

**ASSET PURCHASE AGREEMENT**

**By and Among**

**SMITH MEDIA, LLC**

**and**

**SMITH MEDIA LICENSE HOLDINGS, LLC,**

**as Seller,**

**and**

**WKTV, LLC,  
as Buyer**

**Dated: October 1, 2013**

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## ASSET PURCHASE AGREEMENT

This **Asset Purchase Agreement** (this “**Agreement**”), dated as of October 1, 2013, is made and entered into by and among **SMITH MEDIA, LLC**, a Delaware limited liability company (“**Smith**”), **SMITH MEDIA LICENSE HOLDINGS, LLC**, a Delaware limited liability company (“**License Holdings**”, and together with Smith, “**Seller**”), and **WKTV, LLC**, a Delaware limited liability company (“**Buyer**”).

### BACKGROUND:

Seller owns and operates television broadcast station WKTV(TV), Utica, New York (the “**Station**”).

Seller desires to sell, assign and transfer to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets used or held for use in the operation of the Station, subject to obtaining all required consents of the Commission. Seller also will assign and transfer to Buyer, and Buyer will assume, pay and perform, certain liabilities related to the operations of the Station, on the terms and subject to the conditions set forth herein.

Prior to the date hereof, the Initial Deposit was made to Seller by or for the benefit of Buyer. Contemporaneously with the execution and delivery of this Agreement, Buyer delivered to the Escrow Agent the APA Deposit Escrow to be held by the Escrow Agent to secure Buyer’s performance of its obligations under this Agreement.

### AGREEMENT:

In consideration of the above premises, the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sale and Purchase of Assets.

1.1 Sale of Assets to Buyer. At the Closing, subject to the satisfaction of the conditions set forth in Section 7, Seller shall sell and assign to Buyer and Buyer shall purchase and acquire, the Assets free and clear of any and all Liens other than Permitted Liens.

1.2 Excluded Assets. Seller shall not sell, and Buyer shall not purchase, any of the Excluded Assets.

1.3 Assumption of Liabilities.

(a) At the Closing, subject to the satisfaction of the conditions set forth in Section 7, Buyer shall assume, pay, perform and discharge all of the Assumed Liabilities. Buyer shall be entitled to assert any defense against a third party with respect to an Assumed Liability. Seller shall make representatives available at Seller’s expense for consultation with Buyer as Buyer reasonably may request with respect to any facts in Seller’s possession relevant to such



defense relating to periods prior to the Closing upon reasonable notice, during normal business hours, and for reasonable periods of time.

(b) Except as provided in Section 1.3(a), Buyer shall not assume, and shall not pay, perform or discharge, any other Liabilities or obligations of Seller, relating to the Station or otherwise, and Seller shall retain, pay, perform and discharge all Liabilities or obligations of Seller other than the Assumed Liabilities (including the Retained Liabilities).

## 2. Purchase Price.

2.1 Purchase Price. In consideration for the Assets, pursuant to the terms and subject to the conditions of this Agreement, at Closing Buyer shall (i) assume the Assumed Liabilities from Seller and (ii) pay Sixteen Million Dollars (\$16,000,000), as adjusted pursuant to Section 2.2 and Section 2.4 (collectively, the “**Purchase Price**”) as follows: (A) Buyer shall pay Fourteen Million Two Hundred Thousand Dollars (\$14,200,000) (the “**Base Purchase Price**”), to Seller in cash, subject to Section 2.2 and Section 2.4, (B) Buyer shall pay the Indemnity Escrow in cash to the Escrow Agent pursuant to Section 2.3, (C) the Initial Deposit shall be credited against the Purchase Price, and (D) the APA Deposit Escrow, as directed by the Buyer and Seller in the Joint Instructions, shall be paid by the Deposit Escrow Agent to the Seller, by wire transfer of immediately available funds in accordance with written instructions set forth in the Joint Instructions. The Purchase Price is subject to adjustment pursuant to Section 2.2 and Section 2.4. On the date hereof, Buyer has delivered the APA Deposit Escrow to the Escrow Agent to hold in accordance with and subject to the terms of this Agreement and the Deposit Escrow Agreement.

## 2.2 Prorations as of Closing.

(a) Subject to the provisions of paragraph (b) below, the Base Purchase Price shall be subject to adjustment to reflect the principle that all revenues and all expenses arising from the Assets and the business of the Station, including tower rental, business and license fees, utility charges, real and personal property Taxes and assessments levied against the Assets and rebates thereof, property and equipment rentals, sales commissions or other fees payable, applicable copyright or other fees, including program license payments, sales and service charges, Taxes (except for Taxes arising from the transfer of the Assets pursuant to this Agreement), any accrued expenses, Commission regulatory fees, music and other license fees and similar prepaid and deferred items, shall be prorated between Buyer and Seller to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and Liabilities allocable to the business of the Station for the period ended immediately prior to the Effective Time (other than the Assumed Liabilities), and Buyer shall receive all revenues and shall be responsible for all expenses, costs and obligations allocable to the business of the Station for the period commencing immediately on and after the Effective Time (other than the Retained Liabilities).

(b) Notwithstanding anything else in this Section 2.2 to the contrary, any prorations and adjustments pursuant to Section 2.2(a) shall be subject to the following:

(i) The proration required in Section 2.2(a) shall be made to the extent (and only to the extent) that the items subject to such proration are not included in the working capital adjustment required by Section 2.4;

(ii) All revenues and expenses of the Station to the extent subject to proration pursuant to this Section 2.2 shall be included in the calculation of Net Working Capital to the extent included in the definition thereof for purposes of this Agreement, and, to the extent so included, shall not be subject to proration pursuant to this Section 2.2;

(iii) There shall be no proration for or in respect of the Excluded Assets or the Retained Liabilities, and Buyer shall not be responsible for any obligation or Liability that is not an Assumed Liability; and

(iv) Except as otherwise provided in Section 6.8, in no event shall Buyer be liable for any bonus or any other compensation payable to any employees as a result of or in connection with the transaction contemplated herein, including stay or retention bonuses or change of control payments, all of which shall be the responsibility of Seller.

(c) Notwithstanding anything else in this Section 2.2 to the contrary, there shall be no proration between Buyer and Seller for syndicated programming, network or other programs or film barter assets or for payments due under Programming Contracts; all adjustments in respect of which shall be made only to the extent included in the working capital adjustment required by Section 2.4. All such syndicated programming, network or other programs or film barter assets have been amortized in accordance with the Station's ordinary course accounting policies. Notwithstanding anything to the contrary contained herein, the current liability for the Station's cash syndicated programming included in Net Working Capital shall be brought current by Seller as of the Effective Time and no such amounts shall be deferred in such a manner that the liability in respect thereof differs from amounts determined by using the terms of the agreement giving rise to such liability.

2.3 Indemnity Escrow. At the Closing, Buyer will deposit with Webster Bank, N.A. (the "**Escrow Agent**"), as escrow agent pursuant to an escrow agreement substantially in the form of **Exhibit 2.3** the ("**Escrow Agreement**") One Million Dollars (\$1,000,000) in cash (the "**Indemnity Escrow**"). The Escrow Agent will hold the Indemnity Escrow to be distributed pursuant to the terms of the Escrow Agreement (as defined below) and this Agreement. The Indemnity Escrow will serve as the sole source of payment of any indemnification obligations of Seller pursuant to Section 9 and any payment due from Seller to Buyer under Section 2.4(e).

2.4 Adjustment to Purchase Price. The Purchase Price shall be increased or decreased by the amount, if any, by which the Net Working Capital is greater than or less than, respectively, Zero Dollars (\$0.00).

(a) Determination of Estimated Purchase Price Adjustment Statement. Seller shall prepare and deliver to Buyer a written statement of its good faith estimate of the Net

Working Capital as of the Effective Time and any prorations required by Section 2.2(a) and the Purchase Price based thereon (the “**Estimated Purchase Price Adjustment Statement**”) no less than five (5) days prior to the Closing Date. The Estimated Purchase Price Adjustment Statement shall be prepared in accordance with GAAP consistently applied and on the same basis and applying the same accounting principles, policies and practices that were used in preparing the Financial Statements, which such principles, policies and practices are set forth on **Schedule 2.4(a)**, which contains a sample statement of the Estimated Purchase Price Adjustment Statement with a hypothetical date of Closing of August 31, 2013; provided, however, that for purposes of Sections 2.4(a), 2.4(b), and 2.4(c) the Estimated Purchase Price Adjustment Statement shall exclude: (i) all Accounts Receivables that are aged 180 days or more as of Closing, unless such Accounts Receivable are being collected in accordance with a valid and enforceable written agreement which may be in the form of a confirming e-mail and (ii) all allowances for bad debts.

(b) Estimated Purchase Price Adjustment Statement Adjustment. If the Estimated Purchase Price Adjustment Statement requires a decrease in the Base Purchase Price, such adjustment shall be effected by a reduction in the Base Purchase Price. If the Estimated Purchase Price Adjustment Statement requires an increase in the Base Purchase Price, such adjustment shall be effected by an increase in the Base Purchase Price.

(c) Determination of Final Purchase Price Adjustment Statement. Within one hundred thirty-five (135) days after the Closing Date, Buyer shall determine, and deliver to Seller a written statement of, the actual Net Working Capital as of the Effective Time and any prorations required by Section 2.2(a) and the Purchase Price based thereon (the “**Final Purchase Price Adjustment Statement**”) using the same methodology and the same accounting principles, policies and practices as were used for the Estimated Purchase Price Adjustment Statement, including the exclusion of: (i) all Accounts Receivables that are aged 180 days or more as of Closing, unless such Accounts Receivable are being collected in accordance with a valid and enforceable written agreement which may be in the form of a confirming e-mail and (ii) all allowances for bad debts.

(d) Disputes. If within thirty (30) days following delivery of the Final Purchase Price Adjustment Statement, Seller has not given Buyer written notice of its objection to any calculation contained therein (which notice shall state the basis of Seller’s objection), then the Final Purchase Price Adjustment Statement and the Purchase Price set forth therein calculated by Buyer shall be binding and conclusive on the parties. If, on the other hand, Seller duly gives Buyer such written notice of objection, and if Seller and Buyer fail to resolve the issues outstanding with respect to the amount of Net Working Capital contained in the Final Purchase Price Adjustment Statement within thirty (30) days of Buyer’s receipt of Seller’s objection notice, Seller and Buyer shall submit the issues remaining in dispute to BDO USA, LLP or Grant Thornton LLP (or, in the event such firm is no longer in existence or is no longer independent with respect to one or both of the parties, such other firm of independent certified public accountants as the parties shall mutually agree) (the “**Independent Accountants**”) for resolution applying the principles, policies and practices referred to in Section 2.4(a). If issues are submitted to the Independent Accountants for resolution, (i) Seller and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may reasonably

request and are available to that party or its agents and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants, as set forth in a notice to be delivered to both Seller and Buyer within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties (absent manifest error) and shall be used in the calculation of the Purchase Price; and (iii) the losing party shall bear the fees and costs of the Independent Accountants for such determination.

(e) Final Purchase Price Adjustment. The Purchase Price, as adjusted pursuant to Section 2.4(b), shall be further increased or decreased by the amount, if any, by which the Purchase Price set forth in the Final Purchase Price Adjustment Statement is greater than or less than, respectively, the Purchase Price set forth in the Estimated Purchase Price Adjustment Statement (the “**Final Purchase Price Adjustment**”). If the Purchase Price set forth in the Final Purchase Price Adjustment requires a decrease in the Base Purchase Price, such adjustment shall be effected by payment in cash by Seller to Buyer within five (5) business days after the final determination of the Final Purchase Price Adjustment. If the Purchase Price set forth in Final Purchase Price Adjustment requires an increase in the Base Purchase Price, such adjustment shall be effected by payment in cash by Buyer to Seller within five (5) business days after the final determination of the Final Purchase Price Adjustment.

2.5 Allocation of Purchase Price. The Seller and the Buyer shall use commercially reasonable efforts to agree, within 120 days after the Closing Date, on the allocation of the Purchase Price (and other amounts, including Assumed Liabilities, taken into account as purchase price for tax accounting purposes) among the Assets in accordance with the requirements of Section 1060 of the Code, and the regulations thereunder. If the parties hereto reach agreement with respect to such allocation, the parties agree to (i) jointly complete and separately file Forms 8594 with their respective federal income tax returns for the Tax year in which the Closing Date occurs, and (ii) not take a position on any Tax Return that is inconsistent with the terms of any such allocation without the written consent of the other parties. If the parties do not reach agreement with respect to such allocation, then each party shall make its own determination of such allocations for financial and Tax reporting purposes. The parties shall promptly advise each other of the existence of any Tax audit or Litigation related to any allocation hereunder.

### 3. Closing.

3.1 Date of Closing. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall occur on the Closing Date, and shall be held at the offices of Seller’s counsel at 10:00 a.m. local time, or at such other time and place as Seller and Buyer may mutually agree. Notwithstanding the actual time the deliveries of the parties are made on the Closing Date, the parties agree that the Closing shall be effective and deemed for all purposes to have occurred as of 12:01 a.m., local time in Utica, New York, on the Closing Date (the “**Effective Time**”).

3.2 Outside Date for Closing. If the Closing has not occurred by October 5, 2014, either Seller or Buyer may terminate this Agreement by notice to the other; upon such

termination, neither of the parties shall have any Liability of any kind arising out of this Agreement other than for any Liability resulting from its breach of this Agreement prior to termination subject to the terms and conditions of Section 10. If the Closing is postponed pursuant to Section 11, the date referred to in the previous sentence shall be extended by the period of the postponement.

4. Representations and Warranties by Seller. Seller represents and warrants to Buyer as follows:

4.1 Organization, Standing and Foreign Qualification. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware with the power and authority to carry on the business of the Station and to own, lease and operate its Assets. Smith is duly qualified to transact business as a foreign limited liability company in good standing in the State of New York.

4.2 Authority and Binding Effect. Seller has the limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other agreements contemplated hereby to which Seller is a party (the “**Seller Other Agreements**”) and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Seller Other Agreements have been approved by all necessary action of the Members and Managers of Seller. This Agreement has been, and the Seller Other Agreements will be, executed and delivered by duly authorized officers of Seller and each constitutes, or will constitute when executed and delivered, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as such enforceability may be limited by principles of public policy, and subject to (i) the effect of any applicable Laws of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors’ rights and relief of debtors generally, and (ii) the effect of rules of law and general principles of equity, including, without limitation, rules of law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3 Validity of Contemplated Transactions, Restrictions. Except as disclosed on **Schedule 4.3**, the execution, delivery and performance of this Agreement and the Seller Other Agreements by Seller and the consummation of the transactions contemplated hereby or thereby, will not (i) violate any provision of the Certificate of Organization or the Operating Agreement of Seller, (ii) violate, in any Material respect, any Law or Order relating to Seller related to the Station, (iii) result in a Material Default under, or require the consent or approval of any party to, any Material Business Contract or any Material License of Seller related to the Station, (iv) result in the creation or imposition of any Lien on any of the Assets, other than Permitted Liens; or (v) require the consent or approval of, or any Material notice to, any Governmental Authority.

4.4 [Intentionally Omitted].

4.5 Financial Statements. Attached as **Schedule 4.5** are true, correct and complete copies of all of the Financial Statements. The Financial Statements are unaudited and (i) have been prepared in accordance with GAAP consistently applied (except for normal year

end adjustments and the absence of notes) throughout the periods covered thereby and in accordance with the books and records of Seller, which are complete and correct in all Material respects, (ii) present fairly, in all Material respects, the financial position of Seller as of the dates indicated and the results of its operations and its cash flows for the periods then ended, and (iii) reflect reserves in conformity with GAAP. The Financial Statements contain all adjustments necessary to present fairly, in all Material respects, the financial condition of Seller as of the respective dates indicated and the results of operations of Seller for the respective periods indicated, except that the Interim Financial Statements remain subject to normal audit adjustments and absence of notes.

