

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is made as of October 2, 2009, by and between The Lutheran Church – Missouri Synod, a Missouri non-profit corporation (“**Seller**”) and Gateway Creative Broadcasting, Inc. a Missouri corporation (“**Purchaser**”).

**WHEREAS**, Seller is the licensee of the radio broadcast station KFUE-FM, Clayton, MO (Facility ID No. 65924) (the “**Station**”);

**WHEREAS**, Seller owns the assets which are used in the operation of the Station; and

**WHEREAS**, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, certain of the assets relating to the Station as described herein under the terms and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS AND REFERENCES

Capitalized terms used herein without definition shall have the respective meanings assigned thereto in Annex I attached hereto and incorporated herein for all purposes of this Agreement (such definitions to be equally applicable to both the singular and plural forms of the terms defined). Unless otherwise specified, all references herein to “Articles” or “Sections” are to Articles or Sections of this Agreement. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

### ARTICLE 2. PURCHASE AND SALE

#### 2.1. Purchase and Sale of Assets.

Subject to the conditions set forth in this Agreement, at the Closing (as defined hereinafter), Seller shall assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in and to certain assets used by Seller in the operation of the Station (the “**Purchased Assets**”), free and clear of all Liens (other than Permitted Liens), as specified below:

##### 2.1.1. FCC Licenses.

All licenses, construction permits or authorizations issued by or pending before the FCC for use in the operation of the Station that are set forth on Schedule 2.1.1, together with any and all renewals, extensions and modifications thereof (the “**FCC Licenses**”).

### **2.1.2. Tangible Personal Property.**

The antennas, main and back-up transmitters and generators, STLs and other similar tangible personal property owned and/or principally used by Seller in the operation of the Station, as more specifically set forth in Schedule 4.5, subject to the further terms and conditions set forth therein.

### **2.1.3. Assumed Contracts.**

Only those Contracts of the Seller principally related to the operation of the Station that are set forth on Schedule 2.1.3, together with such modifications thereto (collectively, the “**Assumed Contracts**”).

### **2.1.4. Business Records.**

Unless as may be otherwise required by law, the books and records principally related to the Purchased Assets, but only the Purchased Assets, such as property tax records, logs, all materials maintained in the FCC public file principally relating to the Station, technical data, political advertising records and all other records, correspondence with and documents pertaining to Governmental Authorities and similar third parties (the “**Business Records**”).

## **2.2. Excluded Assets.**

Notwithstanding the terms of Section 2.1, Seller shall not assign, transfer, convey or deliver to Purchaser, and Purchaser shall not purchase and accept, and the Purchased Assets shall not include, any of Seller’s right, title and interest in and to any of the following assets (the “**Excluded Assets**”):

### **2.2.1. Cash, Receivables, Securities and Expenses.**

All cash, cash equivalents, cash deposits, intercompany receivables from any Affiliate of Seller, accounts receivable, notes receivable or other receivables, tax refunds, bank deposits, securities and prepaid expenses of Seller (except to the extent Purchaser receives a proration amount under Section 3.6).

### **2.2.2. Certain Books and Records.**

Seller’s corporate seal, minute books, charter documents, corporate stock record books and other books and records that pertain to the organization of Seller, and any other records that Seller is prohibited by applicable Law from transferring, and any other books and records of the Seller or the Station not specifically related to the Purchased Assets.

### **2.2.3. Insurance.**

All insurance contracts, or proceeds thereof, and rights against insurers.

#### **2.2.4. Contracts.**

All Contracts that are not Assumed Contracts.

#### **2.2.5. Pre-Closing Claims.**

All claims arising out of acts occurring prior to the Closing Date, or claims that relate to the period prior to the Closing Date, including rights to deposits and prepaid expenses, and claims for refunds arising prior to the Closing Date.

#### **2.2.6. Rights Under this Agreement.**

All of the rights of Seller under or pursuant to this Agreement or any other rights in favor of Seller pursuant to the other agreements contemplated hereby or thereby.

#### **2.2.7. Employee Benefit Plans.**

All pension, profit sharing, retirement, bonus, medical, dental, life, accident insurance, disability, executive or deferred compensation, and other similar fringe or employee benefit plans.

#### **2.2.8. Intangible Property.**

All rights in and to “KFUO” call letters, including all of the following related thereto: trademarks, trade names, brand names, call letters, corporate names, logos, trade dress, business names (and all associated derivations therefrom), Internet domain names and addresses, content located and publicly accessible therefrom, and Internet web pages, as well as any and all promotional materials, tapes, recordings, and record libraries in whatever form or format.

#### **2.2.9. Personnel Records.**

All personnel records and other records that Seller is required by Law to retain in its possession.

#### **2.2.10 Studio, Furniture, Fixtures, Name and Music Library.**

In connection with the Seller continuing to broadcast Classical Programming after the Closing, Seller shall retain the Station’s broadcast studio, furniture and fixtures, the right to the name “Classic 99,” the website “www.classic99.com,” the music library of the Station, and such other assets of Seller that are not part of the Purchased Assets that are mutually agreed to facilitate the continuation of Classical Programming, as more fully set forth in Schedule 3.2.4 hereof.

### **2.3. Assumed Contracts; Assumed Liabilities.**

At the Closing, Purchaser shall assume the obligations of Seller for periods on and after the Closing Date under (i) the Assumed Contracts, and Purchaser agrees to pay and perform the

Assumed Contracts from and after the Closing Date, (ii) Seller trade accounts payable incurred in the ordinary course of business between the date of the Agreement and the Closing Date that remain unpaid and that are not delinquent as of the Closing Date provided such trade agreements do not exceed a total of ten thousand dollars, and (iii) the obligations and liabilities with respect to the operation or ownership of the Station or the Purchased Assets from and after the Closing Date that have been specifically assumed by Purchaser; provided, however, any such trade accounts shall be subject to proration as provided in Section 3.6 (items described in Sections 2.3(i), (ii) and (iii) are referred to herein as the “Assumed Liabilities”).

## **2.4. No Liabilities.**

Except as specifically set forth in Section 2.3, Purchaser does not assume, and shall in no event be liable for, any Liability of the Station or Seller which relate to the period of time prior to the Closing or after Closing if not specifically assumed by Purchaser, including, without limitation, the following Liabilities (the “Excluded Liabilities”):

### **2.4.1. Liabilities Related to the Excluded Assets.**

Any Liabilities or obligations of Seller incurred, arising from or out of, in connection with or as a result of claims made by or against Seller with respect to the Excluded Assets.

### **2.4.2. Liabilities Prior to the Closing Date.**

Any Liabilities or obligations incurred, arising from or out of, in connection with or as a result of the operation of the Station or the ownership or use of the Purchased Assets prior to the Closing Date, and any Liabilities or obligations incurred, arising from or out of, in connection with or as a result of Seller’s operations of any assets other than the Station, the condition of its other assets or places of business prior to the Closing Date.

### **2.4.3. Taxes.**

Any Liabilities or obligations of Seller for any Taxes.

### **2.4.4. Employees.**

Any Liabilities or obligations to former or current officers, directors, employees, shareholders or Affiliates of Seller, including any Liabilities or obligations of Seller in connection with any employment agreements or contracts, employee benefit plans or collective bargaining, labor or employment agreements or other similar arrangements or obligations in respect of retiree health benefits.

### **2.4.5 Accounts Payable.**

Seller’s accounts payable which would become delinquent if not paid immediately prior to the Closing.

#### **2.4.6. Litigation.**

Any existing, pending or future litigation of Seller related to any of the Excluded Liabilities set forth in this Section 2.4 or otherwise incurred, arising out of, or related to events concerning the Station occurring prior to the Closing Date.

### **ARTICLE 3. ESCROW DEPOSIT; PURCHASE PRICE; CLOSING**

#### **3.1. Escrow Deposit.**

For and in partial consideration of the execution and delivery of this Agreement, simultaneously with the execution and delivery of this Agreement, Purchaser has deposited in escrow with Gammon & Grange, P.C. (the “**Deposit Escrow Agent**”), an amount equal to One Hundred and Fifty Thousand Dollars (\$150,000) in cash, said amount to be held as an earnest money deposit (the “**Deposit**”), in accordance with the terms and conditions of this Agreement and the Deposit Escrow Agreement dated as of the date hereof among Purchaser, Seller and the Deposit Escrow Agent, in the form attached hereto as Exhibit A (the “**Deposit Escrow Agreement**”), and which will be applied to the Purchase Price at the Closing as provided in Section 3.2, Section 9.1.4 and Section 9.2.4.

#### **3.2. Purchase Price.**

The aggregate consideration to be paid by Purchaser for the Purchased Assets shall be Eighteen Million Dollars (\$18,000,000.00) (the “**Purchase Price**”), to be paid by Purchaser to Seller at the Closing as follows:

**3.2.1** \$1.5 million to be paid at closing by wire transfer of immediately available funds pursuant to wire instructions delivered by Seller to Purchaser prior to Closing.

