification contained in any representation or warranty (each such misrepresentation and breach of warranty, or such failure of any representation or warranty to be true, a "Buyer Warranty Breach");
 - (ii) any failure by Buyer to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and/or other instruments delivered by Buyer pursuant to this Agreement;
 - (iii) the Assumed Liabilities; and
 - (iv) to the extent arising from the operation of the Station by Buyer from and after the Closing, except to the extent indemnified by Seller under Section 11.03.

- (b) Notwithstanding any other provision to the contrary, Buyer shall not be required to indemnify and hold harmless any Seller Indemnified Party pursuant to Section 11.02(a)(i): (A) unless such Seller Indemnified Party has asserted a claim with respect to such matters within the applicable survival period set forth in Section 11.01 and (B) until the aggregate amount of the Seller Indemnified Parties' Losses resulting from Buyer Warranty Breach exceeds One Hundred Thousand Dollars (\$100,000.00), and then only to the extent of such Losses in excess of such amount; provided, however, that the cumulative indemnification obligation of Buyer under this Article XI shall in no event exceed One Million Dollars (\$1,000,000.00)

SECTION 11.03. Indemnification by Seller.

- (a) Seller shall indemnify against and hold Buyer, its Affiliates and their respective employees, officers and directors (collectively, the "Buyer Indemnified Parties") harmless from, and agrees to promptly defend any Buyer Indemnified Party from and reimburse any Buyer Indemnified Party for, any and all Losses that such Buyer Indemnified Party may at any time suffer or incur, or become subject to, as a result of or in connection with:
- (i) any failure of any representation or warranty of Seller (whether made in or pursuant to this Agreement or in any instrument or certificate delivered by the Seller at the Closing in accordance herewith) to be true when made and at and as of the Closing Date as if made at and as of such date (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date need be true only as of such specified date), in each case determined without regard to any Material Adverse Effect qualification contained in any representation or warranty (other than Section 3.08) (each such misrepresentation and breach of warranty, or such failure of any representation or warranty to be true, a "Seller Warranty Breach");
 - (ii) any failure by Seller to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and/or other instruments delivered by Seller pursuant to this Agreement;
 - (iii) the Excluded Assets, provided that an applicable claim is brought during the applicable survival period to which a breach of a representation or warranty relates; and
 - (iv) the Excluded Liabilities, provided that an applicable claim is brought during the applicable survival period to which a breach of a representation or warranty relates.
- (b) Notwithstanding any other provision to the contrary, Seller shall not be required to indemnify and hold harmless any Buyer Indemnified Party pursuant to Section 11.03(a)(i): (A) unless such Buyer Indemnified Party has asserted a claim with respect to such matters within the applicable survival period set forth in Section 11.01 and (B) until the aggregate amount of the Buyer Indemnified Parties' Losses resulting from Seller Warranty Breaches exceeds One Hundred Thousand Dollars (\$100,000.00), and then only to the extent of such Losses in excess of such amount; provided,

however, that the cumulative indemnification obligation of Seller under this Article XI shall in no event exceed One Million Dollars (\$1,000,000.00)

SECTION 11.04. Indemnification Procedure.

- (a) A party entitled to be indemnified pursuant to Section 11.02 or 11.03 (the "Indemnified Party") shall promptly notify the party liable for such indemnification (the "Indemnifying Party") in writing of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement; provided, however, that a failure to give prompt notice or to include any specified information in any notice will not affect the rights or obligations of any party hereunder except and only to the extent that, as a result of such failure, any party which was entitled to receive such notice was prejudiced as a result of such failure. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article XI within thirty (30) days after the receipt of written notice thereof from the Indemnified Party.
- (b) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 11.04(a), the Indemnifying Party shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party for so long as the Indemnifying Party shall continue in good faith to diligently defend against such action or claim. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case five (5) Business Days before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 11.04(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld, and the Indemnified Party shall make available to the Indemnifying Party or its agents all records and other material in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligations to do so. In the event the Indemnifying Party elects not to defend such claim or action or if the Indemnifying Party elects to defend such claim or action but fails to diligently defend such claim or action in good faith, the Indemnified Party shall have the right to settle or compromise such claim or action without the consent of the Indemnifying Party, except that the Indemnified Party shall not settle or compromise any such claim or demand, unless the Indemnifying Party is given a full and completed release of any and all liability by all relevant parties relating thereto.

SECTION 11.05. Certain Limitations.

- (a) Following the Closing the sole and exclusive remedy for Buyer for any claim arising out of a breach of any representation, warranty, covenant or other agreement herein on the part of Seller shall be a claim for indemnification pursuant to this Article XI except in the case of fraud on the part of Seller.

- (b) The parties hereto agree to make appropriate adjustments for tax consequences in determining the amount of Losses under this Article XI. All indemnification payments under this Article XI shall be deemed adjustments to the Purchase Price.
- (c) An Indemnified Party shall, to the extent practicable and reasonably within its control and at the expense of the Indemnifying Party, make commercially reasonable efforts to mitigate any Losses of which it has adequate notice, provided that the Indemnified Party shall not be obligated to act in contravention of applicable Law or in contravention of reasonable and customary practices of a prudent person in similar circumstances. The Indemnifying Party shall have the right, but not the obligation, and shall be afforded the opportunity by the Indemnified Party to the extent reasonably possible, to make commercially reasonable efforts to minimize Losses before such Losses actually are incurred by the Indemnified Party.
- (d) Each Indemnified Party shall be obligated in connection with any claim for indemnification under this Article XI to use all commercially reasonable efforts to obtain any insurance proceeds available to it with regard to the applicable claims. The amount which the Indemnifying Party is or may be required to pay to any Indemnified Party pursuant to this Article XI shall be reduced (retroactively, if necessary) by any insurance proceeds or other amounts actually recovered by or on behalf of the Indemnified Party in reduction of the related Losses. If the Indemnified Party shall have received the payment required by this Agreement from the Indemnifying Party in respect of Losses and shall subsequently receive insurance proceeds or other amounts in respect of such Losses, then such Indemnified Party shall promptly repay to the Indemnifying Party a sum equal to the amount of such insurance proceeds or other amounts actually received.
- (e) The obligation to indemnify a party's employees, officers and directors in accordance with this Article XI will be enforced exclusively by such party and nothing herein shall be construed to grant such employees, officers and directors any individual rights, remedies, obligations or liabilities with respect to this Agreement. The parties to this Agreement may amend or modify this Agreement in any respect without the consent of such employees, officers and directors.

ARTICLE XII

GENERAL PROVISIONS

SECTION 12.01. Expenses.

Except as may be otherwise specified herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.