4.6 Absence of Undisclosed Liabilities. To Seller's Knowledge, Seller has no Undisclosed Liabilities attributable to the Station, except for Liabilities incurred since the Interim Balance Sheet Date in the ordinary course of business consistent with past practice.

4.7 Absence of Changes. Except as disclosed on **Schedule 4.7**, since the Interim Balance Sheet Date through the date hereof: (i) the business of the Station has been carried on only in the ordinary course consistent with past practice, (ii) there has been no Material Adverse Change, and, to Seller's Knowledge, there has been no event or circumstance that is reasonably anticipated to result in a Material Adverse Change with respect to the Seller, the business of the Station or the Assets, (iii) Seller has not made any change in any method of accounting or any accounting principle, policy or practice with respect to the Station, (iv) Seller has not canceled, modified or waived, without receiving payment or performance in full, except for adjustments to Accounts Receivable in the ordinary course of business, any (a) Material Liability owed to Seller with respect to the Station, including any account receivable of Seller from any Affiliate or any Related Party to an Affiliate, (b) Material Litigation Seller may have against other Persons with respect to the Station, or (c) other Material rights of Seller with respect to the Station, (v) Seller has not (a) made any Material adverse amendment to or terminated any Material Business Contract or Material License with respect to the Station, (b) made any increase in compensation paid, payable or to become payable by Seller to its employees of the Station, or created or amended any Employee Benefit Plan, outside of the ordinary course of business, (c) incurred Material loss of or to any of its assets related to the Station, (d) sold, assigned, leased or otherwise transferred or disposed of any tangible or intangible assets used or held for use in the operations of the Station, except for immaterial assets in the ordinary course of business or dispositions or sales of analog television assets or (e) lowered the advertising rates of the Station in a manner not consistent with past practices or reflective of current market conditions and (vi) there has been no change in cable carriage or channel position on any cable or DBS system on which the Station is carried.

4.8 Tax Matters. Except as set forth on **Schedule 4.8**:

(a) Seller has filed with the appropriate taxing authorities all Material Tax Returns required to be filed through the date hereof and all such Tax Returns were correct and complete in all Material respects, and were prepared in compliance in all Material respects with all applicable Laws and regulations. Seller has paid all Taxes required to be paid, other than Taxes not yet due and Taxes being contested in good faith by appropriate proceedings.

(b) The reserves for Taxes in the Interim Balance Sheet are sufficient for the payment of all unpaid Liabilities for Taxes of Seller (whether or not disputed) for all activities that occurred and all assets owned during the periods ended on or before the Interim Balance Sheet Date. Since the Interim Balance Sheet Date, Seller has not incurred any Liability for Taxes other than in the ordinary course of business and no such Tax Liability so incurred is Material. Seller has not been delinquent in the payment of any Tax, assessment, deposit or other charge by any Governmental Authority and no Liability is pending or has been assessed, asserted or threatened against Seller or any of the Assets in connection with any Tax, and, to the Knowledge of Seller, there is no basis for any such Liability. Seller has not received any notice of assessment or proposed assessment in connection with any Tax Returns and there are no pending Tax examinations of or Tax claims asserted against Seller or any of the Assets, including any claim by any Governmental Authority in any jurisdiction where Seller did not file Tax Returns that Seller is or may be subject to or liable for Taxes imposed by that Governmental Authority or jurisdiction. There are no Liens for any Taxes (other than any inchoate Lien for current real property or ad valorem Taxes not yet due and payable) on any of the Assets or any other assets of Seller.

(c) No Tax is required to be withheld pursuant to Section 1445 of the Code as a result of any of the transfers contemplated by this Agreement.

(d) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(e) Seller is not a party to any Tax allocation or sharing agreement. Seller does not have any Liability for the Taxes of any Person as a transferee or successor, by contract, or otherwise.

(f) Seller has, at all times since its organization, been classified as a partnership for federal income tax purposes and has not made an election to be classified as an association that is subject to federal income taxation as a corporation.

#### 4.9 Title to Assets; Encumbrances; Condition.

(a) Except as set forth on **Schedule 4.9**, Seller has good and marketable title to all of the Assets free and clear of any and all Liens, except Permitted Liens. **Schedule 4.9** contains a list as of the date hereof of all title insurance policies held or owned by Seller relating to the Real Property. Copies of all such title insurance policies have been delivered or made available to Buyer by Seller.

(b) Each Improvement and each item of tangible Personal Property is adequate for its present and intended uses and operation, given the age of such property and the use to which such property is put and except to the extent of normal wear and tear and is usable in the ordinary course of business consistent with past practices. The Assets, together with the Excluded Assets, include all assets required to operate the business of the Station as currently conducted in all Material respects.

#### 4.10 Real Property.

(a) **Schedule 4.10(a)** contains the legal description of each parcel of the Owned Real Property. Except as set forth on **Schedule 4.10(a)**, Seller has granted no option or entered into any contracts with others for the sale, lease or transfer of any Owned Real Property, and no party has any right or option to acquire, or right of first refusal with respect to, any Owned Real Property or any portion thereof.

(b) Except as set forth on **Schedule 4.10(a)**, there is no Leased Real Property relating to the Station.

(c) Each parcel of Real Property has direct access to and from such parcel of Real Property and publicly dedicated streets, roads or highways and such access is not dependent on any land or other real property interest which is not included in the Real Property.

(d) To the Knowledge of Seller, there are no encroachments on or off the Real Property, violations of building codes, zoning, subdivision or other similar Laws or other Material defects in the title of said Real Property. To Seller's Knowledge, all Improvements, structures and transmitting facilities of the Station, including, towers, antennas, guy lines, anchors and other related building, structures, improvements and appurtenances, are located entirely within the confines of the Real Property, except for such failures as are not, individually or in the aggregate, Material.

(e) As of the Closing Date, there will be no unrecorded Contracts affecting the Owned Real Property or any part thereof, except for those Contracts identified on **Schedule 4.21(a)(i)**, and there will be no Persons in possession of the Owned Real Property or any part thereof other than Seller and the tenants under the Leases.

(f) No claim or right of adverse possession by any Third Party has been claimed with respect to the Owned Real Property nor, to the Knowledge of Seller, the leased Real Property, and none of such property is subject to any Order for its sale, condemnation, expropriation or taking (by eminent domain or otherwise) by any Governmental Authority nor, to the Knowledge of Seller, has any such sale, condemnation, expropriation or taking been proposed or threatened.

(g) **Schedule 4.10(a)** contains a list of all Leases. Each of the Contracts of Seller relating to the Leased Real Property is identified in **Schedule 4.21(a)(i)** and each such Contract is in full force and effect and there exists no default or event of default (or condition which, with the giving of notice or passage of time, or both, would create a default or event of default) on the part of Seller, nor, to the Knowledge of Seller, on the part of any other party, under any such Contracts.

#### 4.11 Personal Property.

(a) **Schedule 4.11(a)** contains a correct and complete list of each item of Personal Property that has an original cost in excess of \$25,000 (excluding office furniture, equipment, supplies and miscellaneous items of personal property with an aggregate cost value of less than \$50,000).



(b) **Schedule 4.21(a)(ii)** contains a correct and complete description of all Leased Personal Property as of the date hereof. Each of the Contracts of Seller relating to such Leased Personal Property is fully and accurately identified and described on such schedule (including duration, significant terms, and details of purchase options, if any) and each such Contract is in full force and effect and there exists no default or event of default (or condition which, with the giving of notice or passage of time, or both, would create a default or event of default) on the part of any such Contracts. Except as disclosed on **Schedule 4.11(b)**, neither the Leased Personal Property nor any of Seller's right, title or interest therein is affected by any Lien, prior interests or superior interests of any nature whatsoever that will, or potentially could, terminate or otherwise adversely affect such Leased Personal Property or any of Seller's right, title and interest therein, other than Permitted Liens.

4.12 Intellectual Property. **Schedule 4.12** contains a correct and complete list of all of the Registered Station Intellectual Property, all of the call letters for each Station and any material common law trademarks related to the Station. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the Knowledge of Seller (a) all Material Licenses granting any rights with respect to Material Station Intellectual Property are in full force and effect and constitute legal, valid and binding obligations of Seller, and to the Knowledge of Seller, and other respective parties thereto and (b) there have not been and there currently are not any Defaults thereunder by Seller or, to the Knowledge of Seller, any other party thereto. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) neither Seller nor any of its Affiliates has, in connection with the business of the Station, violated, infringed upon or unlawfully or wrongfully used the Intellectual Property of others and (ii) the Station Intellectual Property, as used in the business of the Station, does not infringe upon or otherwise violate the rights of others, nor has any Person asserted in writing within the twelve (12) months immediately preceding the date of this Agreement a bona-fide claim of such infringement or misuse. Seller has used commercially reasonable efforts to enforce, maintain and protect its interests in and to Station Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Seller has, and upon consummation of the transactions contemplated by this Agreement, Buyer will have, all right, title and interest in (or, subject to the terms of any applicable License, the right to use) the Station Intellectual Property, including the Registered Station Intellectual Property identified on **Schedule 4.12**. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all Material patents, trademarks, trade names, service marks, assumed names, and copyrights and all registrations thereof included in the Registered Station Intellectual Property are valid, subsisting and in full force and effect.

4.13 [Intentionally Omitted].

4.14 Accounts Receivable. The Accounts Receivable are (i) validly existing and (ii) enforceable by Seller in accordance with the terms of the instruments or documents creating them. The allowance for collection losses on the Interim Balance Sheet was established in the ordinary course of business consistent with past practices and in accordance with GAAP. The Accounts Receivable represent monies due for, and have arisen solely out of, bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practices. None of the Accounts Receivable represents

monies due for goods either sold on consignment or sold on approval. Except as reflected in the Financial Statements, there are no refunds, discounts or other adjustments payable with respect to any such Accounts Receivable, and there are no defenses, rights of set-off, counterclaims, assignments, restrictions, encumbrances, or conditions enforceable by Third Parties on or affecting any Account Receivable.

4.15 Insurance. **Schedule 4.15** contains a complete and accurate list of all insurance policies held or owned by Seller relating to the business of the Station and now in force and such schedule indicates the name of the insurer, the type of policy, the amount of the premiums, the term of each policy, and the amounts of coverage and deductible in each case and all outstanding claims thereunder. Correct and complete copies of all such policies have been delivered to Buyer by Seller on or before the date of this Agreement. All such policies are in full force and effect and enforceable in accordance with their terms except as such enforceability may be limited by principles of public policy, and subject to (A) the effect of any applicable Laws of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally, and (B) the effect of rules of law and general principles of equity, including, without limitation, rules of Law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). Seller is not now in Material Default regarding the provisions of any such policy, including failure to make timely payment of all premiums due thereon, and has not failed to give any notice or present any claim thereunder in due and timely fashion.

4.16 Bonds, Letters of Credit and Guarantees. **Schedule 4.16** contains a complete and accurate list as of all bonds, letters of credit, and guarantees issued by Seller, its members or any Third Party for the benefit of Seller or relating to Seller or the business of the Station and now in force or outstanding. Such **Schedule 4.16** contains a summary of the terms, amount, cost and reason for issuance of each such bond, letter of credit and guarantee, correct and complete copies of which have been delivered to Buyer by Seller on or before the date of this Agreement. All such bonds, letters of credit and guarantees are in full force and effect and enforceable in accordance with their terms except as such enforceability may be limited by principles of public policy, and subject to (A) the effect of any applicable Laws of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally, and (B) the effect of rules of law and general principles of equity, including, without limitation, rules of Law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). Neither Seller nor, to the Knowledge of Seller, any other party thereto is in Material Default regarding the provisions of any bond, letter of credit or guarantee, including the failure to make timely payment of all premiums and fees due thereon, and Seller has not failed to give any notice or present any claim thereunder in due and timely fashion.

4.17 Compliance with Law.

(a) Except as set forth in **Schedule 4.17(a)**, Seller is in compliance in all Material respects with all Laws, Licenses and Orders applicable to, required of or binding on Seller with respect to the Station, the business of the Station, or the Assets, including the FCC

Licenses and the Communications Act of 1934, as amended, and the rules, regulations, and published policies of the Commission, and Seller is qualified to hold all of the FCC Licenses with respect to the Station.

(b) Except as set forth in **Schedule 4.17(b)**, Seller holds all Licenses other Material permits and authorizations necessary for or used in the operations of the Station, and each of the FCC Licenses is, and all such permits and authorizations are, in full force and effect. **Schedule 1.1(a)** contains a true and complete list of the FCC Licenses and Antenna Structure Registrations currently in effect and all such permits and authorizations (showing, in each case, the expiration date). Seller has (i) submitted a registration to FCC's Antenna Structure Registration Database and (ii) obtained and holds an antenna structure registration number for each of those antenna structures used in the business of the Station for which Seller is the antenna structure owner and for which such a registration is required to comply with Section 17 of the FCC rules. Except as set forth in **Schedule 4.17(b)**, no action or proceeding, except for rule making proceedings and other proceedings generally applicable to the television industry, is pending for the renewal or modification of any of the FCC Licenses or any of such permits or authorizations, and no application, action, proceeding, investigation or complaint is pending or threatened in writing that could reasonably be expected to result in (i) the imposition of any administrative or judicial sanction with respect to the Station that may Materially adversely affect the rights of Buyer under any such FCC Licenses, permits or authorizations, (ii) the denial of the application for renewal, (iii) the revocation, modification, nonrenewal or suspension of any of the FCC Licenses or any of such permits or authorizations, or (iv) the issuance of a cease-and-desist order. Except as set forth in Schedule 4.17(b), as of the date hereof, to Seller's Knowledge, no complaint is pending or threatened in writing that could reasonably be expected to result in (i) the imposition of any administrative or judicial sanction with respect to the Station that may Materially adversely affect the rights of Buyer under any such FCC Licenses, permits or authorizations, (ii) the denial of the application for renewal, (iii) the revocation, modification, nonrenewal or suspension of any of the FCC Licenses or any of such permits or authorizations, or (iv) the issuance of a cease-and-desist order. Seller has the right to the use of the call letters "WKTV" pursuant to the rules and regulations of the Commission. All Material returns, reports and statements required to be filed by Seller with the Commission relating to the Station have been filed and complied with and are complete and correct in all Material respects as of the date specified in such return, report or statement.

4.18 Environmental. Except as set forth in **Schedule 4.18**:

(a) There are no Environmental Claims (or any Litigation against any Person whose Liability, or any portion thereof, for Environmental Matters or under any Environmental Laws Seller has or may have retained or assumed contractually or by operation of law) pending or, to the Knowledge of Seller, threatened with respect to (i) the ownership, use, condition or operation of the business of the Station, the Assets, or the Real Property, or (ii) any violation or alleged violation of or Liability or alleged Liability under any Environmental Law or any Order related to Environmental Matters. There are no existing violations by Seller, nor, to the Knowledge of Seller, by any other party, of (i) any Environmental Law, or (ii) any Order related to Environmental Matters, with respect to the ownership, use, condition or operation of the business of the Station, the Assets, or the Real Property. To the Knowledge of Seller, there are no past or present actions, activities, circumstances, conditions, events or incidents at or arising

from the Real Property, including any Environmental Matters that could form the basis of (i) any Environmental Claim against Seller, or (ii) any Litigation against any Person whose Liability (or any portion thereof) for Environmental Matters or under any Environmental Laws Seller has or may have retained or assumed contractually or by operation of Law.

(b) Neither Seller nor any of its subsidiaries has used any of the Assets or Real Property for the handling, treatment, storage, or disposal of any Hazardous Substances.

(c) No release, discharge, spillage or disposal of any Hazardous Substances by Seller, nor, to the Knowledge of Seller by any other party, has occurred or is occurring at any Assets or Real Property for which Seller could reasonably be expected to incur Liability.