**3.2.2** A Promissory Note in the form attached as Schedule 3.2.2 hereto in the amount of Sixteen Million Five Hundred Thousand Dollars (\$16,500,000). The Note shall provide for:

**3.2.2.1** A principal payment in the amount of \$1.50 million to be paid not more than 24 months after the Closing Date;

**3.2.2.2** Interest to accrue at 5.25% per annum. Interest payments deferred for one (1) year after Closing. The deferred accrued interest for year one shall be due at the time the balloon payment is made as provided in Section 3.2.2.5 hereof. No interest shall be due on the deferred accrued interest for year one if paid before the end of the second year after Closing, otherwise, interest shall accrue on the deferred accrued interest at the rate of 5.25% per annum;

**3.2.2.3** Interest payments to begin in year two, on the second anniversary of Closing Date and shall be paid annually thereafter;

**3.2.2.4** Principal payments of \$150,000 per year beginning year four,

increasing by an additional \$50,000 per year thereafter;

**3.2.2.5** Balloon payment of all remaining principal and unpaid interest on the tenth (10<sup>th</sup>) anniversary of the Closing Date;

**3.2.2.6** The Note to be secured by a Security Agreement in the form of attached Schedule 3.2.2.6.

**3.2.2.7** The Note shall contain other terms and conditions which are incorporated herein, including the right to prepay without penalty. Which may effect the amounts due as set forth above. Purchaser may prepay the Note in whole or in part without a premium or penalty. Any partial prepayments or extra payments shall not relieve Maker from making annual payments as required above except to the extent such amounts are no longer due. Any partial prepayments of this Note shall first be applied to any interest due on the Note at the time the payment is made and the balance shall be applied to payment of principal. Interest is computed on a 365/365 basis; that is, by applying the ratio of the interest rate over a year of 365 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this loan is computed using this method.

**3.2.3 Additional Available Proceeds.** Purchaser is the licensee of two FM radio stations, KPVR Bowling Green, Missouri and KHZR Potosi, Missouri (“Purchaser Stations”). On execution of this Agreement, Purchaser agrees to act with diligence to place Purchaser Stations on the market for sale at fair market value. All of the proceeds from the sale of either, each and/or both of the Purchaser Stations after payment of all Purchaser Station debt shall be paid to Seller in cash within 30 days after the closing of any such sale and credited toward the Purchase Price. Purchaser warrants that a true and correct accounting of such debt due and payable with respect to each of the Purchaser Stations has previously been provided to Seller.

**3.2.4 Additional Consideration.** Purchaser agrees to lease the Station’s HD2 channel to Seller pursuant to the terms of the HD Channel Agreement, attached hereto as Schedule 3.2.4, such terms to include a lease period up to two years, and that Seller is to reimburse costs associated with operating the HD2 channel. including any leasing costs for HD operations. This obligation is contingent on Seller assigning a tower lease that provides for HD operations. The parties acknowledge that the form of such HD Channel Agreement may be further negotiated after the date hereof, but that such shall be executed concurrently at Closing, or, if necessary to complete the transactions contemplated thereunder, and upon the good faith cooperation of the parties, prior to Closing, such that the transition of Seller to HD broadcasting may be accomplished as of the date of Closing, as contemplated under such HD Channel Agreement. The parties also acknowledge that the Station is currently broadcasting only in analog and that broadcasting a digital signal will require certain modifications to the Station’s transmitter and to the existing tower lease. In the event any equipment is installed or modifications made prior to Closing to accommodate the HD2 operations contemplated herein (“HD Buildout”) and such costs are the responsibility of Purchaser and Closing does not occur, then any funds expended by Purchaser for the HD Buildout shall immediately be reimbursed by Seller. In the event Seller expends funds for the HD Buildout then such funds shall be reimbursed by Purchaser at Closing.

The parties further agree that, in the event that the HD Channel Agreement is not executed prior to Closing due to the circumstances set forth in Section 9.1.8 hereof, the parties shall continue to negotiate in good faith for a reasonable time subsequent to Closing in an effort to effectuate such HD Channel Agreement.

### **3.3. Time of Closing.**

The closing for the sale and purchase of the Purchased Assets (the “**Closing**”) shall take place in person or via facsimile or other electronic delivery at the offices of Seller (or such other place as may be agreed upon by the parties in writing). The Closing shall occur at a mutually agreed upon time on such date (the “**Closing Date**”) that is the fifth (5<sup>th</sup>) Business Day following the satisfaction or waiver of all of the conditions precedent set forth in Article 7 and Article 8.; provided, however Closing shall not occur prior to March 1, 2010 and at Sellers option Closing may be extended another thirty days until April 1, 2010. The parties will endeavor in good faith to effect the Closing simultaneously in different locations to avoid the travel and additional expense of requiring all parties to be located in the same place and in connection therewith the parties will deliver, in escrow, to opposing counsel and other appropriate parties, all agreements, instructions, documents, releases, certificates, wire transfer instructions, pay-off instructions, UCC termination statements and other matters and things necessary to effect the Closing in such manner.

### **3.4. Closing Procedures.**

At the Closing, Seller shall deliver to Purchaser such bills of sale, instruments of assignment, transfer and conveyance and similar documents set forth in Article 7 and Article 9, and Purchaser shall deliver to Seller such documents set forth in Article 8 and Article 9 and pay the Purchase Price to Seller in accordance with Section 3.2. Each party will cause to be prepared, executed and delivered all other documents required to be delivered by such party pursuant to this Agreement and all other appropriate and customary documents as another party or its counsel may reasonably request for the purpose of consummating the transactions contemplated by this Agreement. All actions taken at the Closing shall be deemed to have been taken simultaneously at the time the last of any such actions is taken or completed.

### **3.5. Allocation of Purchase Price.**

Seller and Purchaser agree to allocate the Purchase Price in accordance with the respective fair market values of the Purchased Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Code. The allocation shall be determined by mutual agreement of the parties prior to the Closing. Each of the parties further agrees to file its federal income tax returns and its other tax returns reflecting such allocation in accordance with the determination made by them.

### **3.6. Prorations.**

**3.6.1** All operating income and operating expenses of the Station shall be adjusted and allocated between the parties to the extent necessary to reflect the principle that all such income and expenses attributable to the operation of the Stations on or before the Closing Date shall be

for the account of Seller, and all income and expenses attributable to the operation of the Station after the Closing Date shall be for the account of Purchaser. To the extent not inconsistent with the express provisions of this Agreement, the allocations made pursuant to this Section 3.6 shall be made in accordance with United States generally accepted accounting principles.

**3.6.2** For purposes of making the adjustments pursuant to this Section 3.6, Purchaser shall prepare and deliver to Seller an initial itemized list(s) of all sums to be credited or charged (the “**Proration Amounts**”) against the account of Purchaser, on the one hand, and Seller, on the other hand, with a brief explanation in reasonable detail of the credits or charges, consistent with the allocation principle set forth herein (“**Proration List**”), within thirty (30) days following the Closing Date, or such later date as shall be mutually agreed to by the parties. If Seller disagrees with the Proration Amount determined by Purchaser or with any other matter arising out of this subsection, and Purchaser and Seller cannot within sixty (60) days resolve the disagreement themselves, the parties will refer the disagreement to a firm of independent certified public accountants, mutually acceptable to Seller and Purchaser, whose decision shall be final. The fees and expenses of such accountants shall be paid by the party who does not substantially prevail on the disputed matters decided by the accountants.

#### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Purchaser as follows:

##### **4.1. Organization; Good Standing.**

Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Missouri. Seller has all non-profit corporation power and authority to own and lease its properties and carry on its business as currently conducted.

##### **4.2. Due Authorization.**

Subject to the FCC Order, Seller has full power and authority to enter into and perform this Agreement and the Deposit Escrow Agreement and to carry out Seller’s obligations hereunder and thereunder. The execution and delivery of this Agreement and the Deposit Escrow Agreement and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of Seller. Upon the execution and delivery at Closing of this Agreement and the Deposit Escrow Agreement, each such agreement will constitute the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as may be limited by the availability of equitable principles or by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally.

##### **4.3. No Conflict.**

Except as set forth on Schedule 4.3, neither the execution and delivery by Seller of this Agreement or the Deposit Escrow Agreement, nor the consummation by Seller of the transactions contemplated hereby or thereby, will: (a) conflict with or result in a breach of any

provisions of Seller's organizational documents; (b) subject to the FCC Order, violate any Law or Order of any court or Governmental Authority, which violation would have a Material Adverse Effect; or (c) violate or conflict with or constitute a default under (or give rise to any right of termination, cancellation or acceleration under), or result in the creation of any Lien on any of the Purchased Assets pursuant to, any material agreement, indenture, mortgage or other instrument to which Seller is a party or by which it or its assets may be bound or affected.

#### **4.4. Governmental Approvals.**

To the knowledge of Seller, no approval, authorization, consent, order or other action of, or filing with, any court or Governmental Authority is required in connection with the execution and delivery by Seller of this Agreement or the Deposit Escrow Agreement or the consummation of the transactions contemplated hereby or thereby, other than those of the FCC in obtaining the FCC Order.