(d) All underground tanks and other underground storage facilities presently located at any Owned Real Property of which Seller has Knowledge are listed in **Schedule 4.18**. Except as set forth on **Schedule 4.18**, to the Knowledge of Seller, none of such underground tanks or facilities is leaking or has ever leaked.

(e) Seller has complied with all applicable reporting requirements under all Environmental Laws concerning the disposal or release of Hazardous Substances.

(f) To the Knowledge of Seller, no building or other Improvement or any Real Property contains any asbestos-containing materials for which remediation is required as of the date hereof under Environmental Law.

(g) To the Knowledge of Seller, no polychlorinated biphenyls (PCB's) are used or stored on or in any Real Property.

(h) Without limiting the generality of any of the foregoing, all on-site and off-site locations where Seller or any of its current or former Subsidiaries has stored, disposed or arranged for the disposal of Hazardous Substances removed from the Real Property are identified in **Schedule 4.18**.

(i) **Schedule 4.18** lists all environmental site assessments and other studies in Seller's possession relating to the investigation of the possibility of the presence or existence of any Environmental Matter with respect to the business of the Station, the Assets or any of the Real Property, and Seller has previously delivered to Buyer a copy of each such assessment and study.

(j) The disclosure of facts set forth in **Schedule 4.18** shall not relieve Seller of any of its obligations under this Agreement, specifically including the obligation to indemnify Buyer as set forth in Section 9 hereof.

(k) Notwithstanding any other provision of this Agreement, Buyer acknowledges and agrees that the representations and warranties contained in Section 4.18 are the only representations and warranties given by Seller with respect to environmental matters or with respect to Environmental Laws, Environmental Matters or Environmental Claims.

**4.19**    Litigation and Claims. Except as disclosed on **Schedule 4.19** or **Schedule 4.17**:

(a)    There is no Litigation pending or threatened, and Seller has no Knowledge of any basis for any such Litigation or any facts or the occurrence of any event that might give rise to the foregoing;

(b)    There are no outstanding Orders (other than Orders granting, renewing, or modifying FCC Licenses as requested by Seller in an application filed with the Commission) binding upon Seller, the Assets, the business of the Station or Seller's securities, other than Orders affecting generally Seller's industry or segments thereof;

(c)    None of the pending or threatened Litigation disclosed on **Schedule 4.19**, if adversely determined, would individually or in the aggregate result in a Loss in excess of \$50,000 or would give rise to any claim, recourse or right of indemnification against Buyer as the successor to the Assets or the business of the Station;

(d)    Except for matters pertaining to the Commission, which are addressed in **Section 4.17**, there are no pending or threatened in writing investigations or inquiries directed to Seller, the Assets or the business of the Station by any Governmental Authority. **Schedule 4.19** describes all inspection reports, questionnaires, inquiries, demands, requests for information, and claims of violations or noncompliance with any Law received by Seller with respect to the Station during the two (2) years prior to the date hereof from any Governmental Authority and all written statements or responses of Seller with respect thereto.

(e)    No Litigation has been pending during the three (3) years prior to the date hereof that, individually or in the aggregate resulted in a Loss in excess of \$50,000 or granted any injunctive relief against Seller.

**4.20**    Employee Benefit Plans.

(a)    **Schedule 4.20(a)** contains true, correct and complete list of all Employee Benefit Plans.

(b)    True, correct and complete copies of the Smith Media, LLC Employee Benefit Plan, the Smith Media, LLC Employee Benefit Plan Summary Plan description, and all current collective bargaining agreements to which Smith Media is a party have been made available to Buyer.

(c)    Except as set forth in **Schedule 4.20(b)** hereto:

(i)    Each such Employee Benefit Plan has been administered in compliance with its own terms and in compliance in all Material respects with all applicable Laws. All required contributions for each Employee Benefit Plan have been timely made. There are no undisclosed Liabilities in respect of the Employee Benefit Plans with respect to which Buyer could be liable;

(ii) each of such Employee Benefit Plans which is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code has been determined by the IRS to be so qualified and, to the Knowledge of Seller, no circumstances have occurred that would adversely affect the tax-qualified status of any such Employee Benefit Plan;

(iii) no Employee Benefit Plan is, or has been in the last three years, subject to Title IV of ERISA or Section 412 of the Code;

(iv) neither Seller nor any Commonly Controlled Entity has incurred any withdrawal liability that has not been satisfied with respect to any “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA); and

(v) Seller does not currently have any obligation to contribute to a Multiemployer Plan;

(vi) no action taken with respect to an Employee Benefit Plan has caused or resulted in a Prohibited Transaction with respect to which Buyer could be liable;

(d) Except as set forth in **Schedule 4.20(d)**, no Employee Benefit Plan provides severance benefits to current or former Station Employees.

(e) Except as set forth in **Schedule 4.20(e)**, the consummation of the transactions contemplated hereby, either alone or in combination with another event, will not (i) entitle any Station Employees to any payment, (ii) increase the amount of compensation due to any Station Employee, (iii) accelerate the time of vesting of any compensation, stock incentive or other benefit or (iv) result in any “parachute payment” under Section 280G of the Code whether or not such payment is considered to be reasonable compensation for services rendered.

(f) Except as set forth in **Schedule 4.20(f)**, Seller has no liability with respect to an obligation to provide benefits, including death or medical benefits (whether or not insured) with respect to any Station Employee or former Station Employee beyond his or her retirement or other termination of service other than (i) coverage under COBRA, or (ii) disability benefits under any employee welfare plan that have been fully provided for by insurance.

(g) No action, suit, proceeding, hearing, or investigation of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of Seller, threatened.

#### 4.21 Contracts.

##### (a) Description.

(i) Real Property. **Schedule 4.21(a)(i)** is a list or, with respect to oral Contracts, a brief description of all Material Contracts affecting or relating to the Owned Real Property, other than the Leases described in **Schedule 4.10(a)**.

(ii) Personal Property. **Schedule 4.21(a)(ii)** is a list or, with respect to oral Contracts, a description of all Contracts affecting or relating to Personal Property with a value in excess of 20,000, including Contracts evidencing Liens thereon and including those referred to in **Schedule 4.9**.

(iii) Purchase Orders -- Non-Capital Assets. **Schedule 4.21(a)(iii)** is a list of all outstanding Contracts for the acquisition or sale of goods, Assets or services that relate to the business of the Station (other than purchase orders or other commitments for the acquisition of capital assets and other than purchase orders and other commitments that do not exceed \$20,000 each).

(iv) Purchase Orders -- Capital Assets. **Schedule 4.21(a)(iv)** is a list of all outstanding Contracts for the acquisition of capital assets that relate to the business of the Station (other than purchase orders and other commitments that do not exceed \$20,000 each).

(v) Employment; Other Affiliate Contracts. **Schedule 4.21(a)(v)** contains a list or, with respect to oral Contracts, a brief description of all Contracts with any employee, officer, agent, consultant, sales representative, distributor, dealer or Affiliate of Seller that relate to the business of the Station (other than those entered into in the ordinary course of business consistent with past practice that are terminable at will by Seller without any Liability).

(vi) Sales Representatives. **Schedule 4.21(a)(vi)** is a list or brief description of all Contracts with any agent, broker, sales representative of, or any Person in a similar representative capacity for, Seller that relate to the business of the Station.

(vii) Powers of Attorney. **Schedule 4.21(a)(vii)** is a list or, with respect to oral Contracts, a brief description of all powers of attorney given by Seller, whether limited or general, to any Person continuing in effect that relate to any of the Assets or the business of the Station.

(viii) Programming and Network Affiliation Agreements. **Schedule 4.21(a)(viii)** is a list or, with respect to oral Contracts, a brief description of all network affiliation agreements and all Material Programming Agreements including for each of those agreements the amounts and availability dates of programming and the dollar amount and schedule of any payments thereunder.

(ix) Barter and Trade Agreements. **Schedule 4.21(a)(ix)** is a list or, with respect to oral Contracts, a brief description of all “barter” and “trade” agreements and with total remaining asset or liability balances in excess of \$20,000 and includes an estimate of the positive or negative trade balances associated with each such agreement.

(x) Station Intellectual Property Agreements. **Schedule 4.21(a)(x)** is a list or, with respect to oral Contracts, a brief description of all Contracts between Seller and any third party relating to the development, maintenance or use of any Material Station Intellectual Property or any of Seller’s Material information technology Assets used in connection with the operation of the Station, the development or transmission of

data, or the use, modification, framing, linking, advertisement or other practices solely with respect to Internet web sites for the Station.

(xi) Any Other Contracts. **Schedule 4.21(a)(xi)** is a list or, with respect to oral Contracts, a brief description of any other Contracts of Seller (other than Contracts with Material Advertisers) that relate to the business of the Station and that: (A) provide for monthly payments in excess of \$5,000, (B) payments provided for or actually made thereunder by or to Seller in any calendar year exceed \$30,000, (C) require performance by Seller of any obligation for a period of time extending beyond six months from the Closing Date or that is not terminable by Seller without penalty upon sixty (60) days or less notice, (D) evidence, create, guarantee or services indebtedness of Seller, (E) establish or provide for any joint venture, partnership or similar arrangement involving Seller, or (F) guarantee or endorse the Liabilities of any other Person.

(b) Copies. Except as set forth in **Schedule 4.21(b)**, correct and complete copies of all the written Contracts, and correct and complete descriptions of the Material terms of all oral Contracts, referred to in Section 4.21(a), other than Contracts with Material Advertisers (collectively, the “**Material Business Contracts**”) have been delivered or made available to Buyer on or before the date hereof.

(c) **Schedule 4.21** includes a true and complete list as of all agreements with operators of cable television and DBS systems with over 2,500 subscribers pursuant to which Seller has granted to such operators the right to retransmit the Station’s signal (the “**Retransmission Agreements**”). Except as set forth on **Schedule 4.21**, no cable or DBS system has notified Seller of any signal quality deficiency or copyright indemnity or other prerequisite to carriage of the Station’s signal, and no cable or DBS system has notified Seller that it has declined or threatened in writing to decline such carriage or failed to respond to a request for carriage or sought any form of relief from carriage from the Commission. To the Seller’s Knowledge, no cable system has petitioned the Commission to modify the Station’s television market, the grant of which petition would result in the Station no longer having “must carry” rights with respect to such cable system.

(d) No Default. Neither Seller nor, to the Knowledge of Seller, any other party is in Material Default under any of the Material Business Contracts and, to the Knowledge of Seller, there is no basis for any claim of Material Default under any of the foregoing.

(e) Assurances. Each of the Material Business Contracts is in full force and effect and constitutes a valid, legal and binding agreement of Seller, enforceable in accordance with its terms except as such enforceability may be limited by principles of public policy, and subject to (A) the effect of any applicable Laws of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors’ rights and relief of debtors generally, and (B) the effect of rules of law and general principles of equity, including, without limitation, rules of Law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law) and, to the Knowledge of Seller, represents a valid, binding and enforceable obligation of each of the other parties thereto, except as such enforceability may be limited by principles of public policy, and subject to (X) the effect of any



applicable Laws of general application relating to bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights and relief of debtors generally, and (Y) the effect of rules of law and general principles of equity, including, without limitation, rules of Law and general principles of equity governing specific performance, injunctive relief and other equitable remedies (regardless of whether such enforceability is considered in a proceeding in equity or at law). Subject to obtaining any consents required and delivery of notices required thereunder, the continuation, validity and effectiveness of each of the Material Business Contracts will not be adversely affected in any Material respect by the consummation of the transactions contemplated by this Agreement. No party to any of the Material Business Contracts has made or asserted in writing any defense, setoff or counterclaim under any of those Material Business Contracts or has exercised any option granted to it to cancel or terminate its Material Business Contracts or to shorten the term of its Material Business Contracts.

(f) Material Advertisers. No Material Advertiser has in writing made or asserted any defense, setoff or counterclaim under any of those Contracts between Seller and a Material Advertiser with respect to the Station or has exercised any option granted to it to cancel or terminate its Contracts with Seller with respect to the Station or to shorten the term of its Contracts with Seller with respect to the Station. "**Material Advertiser**" means any advertiser on the Station whose payments to Seller with respect to the Station have exceeded \$100,000 annually in the past fiscal year. No Material Advertiser has given written notice of its intent to modify adversely to Seller its relationship with Seller with respect to the Station or decrease the advertising purchased from Seller with respect to the Business.

#### 4.22 Labor Matters.

(a) **Schedule 4.22(a)** hereto contains a true, correct and complete list of all employees of the Seller who have employment duties related to the Station, including (and designating as such) any such employee who is an inactive employee on paid or unpaid leave of absence, and indicating the date of employment, current title and annual or hourly compensation and commission or bonus program (if applicable) of each such employee. Each employee set forth in **Schedule 4.22(a)** hereto who is employed by the Seller immediately prior to the Closing (whether actively or inactive), and each additional employee who is hired to perform services for the Station following the date hereof who is employed by the Seller immediately prior to the Closing, shall be referred to herein individually as a "**Station Employee**" and, collectively, as the "**Station Employees**." **Schedule 4.22(a)** contains a list of all accrued and unpaid vacation and any other paid time off for each Station Employee.

(b) Except as disclosed on **Schedule 4.22(b)**, the employment of all employees of Seller is terminable at will by Seller without any penalty or severance obligation incurred by Seller.

(c) Except as set forth on **Schedule 4.22(c)** hereto, there is not pending or, to the Knowledge of Seller, threatened against Seller, any labor dispute, strike or work stoppage that affects or interferes with the operation of the Station, and to the Knowledge of Seller there is no organizational effort currently being made or threatened by or on behalf of any labor union with respect to employees of the Station. The Station has not experienced any labor dispute,

strike, work stoppage or other similar significant labor difficulties within the twelve (12) months preceding the date of this Agreement.

(d) Except as set forth on **Schedule 4.22(d)** hereto, (i) Seller is not a signatory or a party to, or otherwise bound by, any collective bargaining agreement which covers any Station Employees or former Station Employees, (ii) Seller has not agreed to recognize any union or other collective bargaining unit with respect to any Station Employees, and (iii) no union or other collective bargaining unit has been certified as representing any Station Employees.

(e) Except as set forth on **Schedule 4.22(e)**, there are no pending or to the Knowledge of Seller, threatened, proceedings, complaints, claims, disputes, investigations or charges relating to any alleged violation of any legal requirement pertaining to labor relations or employment matters relating to Station Employees or former Station Employees.

4.23 Interested Transactions. Except as set forth in **Schedule 4.23**, Seller is not a party to any Contract or other transaction with any Affiliate of Seller, any Related Party of any Affiliate of Seller (other than as a member or employee of Seller), or any Person in which any of the foregoing (individually or in the aggregate) beneficially or legally owns, directly or indirectly, five percent (5%) or more of the equity or voting interests. Each of such Contracts and other transactions described in the preceding sentence was negotiated on an arm's length basis, contains pricing terms that reflected fair market value at the time entered into and otherwise contains terms and conditions comparable to those customarily contained in similar transactions between unrelated parties. Except as described in **Schedule 4.23**, none of the Persons described in the first sentence of this Section 4.23 owns, or during the last three (3) years has owned, directly or indirectly, beneficially or legally, (individually or in the aggregate) five percent (5%) or more of the equity or voting interests of any Person that competes with Seller or the business of the Station.

4.24 Limitations on Representations and Warranties. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE FUTURE FINANCIAL PERFORMANCE OR RESULTS OF THE OPERATIONS OF THE BUSINESS.

5. Representations and Warranties by Buyer. Buyer represents and warrants to Seller as follows:

5.1 Buyer's Organization. Buyer is a limited liability company duly organized and validly existing under the law of the state of Delaware and has the full power and authority to enter into and perform this Agreement. Buyer is duly qualified to transact business as a foreign limited liability company in good standing in the State of New York.