#### **4.5. Tangible Personal Property.**

Schedule 4.5 sets forth a list, complete and accurate in all material respects, of the Purchased Assets which consist of tangible personal property. All material items of such tangible personal property are in good condition and working order, ordinary wear and tear excepted, and are suitable for the uses for which intended, free from any known defects except such defects that do not interfere with the present use thereof by Seller. The parties acknowledge and agree that certain items, as notated on Schedule 4.5, may continue to be used by Seller for purposes of Seller's HD broadcasting as contemplated under and more specifically set forth in the HD Channel Agreement.

#### **4.6. Title to Personal Property.**

Except as set forth in Schedule 4.6, Seller is the sole and exclusive legal owner of all right, title and interest in, and has good and marketable title to, all of the Purchased Assets constituting personal property, free and clear of all Liens except (a) Permitted Liens, (b) Liens set forth on Schedule 4.6 which will be released on or prior to the Closing, or (c) the Assumed Contracts.

#### **4.7. FCC Licenses.**

Schedule 2.1.1 lists and accurately describes all of the FCC Licenses necessary for the lawful ownership and operation of the Station as currently conducted. Seller has furnished to Purchaser true and accurate copies of all of the FCC Licenses. Each such FCC License is in full force and effect and is valid under applicable Laws; the Station is being operated in compliance with the Communications Act, and all rules, regulations and policies of the FCC; and to the knowledge of Seller, no event has occurred which is reasonably likely to result in the revocation or termination of any FCC License or the imposition of any fine, forfeiture or penalty, except for proceedings of a legislative or rule-making nature intended to affect the broadcasting industry generally. The Station is being operated in all material respects in accordance with the specifications of the FCC Licenses, except for such noncompliance that could not reasonably be expected to have a Material Adverse Effect. The FCC Licenses are unimpaired by any act or

omission of Seller or any of Seller's officers, directors or employees and, Seller has fulfilled and performed all of its obligations with respect to the FCC Licenses and has full power and authority thereunder. Except as set forth on Schedule 4.7, no application, action or proceeding is pending for the renewal or modification of any of the FCC Licenses. To the knowledge of Seller, no event has occurred which, individually or in the aggregate, and with or without the giving of notice or the lapse of time or both, would constitute ground for revocation of any of the FCC Licenses.

#### **4.8. Taxes.**

All Tax reports and returns required to be filed by or relating to the Purchased Assets have been filed with the appropriate Governmental Authority, and there have been paid all Taxes, penalties, interest, deficiencies, assessments or other charges due with respect to such Taxes, as reflected on the filed returns or claimed to be due by such federal, state or local taxing authorities (other than Taxes, deficiencies, assessments or claims which are being contested in good faith and which in the aggregate are not material). Seller has not received any written notice of any examinations or audits pending or unresolved examinations or audit issues with respect to Seller's federal, state or local Tax returns that could adversely affect the Purchased Assets. All additional Taxes, if any, assessed as a result of such examinations or audits have been paid, and to Seller's knowledge, there are no pending claims or proceedings relating to, or asserted for, Taxes, penalties, interest, deficiencies or assessments against the Purchased Assets.

#### **4.9. Environmental Matters.**

**4.9.1.** With respect to the Purchased Assets, Seller is in material compliance with all applicable Environmental Laws.

**4.9.2.** There are no pending or, to the knowledge of Seller, threatened actions, suits, claims, or other legal proceedings based on (and Seller has not received any written notice of any complaint, order, directive, citation, notice of responsibility, notice of potential responsibility, or information request from any Governmental Authority arising out of or attributable to): (a) the current or past presence at the Station of Hazardous Materials; (b) the current or past release or threatened release into the environment from the Station (including into any storm drain, sewer, septic system or publicly owned treatment works) of any Hazardous Materials; (c) the off-site disposal of Hazardous Materials originating on or from the Station or Purchased Assets of Seller; (d) any violation of Environmental Laws at the Station arising from Seller's activities involving Hazardous Materials.

**4.9.3.** To Seller's knowledge, Seller has been duly issued all permits, licenses, certificates and approvals required under any Environmental Law to operate the Purchased Assets as they are currently operated.

**4.9.4.** Seller has made available to Purchaser all material environmental assessments, reports, audits and other documents in its possession or under its control that relate to Seller's compliance with Environmental Laws with respect to the Purchased Assets.

**4.9.5.** Notwithstanding any other provision of this Agreement, this Section 4.9 sets forth

Seller's exclusive representations and warranties with respect to the environmental condition of the Purchased Assets, Seller's compliance with Environmental Laws, Hazardous Materials, Environmental Laws or other environmental matters.

#### **4.10. Litigation.**

Except for any FCC rulemaking proceedings generally affecting the broadcasting industry, and except as set forth on Schedule 4.10, there is no Order of any court or Governmental Authority and no action, suit, proceeding or investigation, judicial, administrative or otherwise that is pending or, to Seller's knowledge, threatened against or affecting the Station which, if adversely determined would have a Material Adverse Effect or which challenges the validity of any of the transactions contemplated by this Agreement.

#### **4.11. Contracts and Agreements.**

Seller is not in material default under any of the Assumed Contracts, and, as of the Closing Date, Seller will have paid all sums and performed in all material respects all obligations under the Assumed Contracts which are required hereunder or thereunder to be paid or performed prior to the Closing Date. As of the date hereof, Seller has delivered to Purchaser true and complete copies of all Assumed Contracts listed on Schedule 2.1.3. In circumstances of oral Assumed Contracts, Seller has disclosed to Purchaser the terms of such Assumed Contracts and agreements which relate to the operation of the Station. Each Assumed Contract constitutes the valid and binding agreement of Seller enforceable against it in accordance with its terms, except as limited by laws affecting creditor's rights or equitable principles generally. Seller has duly performed in all material respects its obligations under each Assumed Contract to the extent that such obligations to perform have accrued, and no breach or default, alleged breach or alleged default, or event that would (with or without the passage of time, notice or both) constitute a material breach or default thereunder by Seller or, to Seller's knowledge, any other party or obligor with respect thereto, has occurred. As of the date hereof, except for obtaining any Third Party Consents (as defined below), Seller has full legal power and authority to assign its rights under the Assumed Contracts to Purchaser in accordance with this Agreement.

#### **4.12. Business Records.**

Seller has, and after the Closing, Purchaser will have, the right to use the Business Records included in the Purchased Assets, free and clear of any royalty or other payment obligations.

#### **4.13. Third Party Consents.**

The only consents from any Person which are required to be obtained by Seller in connection with the execution and delivery by Seller of this Agreement and the consummation of the transactions contemplated hereby are set forth on Schedule 4.13 (the "**Third Party Consents**"), except for such consents the failure of which to obtain could not reasonably be expected to have a Material Adverse Effect.

#### **4.14. Finders and Brokers.**

No person has as a result of any agreement entered into by Seller any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

#### **4.15. Compliance with Laws.**

Seller has complied in all material respects with, and is not in any material respect in violation of, any applicable federal, state or local laws, statutes, rules, regulations or orders relating to the ownership and operation of the Station, including, to its knowledge, material compliance with all applicable local, state and federal statutes and regulations relating to the protection of human health.

#### **4.16. Reports.**

All material returns, reports and statements that Seller is required to file with the FCC have been filed, and all reporting requirements of the FCC have been complied with in all material respects.

#### **4.17. Labor.**

Seller has complied in all material respects with all laws relating to the employment of labor. Seller is not a party to any contract or agreement with any labor organization, nor has Seller agreed to recognize any union or other collective bargaining unit, nor has any union or other collective bargaining unit been certified as representing any of the employees of the Station. Seller has no knowledge of any organizational effort currently being made or threatened by or on behalf of any labor union with respect to employees of Seller at the Station, except such plans of Seller applicable to employees of Seller on a general basis. Purchaser shall not be obligated to continue the employment of any current employees of the Station and shall not assume and will be free of all liabilities of any kind in connection with any such employees whose employment is not continued by Purchaser as of the Closing Date.

#### **4.18. Employee Benefit Plans.**

There are no retirement, pension or thrift plans, individual or supplemental pension or accrued compensation arrangements, contributions to hospitalization or other health or life insurance programs, incentive plans, bonus arrangements and disability and termination arrangements or policies for employees of the Stations. To the extent that any such plans exist, Seller acknowledges and covenants that Purchaser will have no obligations of any kind under such plans.

#### **4.19. Insurance.**

Schedule 4.19 sets forth a summary of all policies of insurance covering the Purchased Assets and such policies are in full force and effect.

#### **4.20. Real Property.**

**4.20.1** Schedule 4.20 contains a description of all land, leaseholds, licenses, rights of way and interests in and to real property, buildings, structures, towers, antennas, fixtures, signage, improvements, and appurtenances that are owned, leased or held by Seller as of the date hereof for use principally in connection with the Purchased Assets (“Seller Real Property”).

**4.20.2** As to the Seller Real Property that is leased by Seller, Seller has good title to its interest in such leased Seller Real Property, free and clear of all Liens other than Permitted Liens. All of the leases with respect to such leased Seller Real Property are set forth on Schedule 4.20. Seller is in peaceable possession of the leased Seller Real Property set forth on Schedule 2.1.3 (the “**Assumed Leases**”) and has enforceable rights to non-disturbance and quiet enjoyment therein. Seller has no knowledge of any present disputes or claims with respect to offsets or defenses by either landlord or tenant against the other under any Assumed Lease.

**4.20.3** The Seller Real Property and all towers, antennas, fixtures, signage, improvements, and appurtenances thereto, are to Seller’s knowledge (1) in good operating condition and repair (reasonable wear and tear excepted), (2) in compliance in all material respects with applicable zoning Laws and the building, health, fire and environmental protection Laws, (3) without structural defects, and (4) without need for any repairs (other than normal routine maintenance) consistent with the present use thereof.

**4.20.4** Seller has not received any notice of condemnation or of eminent domain proceedings or negotiations for the purchase in lieu of condemnation of any of the Seller Real Property or the improvements thereto, and to Seller’s knowledge no condemnation or eminent domain proceedings or negotiations have been commenced or threatened in writing in connection with the Seller Real Property or the improvements thereto.

#### **4.21 Disclaimer.**

Except for the foregoing representations and warranties specifically set forth in Sections 4.1 through 4.21, and the representations and warranties set forth in the certificate to be delivered by Seller pursuant to Section 9.1.2, the Station and the Purchased Assets are being transferred by Seller to Purchaser without any representation or warranty, all other representations and warranties of any kind, express or implied, including warranties of fitness, being hereby expressly disclaimed. Without limiting the generality of the foregoing, Purchaser hereby acknowledges that Seller has not made any warranty or representation, express or implied, as to the revenue or income to be derived from the Station or the Purchased Assets.

### **ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller as follows:

### **5.1. Organization and Good Standing.**

Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri.

### **5.2. Due Authorization.**

Subject to the FCC Order, Purchaser has full power and authority to enter into and perform this Agreement and the Deposit Escrow Agreement and to carry out Purchaser's obligations hereunder and thereunder. The execution and delivery of this Agreement and the Deposit Escrow Agreement and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Purchaser. This Agreement and the Deposit Escrow Agreement have been duly executed and delivered by Purchaser and each constitutes the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its respective terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally or general equitable principles.

### **5.3. Execution and Delivery.**

Neither the execution and delivery by Purchaser of this Agreement or the Deposit Escrow Agreement nor the consummation of the transactions contemplated hereby or thereby will: (a) conflict with or result in a breach of the certificate of incorporation or bylaws of Purchaser; (b) subject to the FCC Order, violate any Law or Order of any court or Governmental Authority; or (c) violate or conflict with or constitute a default under (or give rise to any right of termination, cancellation or acceleration under) any material agreement, indenture, mortgage, lease, contract or other instrument to which Purchaser is a party or by which it is bound or affected.

### **5.4. Consents.**

No consent, approval, authorization, license, exemption of, filing or registration with any court or Governmental Authority is required in connection with the execution and delivery of this Agreement or the Deposit Escrow Agreement or the consummation by Purchaser of any transaction contemplated hereby or thereby, other than those of the FCC in obtaining the FCC Order. No approval, authorization or consent of any other third party is required in connection with the execution and delivery by Purchaser of this Agreement and the Deposit Escrow Agreement and the consummation of the transactions contemplated hereby or thereby, except as may have been previously obtained by Purchaser.

### **5.5. Finders and Brokers.**

No person has as a result of any agreement entered into by Purchaser any valid claim against any of the parties hereto for a brokerage commission, finder's fee or other like payment.

## **5.6. Purchaser's Qualification.**

**5.6.1.** Purchaser is, and as of the Closing Purchaser will be, legally, financially and otherwise qualified to perform its obligations hereunder and to be the assignee of the FCC Licenses, and no waivers shall be required by the FCC for the consummation of the transactions contemplated hereby or the grant of the FCC Order. To Purchaser's knowledge, there are no facts or proceedings which would reasonably be expected (a) to disqualify Purchaser under the Communications Act from holding the FCC Licenses, (b) to cause the FCC to flag the FCC Application and/or initiate a review of the potential effects on competition of the transaction, or (c) to cause the FCC not to consent to the assignment of the FCC Licenses to Purchaser.

**5.6.2.** To the knowledge of Purchaser, Purchaser or any Affiliate of Purchaser shall not be required to sell, dispose of or surrender any FCC license held by Purchaser or any such Affiliate with respect to any broadcast properties, or any other properties or businesses of Purchaser or such Affiliate, as may be required under the Communications Act or the antitrust laws in order to consummate the sale and purchase of the Purchased Assets contemplated by this Agreement. Neither Purchaser nor any Affiliate of Purchaser owns or possesses, nor has entered into any agreement (other than this Agreement) to acquire any media interests (including the right to program any broadcast stations) in any of the markets in which the Station operates. This Section 5.6.2 is qualified to the extent applicable pursuant to the terms and provisions of Section 3.2.3 hereof.

## **5.7. Financial Ability.**

Purchaser on the Closing Date will have cash and financing available that is sufficient to enable it to pay the Purchase Price and consummate the transactions contemplated by this Agreement. Purchaser acknowledges that the availability of cash or financing shall not be a condition to its obligation to consummate the transactions contemplated hereby at the Closing, or to any of its other obligations hereunder. Purchaser further represents and warrants that the debt schedule provided to seller under Section 3.2.3 is true and correct.

## **ARTICLE 6. CERTAIN COVENANTS AND AGREEMENTS**

### **6.1. Regulatory Approvals.**

**6.1.1.** No later than five (5) Business Days after the date of this Agreement, Seller and Purchaser shall jointly cause to be filed by Seller's FCC counsel one or more applications with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Purchaser (the "**FCC Application**"). Each party shall pay its own expenses in connection with the preparation and prosecution of the FCC Application and shall share equally any filing fees associated with the FCC Application.

**6.1.2.** Upon the terms and subject to the conditions set forth in this Agreement, Seller and Purchaser shall each use their respective reasonable best efforts to promptly (a) take, or to cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable under applicable Law or

otherwise to consummate and make effective the transactions contemplated by this Agreement; (b) obtain from any Governmental Authority or third parties any actions, non-actions, clearances, waivers, consents, approvals, permits or Orders required to be obtained by Seller, Purchaser or any of their respective Affiliates in connection with the authorization, execution, delivery and performance of this Agreement, the consummation of the other transactions contemplated hereby and thereby and the assignment of the FCC Licenses from Seller to Purchaser; (c) furnish all information required for any application or other filing to be made pursuant to any applicable Law or any applicable regulations of any Governmental Authority in connection with the transactions contemplated by this Agreement, including the FCC Application, and to supply promptly any additional information and documentary material that may be requested in connection with such filings or applications; (d) avoid the entry of, or have vacated or terminated, any Order that would restrain, prevent or delay the Closing or the FCC Order, including defending against and opposing any lawsuits or other proceedings (including any FCC reconsideration or review), whether judicial or administrative, reviewing or challenging this Agreement, the consummation of the other transactions contemplated hereby and thereby or the assignment of the FCC Licenses from Seller to Purchaser; and (e) execute and deliver any additional instruments necessary to assign the FCC Licenses from Seller to Purchaser or to consummate any other transactions contemplated by this Agreement. No party to this Agreement shall consent to any voluntary delay of the assignment of the FCC Licenses from Seller to Purchaser or the consummation of the other transactions contemplated hereby at the behest of any Governmental Authority or third party without the consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting this Section 6.1.2, Purchaser agrees to take any and all reasonable steps and to make any and all reasonable undertakings to (i) avoid or eliminate each and every impediment under any antitrust, merger control, competition, or trade regulation Law, including the Communications Act, that may be asserted by any Governmental Authority with respect to consummation of the transactions contemplated by this Agreement and (ii) resolve any objection that may be asserted by the FCC or any third party in order to obtain promptly the FCC Order or satisfy or comply with any conditions imposed by the FCC Order, in all events so as to enable the Closing to occur as soon as reasonably possible.

**6.1.3.** Notwithstanding anything in this Agreement to the contrary, the terms of Section 6.1.2 shall survive the Closing until the FCC Order becomes a Final Order; provided, however, that such terms shall only survive as applied to actions relating to the obtaining of the FCC Order and such FCC Order becoming a Final Order. No assignment of the FCC Licenses shall occur prior to obtaining the FCC Order.

## **6.2. Third Party Consents and Notices.**

Seller will use its commercially reasonable best efforts to obtain all Third Party Consents as promptly as practicable after the date of this Agreement, in form reasonably satisfactory to Purchaser and none shall provide for any increase in cost or other change in terms and conditions after the Closing which would be materially adverse to Purchaser; provided, however, that Seller's failure to obtain all of the Third Party Consents shall not constitute a breach of this Agreement so long as Seller shall have used commercially reasonable efforts in connection therewith; provided further, however, if the Purchaser deems that the third party consent is

reasonably material, then Purchaser may terminate the Agreement and the Deposit shall be returned to Purchaser.

### **6.3. Access to Information.**

From the date of this Agreement until the Closing (upon reasonable notice to Seller), during normal business hours, Seller shall, and shall cause its officers, directors, employees, auditors and agents to, (a) afford the officers, employees and authorized agents and representatives of Purchaser reasonable access to the offices, properties, books and records of Seller to the extent related to the Purchased Assets, and (b) furnish to the officers, employees and authorized agents and representatives of Purchaser such additional information regarding the Purchased Assets as Purchaser may from time to time reasonably request in order to assist Purchaser in fulfilling its obligations under this Agreement and to facilitate the consummation of the transactions contemplated hereby; provided, however, that such investigation shall not unreasonably interfere with any of the businesses or operations of Seller or the Station.