5.2 Authorization of Agreement. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to which Buyer is a party (the "**Buyer Other Agreements**", and together with the Seller Other Agreements, the "**Other Agreements**") by Buyer has been duly authorized by all necessary action of Buyer and this Agreement and the Buyer Other Agreements each constitutes a valid and binding obligation of

Buyer enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.3 Consents of Third Parties. The execution, delivery and performance of this Agreement and the Buyer Other Agreements by Buyer will not:

(a) conflict with Buyer's certificate of formation or limited liability company agreement and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment or other instrument, or any order, judgment or decree, to which Buyer is a party or by which Buyer is bound, subject to obtaining the Commission Consent; or

(b) constitute a violation by Buyer of any law applicable to it. No consent, approval or authorization of, or designation, declaration or filing with, any governmental authority is required on the part of Buyer in connection with the execution, delivery and performance of this Agreement, except for the filings referred to in Section 6.1 and except for the Commission Consent.

5.4 Litigation. There is no claim, litigation, proceeding or governmental investigation pending or, to Buyer's Knowledge, threatened, or any order, injunction or decree outstanding, against Buyer or any of its affiliates that would prevent the consummation of the transactions contemplated by this Agreement.

5.5 Buyer's Qualification. Buyer is legally, financially, and otherwise qualified, without the restructuring or divestiture of any interest now held by it or by its attributable principals, to be the licensee of, acquire, own and operate the Station under the rules and regulations of the Commission and the Communications Act of 1934, as amended (the "**Communications Laws**"). Buyer is not aware of any fact that would, under existing law, including the Communications Laws (a) disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station or (b) cause the Commission to fail to approve in a timely fashion the application for the consent and approval of the Commission necessary for the consummation of the transactions described in this Agreement. No waiver of the Communications Laws is necessary to be obtained for the grant of the applications for the assignment of the FCC Licenses to Buyer, nor will processing pursuant to any exception to any rule of general applicability be requested or required in connections with the consummation of the transactions contemplated by this Agreement.

5.6 Financing. At Closing, Buyer shall have sufficient cash funds to pay the Purchase Price.

## 6. Further Agreements of the Parties.

6.1 Filings. As soon as practicable, but in no event later than ten (10) business days after the date of this Agreement, the parties shall file with the Commission all necessary applications requesting Consent to the transactions contemplated by this Agreement (the "**Assignment Application**"); the parties shall with due diligence take all reasonable steps

necessary to expedite the processing of the Assignment Application and to secure such Consent or approval, including the filing of all appropriate or necessary supplemental filings and amendments and vigorously contesting and opposing any petitions, objections, challenges or requests for reconsideration thereof. Seller shall, to the extent reasonably requested by the Commission enter into tolling and/or escrow agreements necessary to obtain grant of the Assignment Application. No party hereto shall take any action not contemplated by this Agreement that such party Knows or should Know would adversely affect obtaining the Commission Consent or adversely affect the Commission Consent becoming a Final Order, other than disclosure or similar obligation required by applicable Law. Each party shall promptly provide the other party with true, correct and complete copies of all pleadings, orders, filings or other documents served on them related to the assignment application or the Commission Consent. The terms “**Consent**” or “**Commission Consent**” shall mean the action by the Commission or its staff, acting pursuant to delegated authority, granting its consent to the assignment of the Station’s licenses as contemplated by this Agreement. Each party shall bear its own costs and expenses (including the fees and disbursements of its counsel) in connection with the preparation of the portion of the Assignment Application to be prepared by it and in connection with the processing thereof. Neither Buyer nor Seller shall be required to post any bond or make any escrow deposit with the Commission in connection with obtaining the Commission Consent. All filing and grant fees, if any, paid to the Commission, shall be advanced by Buyer and then shared equally by Buyer, on the one hand, and Seller, on the other.

6.2 Operations of the Station. From the date of this Agreement through the Closing:

(a) Seller shall operate the business of the Station in the usual and ordinary course and consistent with past practices and in conformity and compliance in all Material respects with (i) the FCC Licenses, the Communications Act of 1934, and the rules, regulations and policies of the Commission, and (ii) all other Laws or orders relating to the Station;

(b) Seller shall use commercially reasonable efforts, consistent with its past practices, (i) to preserve the business organization of the Station intact and to preserve the goodwill and business of the advertisers, suppliers and others having business relations with the Station, (ii) to retain the services of the employees of the Station, and (iii) to preserve all Station Intellectual Property;

(c) Seller shall not, except with Buyer’s prior approval, except in the ordinary course and substantially consistent with past practice, (i) enter into any transaction or incur any Liability or obligation that is Material to the business or operations of the Station or (ii) sell or transfer any of the Assets relating to the Station, other than Assets that have worn out or been replaced, with other Assets of equal or greater value;

(d) Seller shall not, except with Buyer’s prior approval, (i) enter into or renew any lease, commitment or other agreement relating to the Station that, (A) if entered into prior to the date of this Agreement, would have been required to be included on **Schedule 4.21** (or that would require receipt of a consent or approval required to be included on **Schedule 4.3**), and (B) would create a Liability after the Closing Date of \$30,000 or more individually, (ii) enter into any new time sale agreement for the Station except in the ordinary course of business for cash,

barter or trade and consistent with past practices, (iii) cause or take any action to allow any Material Contract to lapse (other than in accordance with its terms), to be modified in any Materially adverse respect, or otherwise to become impaired in any Material manner, except in the ordinary course of business, (iv) grant or agree to grant any general increases in the rates of salaries or compensation payable to Station Employees other than in accordance with past practice and in an aggregate amount of not more than three percent (3%), (v) grant or agree to grant any specific bonus or increase to any Station Employees other than in accordance with past practice, or (vi) increase benefits under, or establish any new bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, option (including the granting, modification or acceleration of options or performance awards), or other Employee Benefit Plan (except to the extent necessary to comply with applicable Law or as provided under such Employee Benefit Plan) or amend or modify any Employee Benefit Plan (except to the extent necessary to comply with applicable Law);

(e) Seller shall use commercially reasonable efforts to (i) maintain all of the Improvements and the tangible Personal Property in adequate repair, maintenance and condition, given the age of such Improvements and property and the use to which such Improvements and property are put and except to the extent of normal wear and tear, and repair or replace, consistently with past practice, any Improvements and tangible Personal Property that may be damaged or destroyed, and (ii) maintain or cause to be maintained insurance on the Assets and the business of the Station as described in Section 4.15;

(f) Seller shall confer on a regular and frequent basis with Buyer to report Material operational matters and to report the general status of ongoing operations of the Station and Seller shall promptly notify Buyer in writing of any Material Adverse Change with respect to the Assets or the business of the Station, or any condition or event that threatens to result in a Material Adverse Change with respect to the Assets or the business of the Station, of which it is aware;

(g) Seller shall not, except with Buyer's prior approval, make any agreement or commitment that will result in or cause to occur a Default of any of the items contained in paragraphs (a) through (f) above;

(h) Seller shall give Buyer prompt written notice of the occurrence of any of the following: (A) a loss, taking, condemnation, damage or destruction of or to any of the Assets involving in excess of Thirty Thousand Dollars (\$30,000); (B) the commencement of any Material proceeding or litigation at law or in equity or before the Commission or any other Governmental Authority that involves the FCC Licenses, other than proceedings or litigation of general applicability to the television broadcasting industry; (C) any Material labor grievance, strike, or other Material labor dispute; (D) any Material violation by Seller of any Law; or (E) any Material breach, default, claimed default or termination of any Material Business Contract;

(i) Seller and Buyer shall promptly notify the other(s) in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining, enjoining or challenging the consummation of this Agreement or the transactions contemplated hereunder (including challenges to the Assignment Application), or upon receiving any notice from any Governmental Authority of its intention to institute an investigation into, or

institute a suit or proceeding to restrain or enjoin the consummation of this Agreement or the transactions contemplated hereby;

(j) Seller and Buyer shall each use commercially reasonable efforts to contest, defend and resolve any such suit, proceeding or injunction brought against it so as to permit the prompt consummation of the transactions contemplated hereby; provided that shall efforts shall not require Buyer or Seller to expend more than \$30,000 and shall not limit the termination rights set forth in Section 10 of this Agreement;

(k) Seller shall use commercially reasonable efforts to protect the present service areas of the Station from increased electrical interference from other Station, existing or proposed, and exercise commercially reasonable efforts to maintain carriage of the Station's signals on all cable systems on which they are entitled to carriage; and

(l) Seller shall promptly provide Buyer with copies of all correspondence received after the date hereof with cable and DBS systems to and from Seller with regard to the Station concerning must carry status, retransmission consent and other matters arising under the Cable Act, the Satellite Home Viewer Extension and Reauthorization Act of 2004, as amended ("SHVERA"), and any successor statutes to SHVERA, and keep Buyer advised of the status of Material developments in all negotiations by Seller with cable and DBS systems concerning such matters related to the Station.

6.3 No Control. Between the date of this Agreement and the Closing, Buyer shall not, directly or indirectly, control, supervise or direct, or attempt to control, supervise or direct, the operations of the Station, but such operations shall be solely the responsibility of Seller and, subject to the provisions of Section 6.2, shall be in its complete discretion.

6.4 Expenses. Each party shall bear its own expenses incurred in connection with the negotiation and preparation of this Agreement and in connection with all obligations required to be performed by it under this Agreement, except where specific expenses have been otherwise allocated by this Agreement.

6.5 Access to Information.

(a) Prior to the Closing and for one year following the Closing Date, Buyer and its representatives may make such investigation of the property, assets and businesses of the Station as it and they may desire, and Seller shall give to Buyer and to its counsel, accountants and other representatives, upon reasonable notice, full access during normal business hours throughout the period prior to the Closing to all of the assets, books, commitments, agreements, records and files of Seller relating to the Station and Seller shall furnish to Buyer during that period all documents and copies of documents and information concerning the businesses and affairs of the Station as Buyer reasonably may request. Seller shall also allow and arrange for Buyer and its designees reasonable access, upon reasonable notice and during normal business hours, to consult and meet with Seller and its officers, directors, and managers and the employees, attorneys, accountants and other agents of Seller with respect to the Station; provided, that the foregoing do not unreasonably disrupt the business of the Seller. Except as expressly provided herein, neither the Buyer nor any of its agents or representatives shall contact

in any manner whatsoever any of the Seller's or the Station's employees, customers, suppliers or others having business dealings with the Seller or the Station, without the express prior written consent of the Seller. In addition, prior to the Closing, Seller shall obtain confidential information about Buyer generally as well as about the terms of this transaction.

(b) Buyer acknowledge and agrees that it is bound by the Non-Disclosure Agreement by and between Seller and Heartland Media, Buyer's parent, dated July 23, 2013 (the "**Non-Disclosure Agreement**"), with respect to Evaluation Materials (as defined in the Non-Disclosure Agreement) provided by the Seller to Heartland Media and the Buyer, and that until the Closing such Non-Disclosure Agreement shall continue in full force and effect in accordance with its terms, including, without limitation, with respect to any Evaluation Materials (as defined in the Non-Disclosure Agreement) provided by the Seller to the Buyer pursuant to Section 6.5 of this Agreement or otherwise.

6.6 Consents; Assignment of Agreements. Seller shall use commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals referred to in Section 4.3. If, with respect to any Contract to be assigned to Buyer, a required consent to the assignment is not obtained by the Closing, and, then unless Buyer otherwise consents, such contract shall not be assigned to Buyer at Closing, Seller shall use commercially reasonable efforts to keep it in effect and give Buyer the benefit of it to the same extent as if it had been assigned, and Buyer shall perform Seller's obligations attributable to the period on or after the Effective Time under the agreement relating to the benefit obtained by Buyer. Nothing in this Agreement shall be construed as an attempt to assign any Contract that is by its terms nonassignable without the consent of the other party. Promptly after receipt of any such consent or approval after the Closing, Seller shall assign such Contract to Buyer and Buyer shall assume such Contract from Seller.

6.7 Sales Taxes; Title Insurance; Transfer and Recording Fees. Seller, on the one hand, and Buyer, on the other hand, each shall pay one-half of all (a) state or local sales, use and similar Taxes payable in connection with the sale and transfer of the Assets, and (b) any stamp or transfer Taxes, real or personal property Taxes or recording fees payable in connection with the sale of the Assets. Buyer shall pay any fees for any title insurance on the fee acquired by Buyer pursuant to this Agreement.

6.8 Employees and Employee Benefit Matters.

(a) Buyer shall offer employment as of the Closing Date to all Station Employees, other than Michael D. Granados and Ian J. Guthrie. As of the Closing Date, Buyer shall employ each such Station Employee who accepts Buyer's offer of employment ("**Transferred Employees**") at a salary or hourly rate and, if applicable, commissions that are no less than the salary, hourly rate or commission rate as in effect as of the Closing Date. Buyer shall employ those Transferred Employees that are Union Employees in accordance with the terms and conditions established in the applicable Bargaining Agreement and under applicable Law ("**Union Transferred Employees**" and the remaining Transferred Employees who are not Union Employees shall be referred to as "**Non-Union Transferred Employees**"). Each Non-Union Transferred Employee shall be employed on such other terms and conditions as in effect immediately prior to the Closing Date and with employee benefits (including benefits of the type

described in Section 3(1) of ERISA) that are comparable to those provided by the Seller. Each Union Transferred Employee shall be employed on such terms as provided under the applicable Bargaining Agreement. Buyer shall provide each Transferred Employee credit for years of service with the Seller (or their Affiliates) prior to the Closing for the purpose of eligibility, vesting and benefit accrual (but not for purposes of benefit entitlement under any defined benefit plans) under Buyer's health, vacation, severance, sick leave and other employee benefit plans and policies. Notwithstanding anything to the contrary herein, unless employed pursuant to a written agreement which expressly provides that his/her employment with Buyer is not terminable at will, each Transferred Employee shall be an employee at will of the Buyer, and nothing in this Section or elsewhere in this Agreement shall guarantee employment with the Buyer for any period of time.

(b) Without limiting the scope of Section 6.8(a), Buyer shall cause each Non-Union Transferred Employee (and his or her eligible dependents) to be covered immediately following the Closing, by a group health plan that provides health benefits (within the meaning of Section 5000(b)(1) of the Internal Revenue Code) on terms and conditions that are comparable to those provided under the group health plan in which the Transferred Employee participated immediately prior to the Closing, and shall cause each Union Transferred Employee (and his or her eligible dependents) to be covered immediately following the Closing, by a group health plan subject to the terms of the Bargaining Agreement. In each of the preceding cases, such applicable offered group health plan will not limit or exclude coverage on the basis of any pre-existing condition of such Transferred Employee or his or her dependents. Buyer shall give credit to such Transferred Employee and his or her covered dependents for all year-to-date deductibles, co-pays, and out-of-pocket expenses incurred under the Seller's Employee Benefit Plan to the extent that the employee can provide documentation of such expenses.

(c) If any Transferred Employee is eligible to take any accrued but unused vacation time pursuant to the vacation policy applicable to such Transferred Employee immediately prior to Closing, Buyer shall allow such Transferred Employee to use such accrued vacation, or to receive payment thereafter upon termination of employment to the extent credited by Seller.

(d) From the Closing Date until the first anniversary of the Closing Date, if a Transferred Employee terminates employment with Buyer for any reason that would give rise to the payment of a severance payment as specified on **Exhibit 6.8(a)** attached hereto, Buyer shall provide severance benefits at least equal to those specified on such **Exhibit 6.8(a)**. For purposes of the preceding sentence, such Transferred Employee will receive credit for service performed for the Seller (or their Affiliates) prior to the Closing Date, and service performed for Buyer after the Closing Date, in connection with the determination of the amount of such severance benefit.

(e) Buyer shall assume full responsibility and liability for offering and providing continuation coverage under Section 4980B of the Code with respect to each covered employee, each M&A qualified beneficiary and each other qualified beneficiary thereof who incurs a "qualifying event" (within the meaning of Section 4980B of the Code) on or prior to the Closing Date or is receiving continuation coverage. For purposes of this Section, each employee of the Seller who experiences a loss of health care coverage as the result of the transactions



contemplated by this Agreement together with his or her spouse and dependents, if any, shall be deemed eligible for continuation coverage as provided herein.