### **6.4. Confidentiality.**

**6.4.1** All confidential, nonpublic, or proprietary information (“**Confidential Information**”) furnished or to be furnished to one party (the “**Receiving Party**”) by the other party (the “**Disclosing Party**”) in connection with the transactions contemplated by this Agreement, including the terms and conditions of this Agreement, shall be kept strictly confidential by the Receiving Party. Each party, as Receiving Party, agrees that (a) it shall not disclose or otherwise make available, at any time, any Confidential Information of the Disclosing Party, (b) it shall protect such Confidential Information with a high degree of care to prevent the disclosure thereof, and (c) if, for any reason, the transactions contemplated by this Agreement are not consummated, all Confidential Information concerning the Disclosing Party obtained by Receiving Party shall be kept confidential by Receiving Party and all copies thereof will be returned to Disclosing Party or destroyed.

**6.4.2** From and after the Closing, (1) Section 6.4.1 shall not apply to or restrict in any manner Purchaser’s use or disclosure of Confidential Information relating to the Purchased Assets or the Station, and (2) Seller shall keep strictly confidential all Confidential Information relating to the Purchased Assets and the Station, subject only to the exceptions set forth in Section 6.4.3.

**6.4.3** The provisions of Section 6.4.1 shall not apply with respect to information that (i) is generally available to the public, other than as a result of a disclosure or other fault by Receiving Party, (ii) is rightfully in Receiving Party’s possession free of any obligation of confidence, (iii) is developed by employees or agents of Receiving Party independently of and without reference to any information communicated to Receiving Party by Disclosing Party. Furthermore, a disclosure by Receiving Party of information of Disclosing Party (1) in response to a valid Order, (2) as required by Law, (3) as necessary to establish the rights of such party under this Agreement, or (4) to such party’s accountants, lawyers, and employees who agree to keep such information confidential, shall not be considered to be a breach of this Agreement by Receiving Party; provided that, with respect to clauses (1) and (2), Receiving Party shall provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a

protective Order or otherwise prevent such disclosure, that Receiving Party limit the extent of such disclosure solely to the extent required by such Order or Law, and that Receiving Party use its reasonable best efforts to ensure that such disclosed information is treated strictly confidentially by the recipients thereof.

#### **6.5. Public Announcements.**

Seller and Purchaser shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated herein and shall not issue any such press release or make any such public statement without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that a party may, without the prior written consent of the other party, issue such press release or make such public statement as may, in the reasonable opinion of counsel, be advisable or required by Law or any listing agreement with a national securities exchange to which Seller or Purchaser is a party if it has used all reasonable efforts to consult with the other party and to obtain such party's consent but has been unable to do so in a timely manner.

#### **6.6. Ordinary Course of Business.**

During the period from the date of this Agreement to the Closing Date, unless the prior consent of Purchaser is first obtained, Seller shall not cause the Station to knowingly take any action which would cause the conditions set forth in Section 7.1 and Section 7.2 to not be satisfied as of the Closing Date.

#### **6.7. Control of the Station.**

Prior to the Closing, Purchaser shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct, the operations of the Station; such operations, including complete control and supervision of all of the Station programs, employees, and policies, shall be the sole responsibility of Seller until the Closing.

#### **6.8. Conduct of Business.**

**6.8.1 Affirmative Covenants of Seller.** Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or with the prior written consent of Purchaser, which consent shall not be unreasonably withheld, Seller shall:

(i) Operate the Station in all material respects in accordance with all laws applicable to Seller's use of the Purchased Assets; continue to operate and maintain the Station in conformity with the Licenses, the Communications Act of 1934, as amended, the rules and regulations of the FCC, and in conformity with all other applicable Laws having jurisdiction over the Station or the Purchased Assets.

(ii) Maintain the material Purchased Assets in current repair, maintenance and condition, ordinary wear and tear excepted, replace all material items of Purchased Assets at time intervals consistent with prior practice, and repair or replace (subject to Section 6.9 (Risk of Loss)) any material Purchased Asset that may be damaged or destroyed with items of equal or

greater value and utility unless Seller determines in good faith that such a repair or replacement is not materially necessary for the continued operation of the Station.

(iii) Use reasonable efforts to obtain the Third Party Consents, without any Material Adverse Effect with respect to Purchaser.

(iv) Timely make or provide all payments, services or other consideration due for the Assumed Contracts so that all payments required to be made as of the Closing Date will have been paid, except for any amounts being contested by Seller in good faith.

(v) Maintain in full force and effect the FCC Licenses, and all other material licenses principally relating to the operation of the Station.

(vi) Maintain insurance consistent with past practices on the Purchased Assets. Upon Purchaser's request, Seller shall also provide Purchaser with certificates of insurance evidencing such coverage.

(vii) Promptly notify Purchaser in writing of any material developments with respect to the business or operations of the Station of which Seller has knowledge, and of any material change in any of the information contained in Seller's representations and warranties contained in Article IV of this Agreement of which Seller has knowledge.

(viii) Permit Purchaser or representatives of Purchaser (including consultants and advisors) reasonable access to the Station and the Purchased Assets as provided in Section 6.3.

**6.8.2 Negative Covenants of Seller.** Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or with the prior written consent of Purchaser, which consent shall not be unreasonably withheld, Seller shall not:

(i) Take any action that would reasonably be expected to breach, default under, terminate, modify or amend any Assumed Contract.

(ii) Except as set forth on Schedule 4.6, create, assume or permit to exist any Lien on any of the Purchased Assets.

(iii) Sell, assign, lease or otherwise transfer or dispose of any of the material Purchased Assets now owned or hereafter acquired, except for assets consumed or disposed of in the ordinary course of business.

(iv) Knowingly take any action that would reasonably be expected to cause the conditions set forth in Article VII not to be satisfied as of the Closing Date.

## **6.9. Risk of Loss.**

Seller shall bear the risk of all damage to, loss of or destruction of any of the Purchased Assets between the date of this Agreement and the Closing Date. If any material portion of the

Purchased Assets (other than items that are obsolete and not necessary for the continued operations of the Station) shall suffer any material damage or destruction prior to the Closing Date, Seller shall promptly notify Purchaser in writing of such damage or destruction, shall advise Purchaser in writing of the estimated cost to complete such restoration, repair or replacement, and shall, in Seller's discretion, (i) promptly take all necessary steps to restore, repair or replace such assets at its sole expense, or (ii) reduce the Purchase Price by the amount of such estimated cost to complete such restoration, repair or replacement. If such restoration, repair or replacement does not exceed \$100,000 and is not accomplished prior to the Closing Date, as the same may be extended as provided herein, the parties shall consummate the Closing and Seller shall reduce the Purchase Price by the amount of such unfinished restoration, repair or replacement and Purchaser shall thereafter complete such restoration, repair or replacement at its sole expense; provided, however, Seller shall have no further liabilities with respect to such damage or destruction after payment to Purchaser of such insurance proceeds. If such restoration, repair or replacement exceeds \$100,000 and is not accomplished prior to the Closing Date, as the same may be extended by the parties, Purchaser may terminate this Agreement in its sole and absolute discretion prior to the Closing Date upon written notice to Seller.

#### **6.10. Collection of Receivables.**

Within three (3) Business Days after the Closing Date, Seller shall deliver to Purchaser a complete and detailed list of all the Station's accounts receivable relating to the Station prior to the Closing Date ("**Seller's AR**"). For a period of one hundred eighty (180) days following the Closing Date (the "**Collection Period**"), Purchaser will use commercially reasonable efforts to collect Seller's AR and will promptly forward to the address for Seller set forth in Section 12.7, any amounts received by Purchaser at the Station representing any Seller's AR. Purchaser shall not be required to institute any legal proceedings to enforce the collection of Seller's AR or to refer any of Seller's AR to a collection agency. Purchaser shall incur no liability to Seller for any uncollected account.

#### **6.11. Employees.**

As of the Closing Date, Purchaser may, at its option, offer employment to any employee of Seller who works primarily at or for the Station on such terms and conditions as may be mutually agreed upon by Purchaser and such employee. Seller will use its best efforts to assist Purchaser in hiring any such employees to whom Purchaser elects to offer employment. Seller will not take any action, directly or indirectly, to prevent or discourage any such employee from being employed by Purchaser as of the Closing Date and will not solicit, invite, induce or entice any such employee to remain in the employ of Seller or otherwise attempt to retain the services of any such employee, except with the prior written consent of Purchaser. Seller agrees to consult with Purchaser on all material oral or written communications or meetings primarily regarding future employment with such employees. Notwithstanding any possible inferences to the contrary, neither Seller nor Purchaser intends for this Section 6.11 to create any rights or obligations except as between Seller and Purchaser, and no past, present or future employees of Seller or Purchaser will be treated as third-party beneficiaries of this Section 6.11.

#### **6.12 Additional Affirmative Covenants.**

[Deleted]

### **6.13 Purchaser Conduct.**

Purchaser shall take no action or fail to take any action that would (a) disqualify Purchaser from being the licensee of the Station under the Communications Act and the rules, regulations and policies of the FCC, or (b) prevent Purchaser from otherwise fulfilling its obligations to pay the Purchase Price at Closing.

## **ARTICLE 7. CONDITIONS TO PURCHASER'S CLOSING**

The obligations of Purchaser to purchase the Purchased Assets and to proceed with the Closing are subject to the satisfaction (or waiver in writing by Purchaser) at or prior to the Closing of each of the following conditions:

### **7.1. Representations and Warranties.**

The representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing Date with the same effect as though made at such time except (i) as contemplated or permitted by this Agreement, (ii) for any inaccuracy that could not reasonably be expected to have a Material Adverse Effect, (iii) any representation or warranty that is expressly stated only as of a specified earlier date, in which case such representation or warranty shall be true as of such earlier date, (iv) changes in any representation or warranty that are contemplated by this Agreement, or (v) changes in any representation or warranty that are the result of any act or omission by Purchaser or its agents.

### **7.2. Covenants.**

Seller shall have performed the covenants and agreements contained in this Agreement that are to be performed by Seller at or prior to the Closing, except in all cases where the failure to perform such covenants and agreements would not have a Material Adverse Effect, results from any act or omission by Purchaser or its agents, or as may otherwise be agreed upon by the parties in writing prior to Closing.

### **7.3. FCC Order.**

The FCC shall have granted its consent to the assignment of the FCC Licenses set forth on Schedule 4.7, and the FCC Order shall have been issued by the FCC and shall have become a Final Order. Purchaser may at its sole discretion close the transaction contemplated hereunder prior to finality of FCC consent to the assignment.

### **7.4. No Orders.**

No Order or temporary, preliminary or permanent injunction or restraining order shall have been entered by any Governmental Authority which expressly prohibits or materially

restrains the transactions contemplated by this Agreement; nor shall have any order been entered by, or matter pending before, the Commission on Constitutional Matters of the Seller which would or might expressly prohibit or materially restrain the transactions contemplated by this Agreement

**7.5. Third Party Consents.**

The Third Party Consents set forth on Schedule 4.13 shall have been obtained without the imposition of any conditions materially adverse to Purchaser.

**7.6. Closing Deliveries.**

Purchaser shall have received each of the documents or items required to be delivered to it pursuant to Section 9.1.

**ARTICLE 8.  
CONDITIONS TO SELLER'S CLOSING**

The obligations of Seller to sell, transfer, convey and deliver the Purchased Assets and to proceed with the Closing are subject to the satisfaction (or waiver in writing by Seller) at or prior to the Closing of the following conditions:

**8.1. Representations and Warranties.**

The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made at such time (except as contemplated or permitted by this Agreement).

**8.2. Covenants.**

Purchaser shall have performed the covenants and agreements contained in this Agreement that are to be performed by Purchaser at or prior to the Closing, except in all cases where the failure to perform such covenants and agreements would not have a Material Adverse Effect or results from any act or omission by Seller or its agents.

**8.3. FCC Order.**

The FCC shall have granted its consent to the assignment of the FCC Licenses set forth on Schedule 4.7, and the FCC Order shall have been issued by the FCC and shall have become a Final Order. Purchaser may at its sole discretion close the transaction contemplated hereunder prior to finality of FCC consent to the assignment.

**8.4. No Orders.**

No Order or temporary, preliminary or permanent injunction or restraining order shall have been entered by any Governmental Authority which expressly prohibits or materially restrains the transactions contemplated by this Agreement.

**8.5 Subordination Agreements.**

The subordination agreements contemplated under the Security Agreement shall have been obtained.

**8.6 HD Channel Agreement.**

The HD Channel Agreement shall have been executed and in effect as set forth in Section 3.2.4 hereof.

**8.7 Closing Deliveries.**

Seller shall have received each of the documents or items required to be delivered to it pursuant to Section 9.2.

**ARTICLE 9.  
DOCUMENTS TO BE DELIVERED AT CLOSING**

**9.1. Delivery by Seller.**

At the Closing, Seller shall deliver to Purchaser the following:

**9.1.1.** A bill of sale and assumption agreement in a form reasonably satisfactory to Purchaser, dated as of the Closing, executed by Seller.

**9.1.2.** A certificate, signed by an executive officer of Seller, as to the fulfillment of the conditions set forth in Section 7.1 and Section 7.2.

**9.1.3.** The Business Records.

**9.1.4.** Instructions to the Deposit Escrow Agent in writing and duly executed by Seller to deliver the Deposit to Seller.

**9.1.5.** An Assignment of Licenses.

**9.1.6.** Copies of the resolutions of the board of directors of Seller authorizing the execution, delivery, and performance of this Agreement by Seller and the consummation and the transactions contemplated hereby.

**9.1.7.** An Assignment and Assumption Agreement with respect to the Assumed Contracts, and evidence that the Third Party Consents have been obtained.

**9.1.8** Delivery of executed HD Channel Agreement; provided, however, neither party shall be required to execute or exchange the HD Channel Agreement in the event Seller has failed to obtain a lease for HD operations reasonably acceptable to Purchaser as contemplated under Section 3.2.4 hereof.

**9.1.9** Any other document reasonably requested by Purchaser to complete the Closing.

**9.2. Delivery by Purchaser.**

At the Closing, Purchaser shall deliver to Seller the following:

**9.2.1.** The Purchase Price in the amount and manner set forth in Section 3.2.

**9.2.2.** A certificate, signed by an executive officer of Purchaser, as to the fulfillment of the conditions set forth in Section 8.1 and Section 8.2.

**9.2.3.** An Assignment and Assumption agreement in a form satisfactory to Seller, dated as of the Closing, executed by Purchaser pursuant to which Purchaser shall assume the Assumed Contracts.

**9.2.4** Instructions to the Deposit Escrow Agent in writing and duly executed by Purchaser to deliver the Deposit to Seller.

**9.2.5** Delivery of the executed Promissory Note, Security Agreement, and the subordination agreements contemplated under the Security Agreement.

**9.2.6** Copies of the resolutions of the board of directors of Purchaser authorizing the execution, delivery, and performance of this Agreement by Purchaser and the consummation and the transactions contemplated hereby.

**9.2.7** Delivery of executed HD Channel Agreement; provided, however, neither party shall be required to execute or exchange the HD Channel Agreement in the event Seller has failed to obtain a lease for HD operations reasonably acceptable to Purchaser

**9.2.8** Any other document reasonably requested by Seller to complete the Closing.

**ARTICLE 10.  
TERMINATION**

**10.1. Termination.**

This Agreement may be terminated by the mutual written agreement of Purchaser and Seller, or, if the terminating party is not then in material breach of its obligations hereunder, upon written notice as follows:

**10.1.1** by Purchaser, provided Purchaser is not itself in material breach, if Seller is in material breach of its obligations hereunder, such that the conditions set forth in Section 7.1 and Section 7.2 would not be satisfied as of the Closing, and such breach has not been cured by Seller within thirty (30) days of written notice of such breach (or such longer period of time if the breach cannot be reasonably cured within thirty (30) days and Seller is diligently attempting to cure such breach);

**10.1.2** by Seller, provided Seller is not itself in material breach, if Purchaser is in material breach of its obligations hereunder, such that the conditions set forth in Section 8.1 and Section 8.2 would not be satisfied as of the Closing, and such breach has not been cured by Purchaser within thirty (30) days of written notice of such breach (or such longer period of time if the breach cannot be reasonably cured within thirty (30) days and Purchaser is diligently attempting to cure such breach), except in the case of Purchaser's failure to pay the Purchase Price on the Closing Date, for which there shall be no cure period;

**10.1.3** by either Purchaser or Seller if the FCC denies the FCC Application, or has designated the FCC Application for a hearing; or

**10.1.4** by either Purchaser or Seller if the Closing has not occurred on or before such date which is twelve (12) months after the date of this Agreement.

## **10.2. Effect of Termination.**

In the event of termination of this Agreement pursuant to Section 10.1.3 or 10.1.4, all rights and obligations of the parties under this Agreement shall terminate without any liability of any party to any other party (except for any liability of any party for any material breach of this Agreement, in which case any non-breaching party shall have all rights and remedies as provided herein). Notwithstanding anything to the contrary contained herein, the provisions of Section 6.4, Section 10.3 and Section 12.5 shall expressly survive the termination of this Agreement.

## **10.3. Release of Deposit.**

**10.3.1** If this Agreement is terminated by Seller pursuant to Section 10.1.2, then the Deposit (excluding all accrued interest thereon) shall be paid to Seller by wire transfer of immediately available funds pursuant to written instructions provided by Seller and Purchaser to the Deposit Escrow Agent. The parties acknowledge and agree that payment of the Deposit to Seller pursuant to this Section 10.3.1 shall constitute liquidated damages.

**10.3.2** If this Agreement is terminated for any reason other than as set forth in Section 10.1.2, then and in that event the Deposit (and all accrued interest thereon) shall be refunded to Purchaser by wire transfer of immediately available funds pursuant to instructions provided by Seller and Purchaser to the Deposit Escrow Agent.