(f) Effective as of the Closing Date, Buyer shall have in effect a tax-qualified defined contribution plan or plans which include a qualified cash or deferred arrangement within the meaning of section 401(k) of the Code (“**Buyer’s 401(k) Plan**”). Immediately prior to the Closing Date, the Seller shall cause all of the account balances of the Transferred Employees under the Seller’s 401(k) Plan (“**Seller’s 401(k) Plan**”) to become fully vested. Prior to the Closing Date, Seller shall amend Seller’s 401(k) Plan to provide that a severance from employment and/or plan termination does not result in an automatic 401(k) loan default for any Transferred Employee to the extent that such Transferred Employees receives a distribution of his or her 401(k) account balance and rolls over such balance to Buyer’s 401(k) Plan (including any outstanding loans, which will be permitted by Buyer’s 401(k) plan), provided that such rollover to Buyer’s 401(k) Plan is completed prior to the last day of the quarter immediately following the Closing Date and in accordance with applicable Law. Buyer shall be responsible to prepare the necessary amendment for Seller’s 401(k) Plan. Seller shall adopt such amendment before the Closing Date subject to Seller’s review and approval of such amendment.

#### 6.9 Further Assurances.

(a) At any time and from time to time after the Closing, each of the parties shall, without further consideration, execute and deliver to the other such additional instruments and shall take such other action as the other may reasonably request to carry out the transactions contemplated by this Agreement. Until the expiration of all applicable statutes of limitation after the Closing, each party shall grant the other reasonable access during normal business hours upon reasonable prior notice to the books and records of that party for the purpose of complying with any applicable Law or request relating to the period during which the other party operated the Station or as otherwise reasonably required. From and after the Closing, the Buyer shall preserve, for a period of six years from the original date of creation, all books and records of the Seller that are in Buyer’s possession relating to the period prior to the Closing. From and after the Closing, Buyer and the Seller shall afford to each other, and their respective counsel, accountants and other authorized agents and representatives, during normal business hours reasonable access to the employees, books, records and other data relating to the Station in its possession with respect to periods prior to the Closing, and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party (a) to facilitate the investigation, litigation and final disposition of any claims which may have been or may be made against any such party or Person or its Affiliates, and (b) for the preparation of Tax Returns and audits. Buyer shall not dispose of, alter or destroy any such materials without giving 45 days’ prior written notice to the Seller so that the Seller may, at Seller’s expense, examine, make copies or take possession of such materials.

(b) If the Closing shall not have occurred for any reason within the original time period for consummating the assignment of the FCC Licenses pursuant to the Commission Consent, and no party shall have terminated this Agreement, the parties shall jointly request and use commercially reasonable efforts to obtain an extension of the time period for consummating assignment of the FCC Licenses pursuant to the Commission Consent. No extension of the time period for consummating the assignment of the FCC Licenses pursuant to the Commission

Consent shall limit the exercise any party of any right such party may have to terminate the Agreement.

6.10 Additional Financial Statements. Seller shall promptly deliver to Buyer copies of all monthly, quarterly or annual financial statements and weekly pacing reports relating to the Station that may be prepared by it during the period from the date of this Agreement to the Closing Date. All financial statements delivered pursuant to this Section 6.10 shall be in accordance with the books and records of the Station. At a minimum, Seller shall prepare monthly unaudited balance sheets and income statements, to be delivered to Buyer by 45 days after the end of the month to which such statements relate and weekly pacing reports to be delivered by Seller to Buyer by the third (3<sup>rd</sup>) day following the end of each broadcast week.

6.11 Other Action. Each of the parties to this Agreement shall use its commercially reasonable efforts consistent with this Agreement to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the parties to consummate the sale and purchase under this Agreement. Buyer shall use commercially reasonable efforts to obtain the funds to pay the Purchase Price at Closing.

6.12 Non-Competition and Non-Solicitation Agreement. At Closing, Seller shall enter into a Non-Competition and Non-Solicitation Agreement, substantially in the form of **Exhibit 6.12** (the “**Non-Competition Agreement**”).

6.13 Schedules. Ten (10) business days before the Closing Date, Seller shall be obligated to supplement any of the Schedules contained in Section 4 hereof with respect to any matter arising after the date hereof that, if existing or occurring on the date of this Agreement, would have been required to be set forth or described in such Schedules provided, however, that if an event occurs or a matter arises related to any representation or warranty made by Seller in Section 4 hereof that Seller reasonably believes has or will result in a Material Adverse Effect, Seller will promptly provide written notice to Buyer and will promptly update all relevant Schedules relating to such event or matter. No such supplement shall be deemed to modify the representations or warranties contained in Section 4 or to modify the Schedules as they existed as of the date hereof. In the event that Seller delivers updated Schedules after the date that is ten (10) business days prior to Closing, Buyer may unilaterally extend the Closing Date if necessary to allow Buyer ten (10) business days to review such supplements to the schedules prior to the Closing Date.

6.14 Other Offers and Exclusive Dealing. Unless and until this Agreement is terminated prior to Closing pursuant to Section 10, Seller, acting in any capacity, will neither directly nor indirectly, through any officer, director, manager, member, employee, agent or otherwise (A) solicit, initiate, encourage or entertain submission of proposals or offers from any Person relating to (i) any purchase of the Assets or any portion thereof, other than in the ordinary course of business and other than disposal of equipment no longer used in the operation of the Station, (ii) any merger, sale of substantial assets relating to the Station, or sale of stock of Seller if the survivor of such merger or acquirer of such stock or assets would not be bound by the terms of this Agreement, (iii) any time brokerage, local marketing, outsourcing, joint sales, shared services, management, marketing or other similar agreement or arrangement related to the Station, or (iv) any similar transaction involving Seller with respect to the Station, (B) participate

in any discussions or negotiations regarding, or, except as required by a legal or judicial process, furnish to any other Person any information with respect to, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to consummate any of the transactions described in clauses (A)(i) through (iv) above involving Seller, or (C) approve or undertake any such transaction. Seller shall promptly communicate to Buyer the terms of any such proposal.

6.15 Certain Tax Matters.

(a) Seller shall file all Tax Returns required to be filed by it on or before the Closing Date.

(b) Buyer, on the one hand, and Seller, on the other hand, shall provide the other parties to this Agreement, at the expense of the requesting party, with such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any Governmental Authority, or any judicial or administrative proceedings relating to Liability for Taxes.

6.16 Consummation of Transactions; Closing Conditions. Subject to the terms and conditions herein provided, each of the parties hereto agrees to take, or cause to be taken, all commercially reasonable actions to consummate the transactions contemplated by this Agreement and to satisfy the conditions precedent to Closing set forth in Section 7 of this Agreement.

6.17 Delivery of Books and Records. Seller shall deliver to Buyer at the Closing all original documents, books and records pertaining to the business of the Station (except minute books and stock records) and to the Assets that are legally significant or useful to the business of the Station and shall deliver copies of all other documents, books and records pertaining to the business of the Station and to the Assets. Seller may retain copies of any of the foregoing for its own use. Without limiting the generality of the foregoing, Seller shall deliver to Buyer at the Closing all documents and records relating to the Station Intellectual Property, including the original Certificates of Registration for all letters patent trademarks and service marks included within the Registered Station Intellectual Property listed on **Schedule 4.12** and all such documents relating thereto along with any other documents necessary to transfer title thereto and to record such transfer before the respective patent and trademark offices or similar Governmental Authorities.

6.18 Title Search; Discharge of Liens; Title Insurance. At or prior to Closing, Seller shall use commercially reasonable efforts to discharge all Liens other than Permitted Liens. Seller has provided to Buyer Lien searches (and shall provide updated searches through a date not more than ten (10) days prior to the Closing Date) of filings made pursuant to Article 9 of the Uniform Commercial Code, tax liens and judgment liens in all jurisdictions where Seller has any Assets. Seller agrees to use commercially reasonable efforts to provide the title insurance company issuing title insurance policies or commitments to Buyer with any and all certificates, affidavits, indemnities or other assurances that it may reasonably request for the purpose of permitting such title insurer to delete the standard, general or printed exceptions set forth in the title policy or title commitment.

6.19 Qualification and Existence.

(a) Seller shall deliver to Buyer (i) a certificate of the Secretary of State of the State of Delaware, dated not more than ten (10) days before the Closing Date, stating that each Seller is a limited liability company in good standing under the laws of such state and (ii) a certificate of the appropriate officials of the State of New York, dated not more than ten (10) days before the Closing Date, stating that Smith is duly qualified and in good standing to transact business as a foreign limited liability company as stated in Section 4.1 of this Agreement in the State of New York.

(b) Buyer shall deliver to Seller a certificate of the Secretary of State of the State of Delaware, dated not more than ten (10) days before the Closing Date, stating that Buyer is a limited liability company in existence under the laws of such state and a certificate of the Secretary of State of the State of New York, dated not more than ten (10) days before the Closing Date, stating that Buyer duly qualified and in good standing to transact business as a foreign limited liability company in the State of New York.

7. Conditions Precedent to Closing.

7.1 Conditions Precedent to the Obligations of Buyer. Buyer's obligations to consummate the purchase under this Agreement is subject to the fulfillment, at or prior to the Closing, of each of the following conditions (any of which may be waived in writing by Buyer):

(a) All representations and warranties of the Seller contained in this Agreement (disregarding any qualifications regarding Materiality or Material Adverse Effect) shall be true and correct at and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing (other than any representation or warranty that is expressly made as of a specified date, which shall be true and correct as of such date only) except for changes which are permitted or contemplated pursuant to this Agreement or specifically consented to by the Buyer in writing; or to the extent that the failure of the representations and warranties of the Seller contained in this Agreement to be true and correct at and as of the Closing (or in respect of any representation or warranty that is expressly made as of a specified date, as of such date only) has not had and would not, individually or in the aggregate, reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) Seller shall have performed and complied in all Material respects with each obligation, covenant and condition required by this Agreement to be performed or complied with by it prior to or at the Closing, including the documents and instruments required to be delivered by Seller under Section 8;

(c) the Commission Consent (i) shall have been obtained; (ii) shall be in full force and effect; and (iii) shall not be subject to any condition or qualification Materially adverse to Buyer or the operations of the Station, other than conditions that may be imposed by reason of circumstances or actions of Buyer that constitute a breach of its representations, warranties and covenants under this Agreement; and (iv) shall have become a Final Order (as defined below);

(d) Seller shall have duly received, without any condition Materially adverse to Buyer, all consents and approvals referred to in **Schedule 7.1(d)**;

(e) there shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in an action or proceeding against the consummation of the transactions contemplated by this Agreement;

(f) since the date of this Agreement, no event, circumstance or condition has occurred with respect to the business of the Station or the Assets which has had or is reasonably expected to have a Material Adverse Effect;

(g) Buyer shall have been furnished with a certificate of an officer or manager of Seller, dated the Closing Date, in form and substance satisfactory to Buyer, certifying to the fulfillment of the conditions set forth in Sections 7.1(a) and (b) and (f);

(h) Seller shall have delivered to Buyer an incumbency certificate or certificates dated the Closing Date certifying the incumbency of all officers and managers of Seller who have executed this Agreement or any of the Seller Other Agreements, which certificates shall contain specimens of the signatures of each of such officers and shall be executed by an officer or manager of Seller other than an officer or manager whose incumbency or authority is certified;

(i) Buyer shall have received an executed and attested special or limited warranty deed in commercially reasonable and recordable form in respect of the Owned Real Property;

(j) Seller shall have delivered to Buyer copies, certified by the duly qualified and acting Secretary or Assistant Secretary of Seller, of resolutions adopted by the Board of Directors or the managers and, if necessary, the members, of Seller approving this Agreement, the Seller Other Agreements and the consummation of the transactions contemplated hereby and thereby; and

(k) Seller shall have entered into the Non-Competition Agreement.

For the purpose of this Agreement, “**Final Order**” means action by the Commission (a) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (b) with respect to which no appeal, request for stay, or petition for rehearing, reconsideration or review by any court or administration agency or by the Commission is pending, and (c) as to which the time for filing any such appeal, request, petition, or similar document for rehearing, reconsideration or review has expired (or if any such appeal, request, petition or similar document has been filed, the Commission action has been upheld in a proceeding pursuant thereto and no additional rehearing, review or reconsideration may be sought).

7.2 Conditions Precedent to the Obligations of Seller. Seller’s obligation to consummate the sale under this Agreement is subject to the fulfillment, at or prior to the Closing, of each of the following conditions (any of which may be waived in writing by Seller):

(a) all representations and warranties of Buyer under this Agreement shall be true and correct at and as of the time of the Closing with the same effect as though those representations and warranties had been made at and as of that time;

(b) Buyer shall have performed and complied in all Material respects with all obligations, covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing, including the documents and instruments required to be delivered by Buyer under Section 8;

(c) there shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in an action or proceeding against the consummation of the transactions contemplated by this Agreement;

(d) Seller shall have been furnished with a certificate of an officer of Buyer, dated the Closing Date, in form and substance satisfactory to Seller, certifying to the fulfillment of the conditions set forth in Sections 7.2(a) and (b); and

(e) the Commission Consent (i) shall have been obtained, (ii) shall be in full force and effect, and (iii) shall not be subject to any condition or qualification materially adverse to Seller, other than conditions that may be imposed by reason or circumstances or actions of Seller that constitute a breach of its representations, warranties and covenants under this Agreement; provided, that this provision shall not relieve Seller from an obligation to use commercially reasonable efforts (including the seeking of a tolling agreement and escrow agreement with the Commission) consistent with its rights and obligations under this Agreement to permit the grant of the Commission Consent notwithstanding pending complaint proceedings against the Station.

## 8. Transactions at the Closing.

8.1 Documents to be Delivered by Seller. At the Closing, Seller shall deliver to Buyer the following:

(a) such bills of sale, assignments, deeds or other instruments of transfer and assignment, and such mortgage discharges, termination letters and UCC-3 termination statements, all in form and substance reasonably satisfactory to Buyer and its counsel, as shall be effective to vest in Buyer title to the Assets consistent with the provisions of this Agreement;

(b) an opinion of Dow Lohnes, PLLC (or any successor thereto), counsel to Seller, dated the Closing Date, in substantially the form of **Exhibit 8.1(b)**;

(c) the certificate referred to in Section 7.1(g);

(d) copies of all consents and approvals received pursuant to Section 6.6;

(e) the Non-Competition Agreement and Escrow Agreement, each duly executed by Seller;

(f) standard, customary documentation (including certain affidavits of Seller) that may be reasonably requested of Seller by Buyer's counsel in connection with Buyer obtaining title insurance policies relating to the Real Property;

(g) certificates of non-foreign status for Seller satisfying the requirements of Treasury Regulations Section 1445-2(b) of the Code; and

(h) such other documents as may reasonably be requested by Buyer or its counsel in order to effect the closing of transactions contemplated by this Agreement, including the instruction to the Escrow Agent regarding the payment of the APA Escrow Deposit to the Seller at Closing (and the payment of the interest on the APA Escrow Deposit to Buyer) (such instructions, the "**Joint Instructions**"), duly executed by Seller.

8.2 Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller the following:

(a) wire transfer of funds in the amount provided in Section 2.1 (and Buyer shall also deliver the Indemnity Escrow to the Escrow Agent);

(b) the Escrow Agreement, duly executed by Buyer;

(c) instruments, in form and substance reasonably satisfactory to Seller and its counsel, pursuant to which Buyer shall assume the obligations of Seller to be assumed by Buyer pursuant to Section 2.2;

(d) a copy of resolutions of the board of directors or managers of the Buyer authorizing the execution, delivery and performance of this Agreement by Buyer, and a certificate of the secretary or an assistant secretary of the Buyer, dated the Closing Date, that such resolutions were duly adopted and are in full force and effect;

(e) the certificate referred to in Section 7.2(d); and

(f) such other documents as may reasonably be requested by Seller or its counsel in order to effect the closing of transactions contemplated by this Agreement, including the Joint Instructions, duly executed by Buyer.

8.3 Documents to be Executed at Closing. At the Closing, Buyer and Seller shall execute and deliver the Escrow Agreement.

## 9. Survival of Representations and Warranties; Indemnification.

9.1 Survival. All of the representations and warranties of the parties hereto contained in this Agreement and any claims related to the performance of any covenant or agreement of the parties contained in this Agreement prior to or at the Closing shall survive the Closing Date and shall terminate and expire fifteen (15) months after the Closing Date. The covenants and agreements of the parties set forth in this Agreement to be performed after the Closing shall survive the Closing until fully performed and discharged.

## 9.2 Indemnification.

(a) Subject to Sections 9.1, 9.3 and 9.4, Seller and agrees to indemnify Buyer and its officers, directors, managers, members, employees, counsel, agents, Affiliates, successors and assigns (collectively, “**Buyer Indemnified Parties**”) against, and hold each of them harmless from, all Losses asserted against, imposed upon or incurred by any of the foregoing by reason of, resulting from, arising out of, based upon or otherwise in respect of the following:

(i) any inaccuracy in any representation or warranty made by Seller pursuant to this Agreement or the Seller Other Agreements, including any inaccuracy caused by a supplement to the Schedules pursuant to Section 6.14; in any case without regard to and without giving effect to any materiality or Material Adverse Effect (or similar) qualifiers contained herein or therein;

(ii) any breach of, or failure to perform, any covenant or agreement made or to be performed by Seller pursuant to this Agreement or the Seller Other Agreements;

(iii) any Retained Liability or any failure by Seller to carry out, perform, pay, discharge or otherwise fulfill any of the Retained Liabilities; and

(iv) those items listed on **Schedule 9.2(a)**.

(b) Subject to Sections 9.1, 9.3 and 9.4, Buyer agree to indemnify Seller and each of its members, managers, officers, directors, employees, counsel, agents, Affiliates, successors and assigns of each of them (collectively, “**Seller Indemnified Parties**”) against, and hold each of them harmless from, all Losses asserted against, imposed upon or incurred by any of the foregoing by reason of, resulting from, arising out of, based upon or otherwise in respect of the following:

(i) any misrepresentation by Buyer or any breach by Buyer of any representation or warranty contained in this Agreement or the Buyer Other Agreements, in any case without regard to and without giving effect to any materiality or Material Adverse Effect (or similar) qualifiers contained herein or therein;

(ii) any breach of, or failure to perform, any covenant or agreement made or to be performed by Buyer pursuant to this Agreement or the Buyer Other Agreements; and

(iii) Buyer’s failure to pay, perform and discharge when due any of the Assumed Liabilities or the Contract Liabilities, subject to the provisions of Section 1.3(a).

(c) The procedures for indemnification under this Agreement shall be as follows:

(i) Any of the Buyer Indemnified Parties or the Seller Indemnified Parties claiming indemnification (the “**Claimant**”) shall promptly give notice to the party



from which indemnification is claimed (the “**Indemnifying Party**”) of any claim, specifying in reasonable detail the factual basis for the claim, and the amount thereof, estimated in good faith, all with reasonable particularity. If the claim relates to an action, suit or proceeding filed by another Person against Claimant, then such notice shall be given by Claimant within ten (10) business days after written notice of such action, suit or proceeding was given to Claimant and shall include true and complete copies of all suit, service and claim documents, all other relevant documents in the possession of the Claimant; provided, however, that the failure or delay of the Claimant to provide such notice shall not release the Indemnifying Party from any of its obligations under this Section 9 unless (and then solely to the extent) the Indemnifying Party is prejudiced thereby.

(ii) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have forty-five (45) days to make such investigation of the claim as the Indemnifying Party reasonably deems necessary or desirable, and the Claimant agrees to make available to the Indemnifying Party and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of such forty-five (45) day period to the validity and amount of such claim, then the Indemnifying Party shall promptly pay to the Claimant the full amount of the claim, subject to the terms and limitations hereof. If the Claimant and the Indemnifying Party do not agree within such forty-five (45) day period, then the Claimant may seek appropriate remedy at law or equity, as applicable, subject to the terms and limitations hereof.

(iii) With respect to any claim by any other Person against the Claimant (a “**Third Party Claim**”), the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall reasonably cooperate with the Indemnifying Party; provided, however, that the Claimant shall be entitled to participate in any such defense with separate counsel at the expense of the Claimant if in the reasonable opinion of counsel to the Claimant a conflict or potential conflict exists between the Claimant and the Indemnifying Party that would make such separate representation advisable. If the Indemnifying Party elects to assume control of the defense of any Third Party Claim, then (i) the Claimant shall have the right to participate in the defense of such claim at its own expense and shall not settle or compromise the Third Party Claim, and (ii) the Indemnifying Party shall have the power and authority to settle, compromise or consent to the entry of judgment in respect of the Third Party Claim without the consent of the Claimant if the judgment or settlement results only in the payment by the Indemnifying Party of the full amount of money damages (and the Indemnifying Party pays such amount in full) and includes an unconditional release of the Claimant from any and all Liability thereunder, and, in all other events, the Indemnifying Party shall not consent to the entry of judgment or enter into any settlement in respect of a Third Party Claim without the prior written consent of the Claimant, which consent shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third Party Claim, then the Claimant may defend through counsel of its own choosing and in such manner as it reasonably deems appropriate, but the Claimant

may only settle such Third Party Claim with the consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed. The Claimant shall make available to the Indemnifying Party or its representatives all records and other materials in the Claimant's possession reasonably required by them for their use in contesting or defending any Third Party Claim.

9.3 Limitation on Liability. Notwithstanding anything to the contrary in this Agreement, neither party shall be required to indemnify the other with respect to an aggregate claim for Losses under Section 9.2(a)(i) or Section 9.2(b)(i), as applicable, unless the amount of such Losses exceed \$175,000, at which time such Losses may be asserted for this threshold amount (relating back to the first dollar) and any amounts in excess thereof; provided, however, that the foregoing threshold amounts shall not apply to any Losses which result from or arise out of fraud.

9.4 Further Limitation on Liability.

(a) Notwithstanding anything to the contrary in this Agreement, the aggregate Liability for Losses of Seller to the Buyer Indemnified Parties under Section 9.2(a) for indemnification under this Agreement shall be limited solely to the funds held in the Indemnity Escrow Account, and Buyer shall have no other recourse against Seller or any of its members with respect to such indemnity obligations arising under this Agreement, except in the event of fraud on the part of Seller.

(b) Notwithstanding anything to the contrary in this Agreement, the aggregate Liability for Losses under Section 9.2(b) of Buyer to the Seller Indemnified Parties for indemnification or otherwise under this Agreement shall be limited solely to \$1,000,000, and Seller shall have no other recourse against Buyer or any of its members with respect to such indemnity obligations or otherwise arising under this Agreement, except with respect to a Breach by Buyer of Buyer's obligations under Section 6.8 of this Agreement.

9.5 Exclusive Remedy. Following the Closing, the sole and exclusive remedy for the Buyer for any claim (whether such claim is framed in tort, contract or otherwise) arising out of a breach of any representation, warranty, covenant or agreement contained herein or in any of the Other Documents or otherwise arising out of or in connection with the transactions contemplated by this Agreement and the Other Documents or the operation of the Station shall be a claim for indemnification pursuant to this Section 9; provided, however, that nothing herein shall be deemed to limit any rights or remedies that the Buyer may have against the Seller for fraud.

10. Termination; Etc.

10.1 Termination. Except with respect to provisions that expressly survive termination, this Agreement may be terminated at any time prior to the Closing:

(a) by written agreement of Buyer and Seller;

(b) by Buyer, if Seller is in Material breach or default of its representations, warranties, covenants or obligations under this Agreement, and either (i) such breach or default

on the part of Seller shall not have been cured or waived within thirty (30) days after written notice thereof from Buyer to Seller; or (ii) Seller shall not have provided reasonable assurance to Buyer that such breach or default on the part of Seller shall be cured on or before the Closing Date and such breach is in fact not cured by then, provided that Seller shall have no right to any such cure period with respect to any breach or default of Seller's obligations to execute and deliver the agreements, certificates, instruments and documents of Seller set forth in this Agreement, including Sections 7.1 and 8.1;

(c) by Seller, if Buyer is in Material breach or default of its representations, warranties, covenants or obligations under this Agreement, and either (i) such breach or default on the part of Buyer shall not have been cured or waived within thirty (30) days after written notice thereof from Seller to Buyer; or (ii) Buyer shall not have provided reasonable assurance to Seller that such breach or default on the part of Buyer shall be cured on or before the Closing Date and such breach is in fact not cured by then, provided that Buyer shall have no right to any such cure period with respect to any breach or default of Buyer's obligations to execute and deliver the agreements, certificates, instruments and documents of Seller set forth in this Agreement, including Sections 7.2 and 8.2 or pay the Purchase Price;

(d) by Buyer as provided in Section 11;

(e) by Buyer or Seller if the Commission designates for a hearing the Assignment Application for Commission consent contemplated by this Agreement; or

(f) by Buyer or Seller if the Closing has not occurred on or before the date provided in Section 3.2, as the same may have been extended as provided in Section 3.2.

## 10.2 Procedure and Effect of Termination.

(a) If this Agreement is terminated by either or both of Buyer or Seller pursuant to Section 10.1, prompt written notice thereof shall forthwith be given to the other party, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further liability of, and action by, any of the parties hereto, but subject to and without limiting any obligation of a party for any default or breach of its representations, warranties, covenants or obligations under this Agreement prior to such termination.

(i) If this Agreement is terminated by Seller pursuant to (A) Section 10.1(c) or (B) Section 10.1(e) or Section 10.1(f); provided that, with respect to this clause (B), only if Buyer is in Material breach or default of its representations, warranties, covenants or obligations under this Agreement, then Seller shall have the right to receive, and shall be paid, the APA Deposit Escrow, which shall serve as liquidated damages to Seller and, anything to the contrary in this Agreement notwithstanding, shall be the sole and exclusive remedy of Seller for Buyer's failure to consummate the Closing for any reason set forth in this Section 10.2(a)(i) (it being acknowledged and agreed such liquidated damages have been computed and estimated as a reasonable forecast of probable actual loss to Seller in such event because of the difficulty of estimating with exactness the damages that would actually result and not as a penalty) and neither Buyer nor Seller shall have any recourse against the other, including any right to pursue any

legal or equitable remedy for breach of contract or otherwise (except for the terms and provisions of this Agreement that survive such termination);

(ii) If this Agreement is terminated by Buyer pursuant to (A) Section 10.1(b) or (B) Section 10.1(e), provided that, with respect to this clause (B) only if Seller is in Material breach or default of its representations, warranties, covenants or obligations under this Agreement and except as provided in Section 10.2(a)(iv), then the APA Deposit Escrow shall be returned to Buyer without limitation of any other remedies available to Buyer;

(iii) If this Agreement is terminated pursuant to Section 10.1(a), then the APA Deposit Escrow shall be returned to Buyer, and neither Buyer nor Seller shall have any recourse against the other, including any right to pursue any legal or equitable remedy for breach of contract or otherwise (except for the terms and provisions of this Agreement that survive such termination); and

(iv) If this Agreement is terminated by Seller or Buyer pursuant to Sections 10.1(e) or 10.1(f) for any reason not set forth in Sections 10.2(a)(i), (ii) or (v) or terminated by Buyer pursuant to Section 10.1(d), then the APA Deposit Escrow shall be returned to Buyer, and neither Buyer nor Seller shall have any recourse against the other, including any right to pursue any legal or equitable remedy for breach of contract or otherwise (except for the terms and provisions of this Agreement that survive such termination).

(v) If this Agreement is terminated by Buyer or Seller pursuant to Sections 10.1(b) through 10.1(f) at such point that each of Buyer, on the one hand, and Seller, on the other hand, is in material breach or default of its representations, warranties, covenants or obligations under this Agreement, then Seller shall have the right to receive, and shall be paid, the APA Deposit Escrow, which shall serve as liquidated damages to Seller and, anything to the contrary in this Agreement notwithstanding, shall be the sole and exclusive remedy of Seller for Buyer's failure to consummate the Closing for any reason (it being acknowledged and agreed such liquidated damages have been computed and estimated as a reasonable forecast of probable actual loss to Seller in such event because of the difficulty of estimating with exactness the damages that would actually result and not as a penalty) and neither Buyer nor Seller shall have any recourse against the other, including any right to pursue any legal or equitable remedy for breach of contract or otherwise (except for the terms and provisions of this Agreement that survive such termination).

(b) Notwithstanding any termination of this Agreement pursuant to Section 10, the obligations of the parties described in Sections 6.4, 6.5(b) and this Section 10 will survive any such termination. Notwithstanding any termination of this Agreement pursuant to Section 10.1, except as set forth in Section 10.2(a)(i), Section 10.2(a)(iii), Section 10.2(a)(iv) and Section 10.2(a)(v), no such termination of this Agreement will relieve any party from liability for any misrepresentation or breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such termination; and

(c) Each party agrees to take such action as is necessary or desirable to effectuate the payment of the APA Deposit Escrow as set forth in this Section 10.2, including promptly providing to the Escrow Agent written instructions related to the payment thereof in the manner set forth in the Escrow Agreement.

10.3 Attorneys' Fees. In the event of a breach or default by either party that results in a claim for indemnification under this Agreement, lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses (whether incurred in investigation, settlement, arbitration, at trial or on appeal).

10.4 Specific Performance. The parties recognize and agree that Buyer has both relied on this Agreement and expended considerable effort and resources related to the transactions contemplated hereunder, that the right and benefits conferred upon Buyer and the Seller herein are unique, and that damages may not be adequate to compensate Buyer in the event Seller refuses to consummate the transactions contemplated hereunder in accordance with the terms and conditions hereof. The parties therefore agree that, in addition to any and all remedies available to Buyer, prior to Closing, Buyer shall be entitled, at its option and in lieu of terminating this Agreement pursuant to Section 10.1, to have this Agreement specifically enforced by a court of competent jurisdiction.

11. Risk of Loss. The risk of loss or damage to any of the Assets shall be on Seller prior to the Closing and thereafter shall be on Buyer. If any Material Asset is damaged or destroyed prior to the Closing Date (any such event being referred to as an “**Event of Loss**”), Seller shall promptly notify Buyer in writing of the Event of Loss. The notice shall specify with particularity the loss or damage incurred, the cause of the Event of Loss, if known or reasonably ascertainable, and the applicable insurance coverage, if any. If Seller elects in its sole discretion to repair, replace or restore the Asset and the Asset so damaged or destroyed cannot be completely repaired, replaced or restored by the scheduled date of the Closing but can be accomplished within 90 days after that date, the date of the Closing shall be postponed for up to that 90-day period to allow Seller an opportunity to repair, replace or restore the Asset. If Seller does not elect to repair, replace or restore the Asset or if the repair, replacement or restoration cannot be accomplished within that 90-day period or if the Station is off of the air for 12 days within any 30 day period, Buyer may elect, by written notice to Seller within 20 days after Buyer has received notice that an Event of Loss has occurred or that the repair, replacement or restoration cannot be so completed:

(a) to close the transaction on the scheduled date of the Closing and accept the damaged Asset as is and the Buyer Indemnified Parties shall not have any right pursuant to Section 9 in respect of such Event of Loss; or

(b) to terminate this Agreement without Liability to any party hereunder, in which event the Escrow Agent shall return the APA Deposit Escrow to Buyer.

If the date of the Closing is postponed beyond the time specified in Section 3.2, the parties shall amend their application or applications to the Commission to request an extension of the date of Closing.