**ARTICLE 11.  
INDEMNIFICATION**

**11.1. Indemnification by Seller.**

**11.1.1** Seller shall indemnify and hold Purchaser, Purchaser's employees, officers, and managers (collectively, "Purchaser's Indemnified Parties") harmless from and against, and agrees promptly to defend Purchaser from and reimburse Purchaser's Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney fees and other legal costs and expenses) which Purchaser's Indemnified Parties may suffer or incur, or become subject to, as a result of or in connection with:

(i) any breach of any of the representations and warranties made by Seller set forth in this Agreement, or in any instrument, certificate or affidavit delivered by Seller at the Closing pursuant to this Agreement, except to the extent that any breach of any representation or warranty results from any act or omission of Purchaser or its agents;

(ii) any failure by Seller to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations set forth in this Agreement, or in any instrument, certificate or affidavit delivered by Seller at the Closing pursuant to this Agreement, except to the extent that any such failure to perform, satisfy or discharge results from any act or omission of Purchaser or its agents;

(iii) any Liability with respect to the operation or ownership of the Station or the Purchased Assets prior to the Closing;

(iv) the Excluded Liabilities; or

(v) any suit, action or other proceeding brought by any governmental authority or person arising out of any of the matters referred to in Sections 11.1(1)(i), 11.1(1)(ii), 11.1a(iii) or 11.1(1)(iv).

**11.1.2** The amounts for which Seller shall be liable under Section 11.1 of this Agreement shall be credited for any insurance proceeds paid to Purchaser's Indemnified Parties in connection with the facts giving rise to the right of indemnification. Moreover, notwithstanding any other provisions herein, the aggregate amount of Seller's liability for indemnification to Purchaser Indemnified Parties under this Agreement shall not exceed \$1,000,000 and Purchaser hereby waives and releases any recourse against Seller for indemnification above \$1,000,000.

**11.1.3** Notwithstanding any other provision to the contrary, Seller shall not have any indemnity obligation under Section 11.1 unless: (1) Purchaser has asserted a claim with respect to such matters within six (6) months after the Closing; and (2) until such claims in the aggregate exceeds \$25,000, it being understood that after such amount exceeds \$25,000, Seller will be liable for all such amounts thereunder in excess of such \$25,000; provided that neither clause (1) nor clause (2) will apply in the case of fraud.

## **11.2. Indemnification by Purchaser.**

**11.2.1** Purchaser shall indemnify and hold Seller, Seller's employees, officers, directors, and managers (collectively, "Seller Indemnified Parties") harmless from and against, and agrees to promptly defend Seller Indemnified Parties from and reimburse Seller Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney fees and other legal costs and expenses) which Seller Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(i) any breach of any of the representations and warranties made by Purchaser set forth in this Agreement, or in any instrument, certificate or affidavit delivered by Purchaser at the Closing pursuant to this Agreement;

(ii) any failure by Purchaser to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations set forth in this Agreement, or in any instrument, certificate or affidavit delivered by Purchaser at the Closing pursuant to this Agreement;

(iii) any Liability with respect to the operation or ownership of the Station or the Purchased Assets from and after the Closing;

(iv) the Assumed Contracts, Assumed Leases and Assumed Liabilities: or

(v) any suit, action or other proceeding brought by any governmental authority or person arising out of any of the matters referred to in Sections 11.2(1)(i), 11.2(1)(ii), 11.2(1)(iii), or 11.2(1)(iv).

**11.2.2** The amounts for which Purchaser shall be liable under Section 11.2 of this Agreement shall be credited for any insurance proceeds paid to Seller Indemnified Parties from insurance policies in connection with the facts giving rise to the right of indemnification. Moreover, notwithstanding any other provisions herein, the aggregate amount of Purchaser's liability for indemnification to Seller Indemnified Parties under this Agreement shall not exceed \$1,000,000 and Seller hereby waives and releases any recourse against Purchaser for indemnification above \$1,000,000.

**11.2.3** Notwithstanding any other provision to the contrary, Purchaser shall not have any indemnity obligation under Section 11.2 unless: (1) Seller has asserted a claim with respect to such matters within six (6) months after the Closing, and (2) until such claims in the aggregate exceed \$25,000, it being understood that after such amount exceeds \$25,000, Purchaser will be liable for all such amounts thereunder in excess of such \$25,000; provided that neither clause (1) nor clause (2) will apply in the case of fraud. Notwithstanding the foregoing, nothing in Section 11.2, including this Section 11.2.3, shall limit Purchaser's obligations under the Note and the Security Agreement, which shall continue in full force and effect after the Closing Date pursuant to the terms set forth therein.

### **11.3. Notification of Claims.**

(a) A party entitled to be indemnified pursuant to Section 11.1 or 11.2 (the “Indemnified Party”) shall notify the party liable for such indemnification (the “Indemnifying Party”) in writing of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. Subject to the Indemnifying Party’s right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall commence to satisfy its obligations under this Article XI within thirty (30) days after the receipt of written notice thereof from the Indemnified Party.

(b) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 11.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Section 11.1 or 11.2, the Indemnifying Party shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 11.3(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party’s possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligation to do so.

## **ARTICLE 12. MISCELLANEOUS PROVISIONS**

### **12.1. Survival.**

The representations and warranties in this Agreement shall terminate at, and will have no further force and effect after, the Closing. No covenants or agreements of the parties contained in this Agreement shall survive the Closing, except that covenants that contemplate or may involve actions to be taken or obligations in effect after the Closing shall survive in accordance with their terms.

### **12.2. Specific Performance.**

The parties acknowledge that the Purchased Assets and the transactions contemplated hereby are unique, that a failure by Seller to complete such transactions will cause irreparable injury to Purchaser, and that actual damages for any such failure may be difficult to ascertain and may be inadequate. Consequently, Seller and Purchaser agree that Purchaser shall be entitled, in the event of a default by Seller, to specific performance of any of the provisions of this

Agreement in addition to any other legal or equitable remedies to which Purchaser may otherwise be entitled. In the event any action is brought in connection therewith, the prevailing party shall be entitled to recover court costs, arbitration expenses and reasonable attorneys' fees.

### **12.3. Liquidated Damages.**

Purchaser and Seller agree that if this Agreement is terminated by Seller pursuant to Section 10.1.2, Seller's sole and exclusive remedy shall be the right to claim and be paid the Deposit as liquidated damages. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm which would be caused by Purchaser's breach and failure to close under the terms of the Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Purchaser's breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder.

Purchaser and Seller agree that if this Agreement is terminated by Purchaser pursuant to Section 10.1.1, Purchaser's sole and exclusive remedy shall be the right to claim and be refunded the Deposit as liquidated damages; provided, however nothing herein shall limit Purchaser's right to seek specific performance as provided in Section 12.2. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm which would be caused by Seller's breach and failure to close under the terms of the Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Seller's breach of this Agreement is incapable and difficult of precise estimation and that Purchaser would not have a convenient and adequate alternative to liquidated damages hereunder.

### **12.4. Additional Actions, Documents and Information.**

Purchaser agrees that it will, at any time, prior to, at or after the Closing Date, take or cause to be taken such further actions, and execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments and obtain such consents, as may be reasonably requested by Seller in connection with the consummation of the transactions contemplated by this Agreement. Seller agrees that it will, at any time, prior to, at or after the Closing Date, take or cause to be taken such further actions, and execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments and obtain such consents, as may be reasonably requested by Purchaser in connection with the consummation of the transactions contemplated by this Agreement.

### **12.5. Fees and Expenses.**

Except as otherwise expressly provided in this Agreement, all fees and expenses, including fees and expenses of counsel, financial advisors, accountants and brokers incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fee or expense, whether or not the Closing shall have occurred.

## **12.6. Transfer Taxes.**

All sales, use, transfer, filing, recordation, registration and similar Taxes and fees arising from or associated with the transactions contemplated hereunder, whether levied on Purchaser or Seller, shall be paid for by the party required to pay such amount by Law or local customs. Purchaser or Seller, as required by Law or this Agreement, shall file all necessary documentation with respect to, and make all payments of, such taxes and fees on a timely basis; provided that Purchaser shall remit any funds necessary to pay such taxes and fees under this Section 12.6 in sufficient time to allow timely payment of any such taxes and fees.

## **12.7. Notices.**

All notices, demands, requests, or other communications which may be or are required to be given or made by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first-class registered or certified mail, return receipt requested, postage prepaid, delivered by overnight air courier, or transmitted by telegram, telex, or facsimile transmission addressed as follows:

If to Seller:

The Lutheran Church—Missouri Synod  
Attn: Ronald P. Schultz, Chief Administrative Officer  
1333 S. Kirkwood Road  
St. Louis, MO 63122-7295

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

Kermit A. Brashear  
Brashear LLP  
North Old Mill  
711 North 108<sup>th</sup> Court  
Omaha, Nebraska 68154

If to Purchaser:

Sandra B. Brown, President  
Gateway Creative Broadcasting, Inc.  
13358 Manchester Road, Suite 100  
Des Peres, MO 63131

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

A. Wray Fitch III  
Gammon & Grange, P.C.  
8280 Greensboro Drive, Seventh Floor  
McLean, VA 22102

or such other address as the addressee may indicate by written notice to the other parties.