12. Definitions. The following terms (in their singular and plural forms as appropriate) as used in this Agreement shall have the meanings set forth below unless the context requires otherwise:

“**Accounts Receivable**” means all accounts receivable, notes receivable and other monies due to Seller for sales and deliveries of goods, performance of services, sale of advertisements, broadcast time and programming and other business transactions (whether or not on the books of Seller) related to the Station arising prior to the Effective Time.

“**Affiliate**” of a Person means: (i) any Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person; (ii) any officer, director, manager, or member.

“**Agreement**” means this Asset Purchase Agreement, including the exhibits and schedules delivered pursuant hereto or referred to herein.

“**Antenna Structure Registrations**” means all registrations of antenna structures issued by the Commission to Seller relating to the operation of the Station listed on **Schedule 1.1(a)**.

“**APA Deposit Escrow**” means that certain Seven Hundred Thousand (\$700,000) payment made to the Escrow Agent to hold in escrow pursuant to the terms of the Deposit Escrow Agreement.

“**Assets**” means all of the assets of Seller used, directly or indirectly, in the operations of the Station (excluding only the Excluded Assets), which assets include the following:

(a) the FCC Licenses related to the Station, including those listed on **Schedule 1.1(a)** and the Antenna Structure Registration;

(b) the Licenses of Seller related, directly or indirectly, to the Station, the operations of the Station or the other Assets, including those listed on **Schedule 1.1(a)**;

(c) all the Station’s equipment (including computers and office equipment), transmitting towers, transmitters, supplies, vehicles, furniture, fixtures and leasehold improvements, improvements on land being acquired by Buyer pursuant to Section 1.1(c), any films and tapes owned by the Station, and all other tangible personal property, wherever located, that is owned by Seller and used exclusively in the operation of the Station, including, but not limited to, the items listed on **Schedule 1.1(b)**;

(d) all Real Property, including the property listed on Schedule 1.1(c);

(e) all Station Intellectual Property, excluding rights under Programming Agreements;

(f) all rights of Seller under leases, commitments and other agreements relating exclusively to the business and operations of the Station, including (i) all commitments and other agreements relating to the acquisition of programming rights, including rights to the film and videotape prints of motion pictures and television programs, with respect to

programming currently being broadcast or currently scheduled to be broadcast by the Station (“**Programming Agreements**”), (ii) all commitments and other agreements relating to the sale of broadcast and advertising time on the Station, (iii) all network affiliation agreements related to the Station, (iv) the leases, commitments and other agreements listed on schedules 4.21(a)(i) through 4.21(a)(xi), and (v) any other leases, commitments and other agreements relating exclusively to the business and operations of the Station that are entered into consistent with the provisions of Section 6.2 between the date of this Agreement and the Closing Date;

(g) all Accounts Receivable;

(h) all of Seller’s rights in connection with any “barter” transactions and “trade” agreements relating exclusively to the Station;

(i) all of Seller’s rights under manufacturers’ and vendors’ warranties to the extent relating to items included in the Assets and all similar rights against third parties relating to items included in the Assets;

(j) all files, logs and business records of every kind to the extent relating to the operations of the Station, including, but not limited to, programming information and studies, technical information and engineering data, news and advertising studies or consulting reports, sales correspondence, lists of advertisers, promotional materials, and credit and sales records;

(k) all current assets included in Net Working Capital;

(l) all Bargaining Agreements involving any labor agreement or collective bargaining agreement; and

(m) all goodwill relating to the Station.

“**Assignment Application**” has the meaning set forth in Section 6.1.

“**Assumed Liabilities**” means (1) those obligations and Liabilities of Seller attributable to the period prior to the Effective Time and included in the definition of Net Working Capital or in the prorations that relate to the operations of the Station pursuant to Section 2.2, (2) all of the Contract Liabilities, (3) those obligations and Liabilities relating to Transferred Employees to the extent provided for in Section 6.8, and (4) any Liabilities exclusively relating to the Station that arise with respect to events occurring after the Closing, and related to the period after the Closing

“**Bargaining Agreement**” means the Collective Bargaining Agreement by and between Smith Media, LLC and Teamsters Union, Local 182

“**Base Purchase Price**” has the meaning set forth in Section 2.1.

“**Buyer**” has the meaning set forth in the preamble above.

“**Buyer Indemnified Party**” has the meaning set forth in Section 9.2(a).

“**Buyer Other Agreements**” has the meaning set forth in Section 5.2.

**“Buyer’s 401(k) Plan”** has the meaning set forth in Section 6.8(f).

**“Cable Act”** shall mean the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, as amended.

**“Claimant”** has the meaning set forth in Section 9.2(c)(i).

**“Closing”** has the meaning set forth in Section 3.1.

**“Closing Date”** means the date that is ten (10) days after all conditions set forth in Section 7.1(c) have been satisfied or such date as the Parties may mutually agree.

**“COBRA”** means the provisions of Code section 4980B and Part 6 of Subtitle B of Title I of ERISA.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**“Commission”** means the United States Federal Communications Commission or any successor thereto or replacement therefore.

**“Commonly Controlled Entity”** means any entity which is under common control with the Seller within the meaning of Code section 414(b), (c), (m), or (o).

**“Communications Laws”** has the meaning set forth in Section 6.1.

**“Computer Software”** means all computer programs, materials, tapes, source code and object code, Databases and compilations, including data and collections of data, whether machine-readable or otherwise and all prior and proposed versions, releases, modifications, updates, upgrades and enhancements thereto, as well as all documentation and listings related thereto.

**“Consent”** or **“Commission Consent”** has the meaning set forth in Section 6.1.

**“Contract”** means any written or oral contract, agreement, understanding, lease, usufruct, license, plan, instrument, commitment, restriction, arrangement, obligation, undertaking, practice or authorization of any kind or character or other document to which any Person is a party or that is binding on any Person or its securities, assets or business.

**“Contract Liabilities”** means all of the obligations and Liabilities of Seller with respect to the operation of the Station attributable to the period as of or after the Effective Time under the Contracts to the Station that are assigned to Buyer pursuant to Section 1.1.

**“Databases”** means databases in all forms, versions and media, together with prior and proposed updates, modifications and enhancements thereto, as well as all documentation and listings therefor.



**“Default”** means (1) a breach of, default under, or misrepresentation in or with respect to any Contract or License, (2) the occurrence of an event that with the passage of time or the giving of notice or both would constitute a breach of, default under, or misrepresentation in any Contract or License, or (3) the occurrence of an event that with or without the passage of time or the giving of notice or both would give rise to a right to terminate, change the terms of or renegotiate any Contract or License or to accelerate, increase, or impose any Liability under any Contract or License.

**“Deposit Escrow Agreement”** means that certain escrow agreement entered into as of the date of this Agreement by and among the Escrow Agent, Seller and Buyer.

**“Dispute Notice”** has the meaning set forth in Section 13.10(c).

**“Disputes”** has the meaning set forth in Section 13.10(a).

**“DOL”** means the U.S. Department of Labor.

**“Effective Time”** has the meaning set forth in Section 3.1.

**“Employee Benefit Plan”** means any employment, bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, equity (or equity-based), leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, medical, accident, disability, workmen’s compensation or other insurance, severance, separation, termination, change of control or other benefit plan, agreement (including any collective bargaining agreement), practice, policy or arrangement, whether written or oral, and whether or not subject to ERISA (including, without limitation, any “employee benefit plan” within the meaning of Section 3(3) of ERISA), which Seller or any ERISA Affiliate sponsors, maintains, has any obligation to contribute to, has Liability under or to which it is otherwise a party and which covers or otherwise provides benefits to any employees or former employees of the Seller who provide or provided services relating to the operations of the Station (or their dependents and beneficiaries).

**“Environmental Laws”** means all Laws relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including without limitation, the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq. (“**CERCLA**”), the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. (“**RCRA**”), and other Laws relating to emissions, discharges, releases or threatened releases of any Hazardous Substance, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substance.

**“Environmental Matter”** means any matter or circumstances related in any manner whatsoever to (i) the emission, discharge, disposal, release or threatened release of any Hazardous Substance into the environment from or onto the Real Property, or (ii) the transportation, treatment, storage, recycling or other handling of any Hazardous Substance or (iii) the placement of structures or materials into waters of the United States, or (iv) the presence

of any Hazardous Substance, including but not limited to asbestos, in any building, structure or workplace on the Real Property or otherwise on, in or under any of the Real Property.

**“ERISA”** means Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any trade or business, whether or not incorporated, that together with the Person or any of its subsidiaries would be deemed a “single employer” within the meaning of Section 414 of the Code.

**“Escrow Agent”** has the meaning set forth in Section 2.3.

**“Escrow Agreement”** has the meaning set forth in Section 2.3.

**“Estimated Purchase Price Adjustment Statement”** has the meaning set forth in Section 2.4(a).

**“Event of Loss”** has the meaning set forth in Section 11.

**“Excluded Assets”** means all of the following assets and properties of Seller:

- (a) all cash and cash equivalents;
- (b) Seller’s limited liability company records and other books and records that relate to internal limited liability company matters of Seller, and all original Tax returns of Seller, and duplicate copies of any records as are necessary or desirable to enable Seller to prepare and file Tax returns and reports and financial statements deemed necessary or desirable by Seller; and
- (c) Seller’s Employee Benefit Plans, and any assets thereof;
- (d) current portion of Seller’s deferred taxes;
- (e) the Seller’s prepaid business (including, liability, business interruption and the like), group and other insurance policies, premiums and recoveries;
- (f) assets of the Seller and its Affiliates not used in the operations of the Station;
- (g) the Initial Deposit and the APA Deposit;
- (h) all rights and claims of the Seller to the extent relating to any other Excluded Asset or any Retained Liability or any obligation of the Buyer to indemnify the Seller, including all guarantees, warranties, indemnities and similar rights in favor of the Seller in respect of any other Excluded Asset or Retained Liability; and
- (i) those assets listed on **Schedule 12(A)**.

**“FCC Licenses”** means (i) all licenses issued by the Commission relating to the operation of the Station and (ii) any other permits and authorizations issued by the Commission relating to the operation of the Station, in both cases including those listed on **Schedule 1.1(a)**.

**“Final Order”** has the meaning set forth in Section 7.1.

**“Final Purchase Price Adjustment Statement”** has the meaning set forth in Section 2.4(c).

**“Final Purchase Price Adjustment”** has the meaning set forth in Section 2.4(e).

**“Financial Statements”** means the unaudited balance sheets of the Station as of December 31, 2012 and as of August 31, 2013, and the related statements of operations for the year and 8-month periods then ended (such August 31, 2013 Financial Statement, the **“Interim Financial Statement”**).

**“GAAP”** means generally accepted accounting principles consistently applied in the United States of America.

**“Governmental Authority”** means any federal, state, county, local, foreign or other governmental or public agency, instrumentality, commission, authority, board or body.

**“Hazardous Substance”** means any hazardous or toxic, substance, material, or waste (as those terms are defined by any applicable Environmental Laws), including petroleum, petroleum products, oil, hydrocarbon, radioactive matter or any other pollutants, contaminants or regulated materials.

**“Improvements”** means all buildings, structures, fixtures and other improvements included in the Real Property.

**“Indemnifying Party”** has the meaning set forth in Section 9.2(c)(i).

**“Indemnity Escrow”** has the meaning set forth in Section 2.3.

**“Independent Accountants”** has the meaning set forth in Section 2.4(d).

**“Initial Deposit”** means that certain \$100,000 payment made to Seller on behalf of Buyer.

**“Intellectual Property”** means the following and/or rights with respect to the following: (i) patents and pending patent applications, together with any and all continuations, divisions, reissues, extensions and renewals thereof, (ii) trade secrets, know-how, inventions, formulae and processes, whether trade secrets or not, (iii) trade names, trademarks, service marks, logos, jingles, slogans, assumed names, brand names and all registrations and applications therefor together with the goodwill of the business symbolized thereby, (iv) copyrights and any registrations and applications therefor, (v) Computer Software, and (vi) Internet domain names and Internet web site addresses and all related web site content.

**“Interim Balance Sheet”** means the Interim Balance Sheet of Seller as of August 31, 2013 included in the Financial Statements.

**“Interim Balance Sheet Date”** means the date of the Interim Balance Sheet.

**“IRS”** means the Internal Revenue Service of the United States of America.

**“Joint Instructions”** has the meaning set forth in Section 8.1(h).

**“Knowledge”** (or any variation of the word **“Know”**) means, (i) with respect to Seller, the actual knowledge of Michael D. Granados, Ian J. Guthrie, and Andy Davis, and (ii) with respect to Buyer, Robert S. Prather, Jr. and Bill Fielder.

**“Law”** means any code, law, order, ordinance, regulation, rule, or statute of any Governmental Authority.

**“Leased Personal Property”** means all Personal Property that is not owned by Seller that Seller either uses or has the right to use.

**“Leased Real Property”** means all Real Property in which Seller holds an interest in or the right to use or occupy pursuant to the Leases, whether as a tenant, subtenant, landlord or sublandlord, and whether in whole or in part, any land, buildings, structures, improvements, fixtures or other real property.

**“Leases”** means all leases, subleases, licenses and other occupancy agreements described on **Schedule 4.10(b)**.

**“Liability”** means any direct or indirect, primary or secondary, Liability, indebtedness, obligation, penalty, expense (including costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of notes, bills and checks presented to banks for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute, contingent, liquidated, unliquidated, matured, unmatured or otherwise.

**“License”** means any license, franchise, notice, permit, easement, right, certificate, authorization, approval or filing to which any Person is a party or that is or may be binding on any Person or its securities, property or business.

**“License Holdings”** has the meaning set forth in the preamble above.

**“Lien”** means any mortgage, lien, security interest, pledge, hypothecation, encumbrance, restriction, reservation, encroachment, infringement, easement, conditional sale agreement, title retention or other security arrangement, defect of title, adverse right or interest, charge or claim of any nature whatsoever of, on, or with respect to any property or property interest.

**“Litigation”** means any action, administrative or other proceeding, arbitration, cause of action, claim, complaint, criminal prosecution, inquiry, hearing, investigation (governmental or otherwise), notice (written or oral) by any Person alleging potential Liability or requesting

information relating to or affecting the business of the Station, the Assets (including Contracts relating to the Station), or the transactions contemplated by this Agreement.

**“Loss”** means any and all direct or indirect demands, claims, payments, obligations, recoveries, deficiencies, fines, penalties, interest, assessments, actions, causes of action, suits, losses, diminution in the value of Assets, damages, punitive, exemplary or consequential damages (including, but not limited to, lost income and profits and interruptions of business), liabilities, costs, expenses (including (i) interest, penalties and reasonable attorneys’ fees and expenses, (ii) attorneys’ fees and expenses necessary to enforce rights to indemnification hereunder, and (iii) consultant’s fees and other costs of defense or investigation), and interest on any amount payable to a Third Party as a result of the foregoing, whether accrued, absolute, contingent, known, unknown, or otherwise as of the Closing Date or thereafter.

**“Material”** or **“Materially”** shall be determined in light of the facts and circumstances of the matter in question; provided, however, that any specific monetary amount cited in this Agreement shall be deemed to determine materiality in that instance.

**“Material Adverse Change”** or **“Material Adverse Effect”** means with respect to Seller any Material adverse change in or effect on (i) the business, operations, assets, Liabilities, condition (financial or otherwise), results of operations of the Station, or (ii) the ability of Seller to consummate the transactions contemplated by this Agreement or any of the Seller Other Agreements to which Seller is or will be a party, or (iii) the ability of Seller to perform any of its obligations under this Agreement or any of the Seller Other Agreements to which it is or will be a party, if such change or effect impairs the ability of such Seller to perform its obligations hereunder or thereunder, taken as a whole, except in any case (i) through (iii), for any such changes or effects resulting directly or indirectly from (A) the transactions contemplated by this Agreement or the taking of any action contemplated by or required by this Agreement, (B) the announcement or other permitted disclosure of the transactions contemplated by this Agreement, (C) any federal or state governmental actions, including, without limitation, proposed or enacted legislation or other regulatory changes, as long as such changes do not have a substantially disproportionate effect on the Station, (D) matters generally applicable to the television broadcasting industry, or changes in general economic conditions nationally (including, without limitation, financial and capital markets), (E) actions taken by Buyer or its Affiliates or (F) earthquakes, hurricanes, tornadoes, natural disasters or global, national or regional political conditions, including hostilities, military actions, political instability, acts of terrorism or war or any escalation or material worsening of any such hostilities, military actions, political instability, acts of terrorism or war existing or underway as of the date hereof (other than any of the foregoing that causes any damage or destruction to or renders unusable any material Assets), as long as the changes resulting therefrom do not have a substantially disproportionate effect on the Station. Further, a reduction in the Station’s broadcast cash flow (and the components thereof, including revenue and expense) resulting from the normal operation of the Station, shall not, in and of itself, constitute a Material Adverse Effect.

**“Material Advertisers”** has the meaning set forth in Section 4.21(f).

**“Material Business Contracts”** has the meaning set forth in Section 4.21(b).

**“Multiemployer Plan”** means a “multiemployer plan” (as defined in Section 3(37) of ERISA) to which a Person or any of its ERISA Affiliates is or has been obligated to contribute or otherwise may have any liability.

**“Net Working Capital”** means the difference, if any, between (i) those current assets of the Station as determined in accordance with GAAP, excluding current film assets, cash and cash equivalents, *minus* (ii) current liabilities of the Station as determined in accordance with GAAP and included in the Assumed Liabilities.

**“Non-Competition Agreement”** has the meaning set forth in Section 6.12.

**“Non-Disclosure Agreement”** has the meaning set forth in Section 6.5(b).

**“Non-Union Transferred Employee”** has the meaning set forth in Section 6.8(a).

**“Order”** means any decree, injunction, judgment, order, ruling, writ, quasi-judicial decision or award or administrative decision or award of any federal, state, local, foreign or other court, arbitrator, mediator, tribunal, administrative agency or Governmental Authority to which any Person is a party or that is or may be binding on any Person or its securities, assets or business.

**“Other Agreements”** has the meaning set forth in Section 5.2.

**“Owned Personal Property”** means all Personal Property other than Leased Personal Property.

**“Owned Real Property”** means the parcels of land described on Schedule 4.10(a), together with all buildings, structures, improvements, fixtures, easements and other rights and interests appurtenant thereto.

**“Permitted Lien”** means (i) liens for taxes not yet due and payable; (ii) inchoate statutory liens that were created in the ordinary course of business and which will be discharged prior to Closing or, to the extent not so discharged, the amount thereof shall be reflected in the Net Working Capital; (iii) restrictions imposed by Governmental Authorities under applicable Law; (iv) zoning, building or similar restrictions relating to or affecting property to the extent the Seller is not in breach thereof; (v) those liens that secure amounts owed by Seller to its creditors for indebtedness for borrowed money that are to be discharged and released simultaneously with the Closing or for which arrangements therefor have been made as of Closing or for which the relevant creditors have agreed in writing to authorize Seller or the Buyer to arrange for their release simultaneously with the Closing or for which arrangements therefor have been made as of Closing; (vi) easements, covenants, conditions, restrictions and other similar matters of record affecting title to Real Property which do not or would not materially impair the use or occupancy of such Real Property in the operation of the business of the Station in the ordinary course, consistent with past practice; and (vii) statutory liens that were created in the ordinary course of business and that secure only amounts or obligations that are not due and payable as of the date in question.

**“Person”** means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association or any person acting in a representative capacity.

**“Personal Property”** means collectively all of the personal property or interests therein owned, leased, used or controlled by Seller and used in the Business including machinery, tools, equipment (including office equipment and supplies), furniture, furnishings, fixtures, vehicles, leasehold improvements and all other tangible personal property.

**“Purchase Price”** has the meaning set forth in Section 2.1.

**“Real Property”** means the Owned Real Property and the Leased Real Property.

**“Registered Station Intellectual Property”** means the Station Intellectual Property that has been registered with, or for which an application for registration has been submitted to, the United States Patent and Trademark Office (or any corresponding state agency), the United States Copyright Office or any domain name registrar.

**“Representatives”** with respect to any Person means the Affiliates of such Person and the members, directors, managers, officers, principals, employees, agents, advisors and other representatives of such Person and its Affiliates.

**“Retained Liabilities”** means any and all Liabilities of Seller that are not an Assumed Liability, including the following:

- (i) any Liabilities for any Taxes of Seller;
- (ii) any Liabilities relating to current or former assets of Seller not being acquired by Buyer pursuant to this Agreement, including the Excluded Assets;
- (iii) except as provided in Section 6.6, any Contract of Seller not validly assigned to Buyer;
- (iv) any Liability incurred by Seller as a result of any Default by Seller under any provision of this Agreement or the Seller Other Agreements or any Default in existence prior to the Closing under any Contract that is part of the Assets;
- (v) except as provided in Section 6.8, any Liability of Seller to pay bonuses or other compensation to employees of Seller on account of the transactions contemplated by this Agreement;
- (vi) any Undisclosed Liability;
- (vii) any Liability of Seller, of any nature whatsoever, to any current or former member or Affiliate of Seller;

(viii) any Liability (including any Liability relating to any Litigation) relating to, based upon, or arising out of (A) the conduct of the business of the Station or the ownership of the Assets prior to the Closing Date or (B) any act, omission, transaction, circumstance, sale of goods or services, state of facts or other condition which occurred or existed prior to the Closing Date, whether or not then known, due or payable and whether or not disclosed in this Agreement or the Seller Other Agreements, to the extent related to the period prior to the Closing Date.

(ix) any Liability that Buyer may incur in connection with any Litigation brought against Buyer under the Worker Adjustment and Retraining Notification Act or any similar Law that relates to actions taken by Seller with regard to any employees or any site employment;

(x) any of the events, circumstances, or conditions described in **Schedule 4.18**, or any Liability arising from any Environmental Matter;

(xi) except as provided in Section 6.8, any Liability of Seller under or relating to any Employee Benefit Plan;

(xii) any claim by any broker, finder or other Person employed or allegedly employed by Seller in connection with the transactions contemplated by this Agreement; or

(xiii) any Liability related to an Excluded Asset.

**“Retransmission Agreements”** has the meaning set forth in Section 4.21(c).

**“Seller”** has the meaning set forth in the preamble above.

**“Seller Indemnified Party”** has the meaning set forth in Section 9.2(b).

**“Seller Other Agreements”** has the meaning set forth in Section 4.2.

**“Seller’s 401(k) Plan”** has the meaning set forth in Section 6.8(f).

**“SHVERA”** has the meaning set forth in Section 6.2(l).

**“Smith”** has the meaning set forth in the preamble above.

**“Station Intellectual Property”** means the Intellectual Property owned, licensed or used by or on behalf of Seller solely in connection with the operation of the Station.

**“Station Employee”** has the meaning set forth in Section 4.22.

**“Station”** has the meaning set forth in the Background above.

**“Tax” or “Taxes”** federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar),



unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“**Tax Returns**” means all returns, reports, filings, declarations and statements relating to Taxes that are required to be filed, recorded, or deposited with any Governmental Authority, including any attachment thereto or amendment thereof.

“**Third Party**” or “**Third Parties**” means any Person that is not Buyer, Seller or an Affiliate of Buyer or Seller.

“**Third Party Claim**” has the meaning set forth in Section 9.2(c).

“**Transferred Employee**” has the meaning set forth in Section 6.8.

“**Undisclosed Liabilities**” means any Liability related to the Station as of the date of determination that is not appropriately reflected or reserved against in the Financial Statements or disclosed in a Schedule.

“**Union Employee**” means all Employees the terms of whose employment are governed by a Bargaining Agreement.

“**Union Transferred Employee**” has the meaning set forth in Section 6.8(a).

### 13. Miscellaneous

13.1 Notices Any notice or other communication under this Agreement shall be in writing and shall be considered given when delivered personally or when mailed by registered mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice to the other):

to Buyer:

WKTV, LLC  
1843 West Wesley Road  
Atlanta, GA 30327  
Attention: Robert S. Prather, Jr.

with a copy to:

Ballard Spahr LLP  
999 Peachtree Street  
Suite 1000  
Atlanta, GA 30309  
Attention: Stephen A. Opler  
Facsimile: (678) 420-9301

if to Seller:

Smith Media, LLC  
1215 Cole Street  
St. Louis, Missouri 63106  
Attention: Mr. Ian Guthrie  
Facsimile: (314) 259-5532

with a copy to:

Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Attention: John D. Byrnes, Esq.  
Facsimile: (202) 776-2222

Frontyard Management, LLC  
c/o BV Investment Partners  
125 High Street  
17<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: Mr. Andrew Davis  
Facsimile: (617) 350-1561

13.2 Brokers. Buyer represents and warrants to the Seller that Buyer has not retained or dealt with any broker or finder in connection with the transactions contemplated by this Agreement. Other than the brokers listed on **Schedule 13.2** (whose fees shall be the sole responsibility of Seller), Seller represents and warrants to Buyer that Seller has not retained or dealt with any broker or finder in connection with the transactions contemplated by this Agreement.

13.3 Entire Agreement. This Agreement, including the Non-Disclosure Agreement, schedules and exhibits, contains a complete statement of all the arrangements between the parties with respect to its subject matter, supersedes any previous agreement between them relating to that subject matter, and cannot be changed or terminated orally.

13.4 Headings. The Section headings of this Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of this Agreement.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware.

13.6 Separability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect.

13.7 Assignment. No party may assign this Agreement or any of its rights, interests or obligations or delegate any of its duties under this Agreement without the consent of the other; provided, however, that, without the consent of Seller, Buyer may (i) assign this Agreement, in whole or in part to any direct or indirect wholly-owned subsidiary of Buyer, (ii) collaterally assign all or any portion of its rights under this Agreement to its lender or lenders, equity sponsor or sponsors or other financing source or sources in connection with obtaining any financing (or any refinancing thereof), and (iii) after the Closing, to any purchaser(s) of all or substantially all of the Assets from Buyer; provided, however, that in any case (i), (ii) or (iii) such assignment does not terminate Buyer's indemnification obligations or Buyer's other obligations and liabilities under this Agreement.

13.8 Publicity. No party shall publish, issue or make any press release or make any other public announcement concerning this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other party, which shall not be withheld or delayed unreasonably; provided, however, that (i) nothing contained in this Agreement shall prevent any party, after notification to the other party to the extent legally permissible, from making any filings with Governmental Authorities that, based on advice of legal counsel, may be required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby and (ii) Seller shall be permitted to publish and broadcast public notices concerning the filing of the Assignment Application in accordance with the requirements of Section 73.3580 of the Commission's rules.

13.9 Jurisdiction. The courts of the State of Delaware in New Castle County and the United States District Court for the District of Delaware shall have jurisdiction over the parties with respect to any dispute or controversy between them arising under or in connection with this Agreement and, by execution and delivery of this Agreement, each of the parties to this Agreement submits to the jurisdiction of those courts, including, but not limited to, the in personam and subject matter jurisdiction of those courts, waives any objection to such jurisdiction on the grounds of venue or forum non conveniens, the absence of in personam or subject matter jurisdiction and any similar grounds, consents to service of process by mail (in accordance with Section 13.1) or any other manner permitted by law, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. These consents to jurisdiction shall not be deemed to confer rights on any Person other than the parties to this Agreement.

#### 13.10 Dispute Resolution.

(a) The resolution of any and all disputes arising from or in connection with this Agreement, whether based on contract, tort, or otherwise (collectively, "**Disputes**"), shall be exclusively governed by and settled in accordance with the provisions of this Section 13.10; provided, however, that this Section 13.10 shall not preclude or delay any party from seeking injunctive relief in a court of competent jurisdiction without complying with the following provisions of this Section 13.10.

(b) The parties hereto shall use all commercially reasonable efforts to settle all Disputes without resorting to mediation, arbitration or otherwise.

(c) The party asserting a Dispute shall deliver to the other party a written notice setting forth the basis for the issue in detail, and identifying the section of this Agreement (the “**Dispute Notice**”). Within ten (10) Business Days of receipt of a Dispute Notice, the issue shall be elevated to a designated panel of four individuals, two representatives from Buyer and two individuals from Seller, with all such individuals familiar with the Station. The panel may be assisted by other advisors, including accountants, attorneys, and employees, in its discussions and review. Such representatives shall be empowered and authorized to bind their respective companies with respect to the matter in dispute, and to settle the issue on behalf of their respective companies. These representatives shall for thirty (30) business days after receipt of the Dispute Notice, confer and in good faith make a reasonable effort to resolve the issue.

(d) In the event that a Dispute remains unsettled after the procedures set forth in Section 13.10(c), a party hereto may commence Proceedings hereunder in any court specified in Section 13.9.

13.11 Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute one and the same instrument. Delivery of a signature page hereto by facsimile transmission or other method of electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

13.12 Rules of Construction. Whenever the context requires, any pronoun shall include the corresponding masculine, feminine and neuter forms. Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular. Without limiting the generality of the foregoing, it is hereby acknowledged and agreed that the terms “Seller” shall include and mean, as applicable, Smith and License Holdings individually and not just Smith and License Holdings collectively or as a group. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references to “party” and “parties” shall be deemed references to parties to this Agreement unless the context shall otherwise require. Except as specifically otherwise provided in this Agreement, a reference to an Article, Annex, Section, Schedule or Exhibit is a reference to an Article, Annex, Section, Schedule or Exhibit of this Agreement. The term “or” is used in its inclusive sense (“and/or”) and, together with the terms “either” and “any” shall not be exclusive. When used in this Agreement, words such as “herein,” “hereinafter,” “hereby,” “hereof,” “hereto,” “hereunder” and words of similar import shall refer to this Agreement as a whole, including Annexes, Schedules and Exhibits hereto, and not to any particular provision of this Agreement, unless the context clearly requires otherwise. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Disclosure of information included on any disclosure schedule (or portion of any disclosure schedule) shall be considered disclosures for all other disclosure schedules (or other portions of other disclosure schedules) to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable to such other disclosure schedules (or other portions of disclosure schedules). In addition, (a) the fact that any disclosure on any schedule is not required to be disclosed in order to render the applicable representation or warranty to which it relates true, or that the absence of such disclosure on any schedule would not constitute a breach of such representation or warranty, shall not be deemed or construed to expand the scope of any representation or warranty hereunder or to establish a standard of disclosure in respect of any


representation or warranty and (b) disclosure of a particular matter on any schedule shall not be construed to mean that such matter is material or would reasonably be expected to have a Material Adverse Effect.

13.13 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any Person by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed under seal as of the date first above written.

**WKTV, LLC**

By:   
Name: Robert S. Prother, Jr.  
Title: President and Chief Executive Officer

**SMITH MEDIA, LLC**

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

**SMITH MEDIA LICENSE HOLDINGS, LLC**

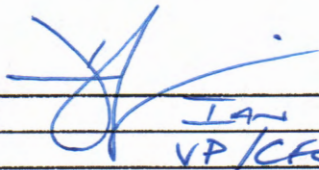
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed under seal as of the date first above written.

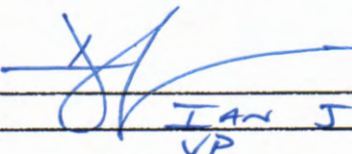
**WKTV, LLC**

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

**SMITH MEDIA, LLC**

By:  \_\_\_\_\_  
Name: IAN J. GUTMAN  
Title: VP/CFO

**SMITH MEDIA LICENSE HOLDINGS, LLC**

By:  \_\_\_\_\_  
Name: IAN J. GUTMAN  
Title: VP