Each notice, demand, request, or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to a facsimile) the receipt confirmation being deemed conclusive but not exclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

#### **12.8. Waiver.**

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

#### **12.9. Benefit and Assignment.**

**12.9.1** No party hereto shall assign this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party hereto.

**12.9.2** Any purported assignment contrary to the terms of this Agreement shall be null, void and of no force and effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder. No Person, other than the parties hereto, is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

#### **12.10. Entire Agreement; Amendment.**

This Agreement and the Deposit Escrow Agreement, including the Schedules and Exhibits hereto and thereto and the other instruments and documents referred to herein or therein or delivered pursuant hereto or thereto contain the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior oral or written agreements, commitments or understandings with respect to such matters. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party or parties against whom enforcement of the amendment, modification or discharge is sought.

#### **12.11. Severability.**

If any part of any provision of this Agreement or any other contract, agreement,

document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of said contract, agreement, document or writing.

**12.12. Headings.**

The headings of the sections and subsections contained in this Agreement are inserted for convenience only and do not form a part or affect the meaning, construction or scope thereof.

**12.13. Governing Law; Jurisdiction.**

This Agreement, the rights and obligations of the parties, and any claims or disputes relating thereto, shall be governed by and construed under and in accordance with the laws of the State of Missouri, without giving effect to the conflicts of law principles thereof. The parties hereby waive personal service of any process in connection with any such action, suit or proceeding and agree that the service thereof may be made by certified or registered mail addressed to or by personal delivery to the other party, at such other party's address set forth pursuant to Section 12.7. In the alternative, in its discretion, any of the parties may effect service upon any other party in any other form or manner permitted by law.

**12.14. Signature in Counterparts.**

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the parties to this Agreement.

**12.15. Attorney Fees.**

In the event of a dispute relating to this Agreement resulting in litigation brought by either party, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**12.16 Records Retention.**

After the Closing Date, Purchaser shall retain for a period consistent with reasonable record retention policies and practices, (which period shall not be less than seven (7) years after the Closing Date), the books and records of Seller and the Station which are acquired hereunder. Purchaser shall provide Seller, and its representatives, reasonable access thereto during normal business hours on at least two (2) day prior written notice for any reasonable purpose specified in such notice.

**12.17 Exhibits, Disclosure Schedule.**

All exhibits and schedules referred to in this Agreement are attached hereto and are incorporated herein by reference as if fully set forth herein. Every matter, document and item

referred to, set forth or described under any exhibit or schedule hereto, or other disclosures made in this Agreement shall be deemed to be disclosed under all relevant sections of Sections 4 and 5 hereof to the extent readily apparent to a reader unfamiliar with the operations of the Station and shall be deemed to qualify each of the representations and warranties of the parties in this Agreement, to the extent such matter, document or item may apply to the extent readily apparent to a reader unfamiliar with the operations of the Station. Inclusion of information in any schedule shall not be construed as an admission that such information is or is not material to the Station or its assets, business, financial position or results of operations. This provision shall not apply to any information or data not specifically included in this Agreement or the Schedules hereto.

**[The remainder of this page intentionally left blank.]**

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

PURCHASER

GATEWAY CREATIVE  
BROADCASTING, INC.

By: Sandra B. Brown  
Name: Sandra B. Brown  
Title: President

SELLER

THE LUTHERAN CHURCH –  
MISSOURI SYNOD

By: \_\_\_\_\_  
Name: Thomas W. Kuchta  
Title: Vice President Finance-Treasurer

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first above written.

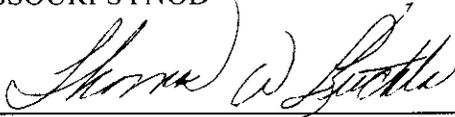
PURCHASER

GATEWAY CREATIVE  
BROADCASTING, INC.

By: \_\_\_\_\_  
Name: Sandra B. Brown  
Title: President

SELLER

THE LUTHERAN CHURCH –  
MISSOURI SYNOD

By:  \_\_\_\_\_  
Name: Thomas W. Kuchta  
Title: Vice President Finance-Treasurer

ANNEX I  
DEFINITIONS

“**Affiliate**” of a party shall mean persons or entities that directly, or indirectly through one or more intermediaries, control or are controlled by, or are under common control with, such party.

“**Agreement**” shall have the meaning set forth in the Preamble.

“**Assumed Contracts**” shall have the meaning set forth in Section 2.1.3.

“**Assumed Leases**” shall have the meaning set forth in Section 4.20.2.

“**Business Day**” shall mean a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“**Business Records**” shall have the meaning set forth in Section 2.1.5.

“**Closing**” shall have the meaning set forth in Section 3.3.

“**Closing Date**” shall have the meaning set forth in Section 3.3.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

“**Collection Period**” shall have the meaning set forth in Section 6.9.

“**Communications Act**” shall mean the Communications Act of 1934, as amended.

“**Confidential Information**” shall have the meaning set forth in Section 6.4.

“**Contract**” means any loan, credit agreement, note, bond, mortgage, indenture, lease, contract, arrangement, understanding, or agreement, whether or not in writing, and any amendment or modification thereto.

“**Deposit**” shall have the meaning set forth in Section 3.1.

“**Deposit Escrow Agent**” shall have the meaning set forth in Section 3.1.

“**Deposit Escrow Agreement**” shall have the meaning set forth in Section 3.1.

“**Disclosing Party**” shall have the meaning set forth in Section 6.4.

“**Environmental Laws**” shall mean the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (“CERCLA”); 42 U.S.C. § 9601 et seq.; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; the

Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; or any other applicable federal, state, or local laws relating to Hazardous Materials generation, production, use, storage, treatment, transportation or disposal, or the protection of the environment.

“**Excluded Assets**” shall have the meaning set forth in Section 2.2.

“**Excluded Liabilities**” shall have the meaning set forth in Section 2.4.

“**FCC**” shall mean the Federal Communications Commission.

“**FCC Application**” shall have the meaning set forth in Section 6.1.2.

“**FCC Licenses**” shall have the meaning set forth in Section 2.1.1.

“**FCC Order**” shall mean that the FCC (including the Media Bureau pursuant to delegated authority) has granted or given its consent, without any condition materially adverse to Purchaser or Seller, to the assignment of the FCC Licenses from Seller to Purchaser.

“**Final Order**” shall mean that the FCC Order shall have become final, that is, that the time period for filing any protests or requests or petitions for stay, reconsideration, rehearing, review or appeal by the FCC or a court of competent jurisdiction of such order and the time period for the FCC or its staff to have taken any actions to reconsider or review such order shall have expired, and that no timely protest or request or petition for stay, reconsideration, rehearing, review or appeal by the FCC or a court of competent jurisdiction or action by the FCC or its staff to reconsider or review such order shall be pending.

“**Governmental Authority**” shall mean any court, arbitrator, department, commission, board, bureau, agency, authority, instrumentality or other body, whether federal, state, municipal, foreign or other.

“**Hazardous Materials**” shall mean any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including without limitation, substances defined as “hazardous wastes”, “hazardous substances”, “toxic substances”, “radioactive materials” or other similar designations in, or otherwise subject to regulation under, any Environmental Laws.

“**Indemnified Party**” shall have the meaning set forth in Section 11.3(a).

“**Indemnifying Party**” shall have the meaning set forth in Section 11.3(a).

“**Law**” shall mean any statute, law, ordinance, rule or regulation.

“**Liabilities**” shall mean, as to any Person, all debts, adverse claims, liabilities and obligations, direct, indirect, absolute or contingent of such Person, whether accrued, vested or

otherwise, known or unknown, whether in contract, tort, strict liability or otherwise and whether or not actually reflected, or required by generally accepted accounting principles to be reflected, in such Person's balance sheets or other books and records.

**“Liens”** shall mean, statutory or otherwise, any liens, leases, covenants, easements, security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, charges, rights of others or restrictions (whether on voting, sale, transfer, disposition or otherwise) or encumbrances of any nature whatsoever, whether imposed by agreement, understanding, law, equity or otherwise.

**“Material Adverse Effect”** or **“material adverse effect”** shall mean a material adverse effect on the Purchased Assets taken as a whole, but shall specifically exclude any material adverse effect caused by (a) factors affecting the radio industry generally or the market in which the Station operate, (b) general, national, regional or local economic or financial conditions, (c) new governmental Laws, (d) the failure to achieve any financial or operational targets, projections or milestones set forth in any Seller business plan or budget, or (e) liquidity or cash flow deficiencies affecting Seller's business, properties, assets, liabilities, financial condition, results of operations, properties or prospects.

**“Order”** shall mean any order, writ, injunction, judgment, plan or decree of any Governmental Authority.

**“Permitted Liens”** shall mean (a) Liens for taxes not yet accrued; (b) landlord's Liens and Liens for property taxes not delinquent; (c) statutory Liens that were created in the ordinary course of business and which are not delinquent; (d) restrictions or rights granted to Governmental Authorities under applicable Law to the extent not arising pursuant to any defaults thereunder; (e) zoning, building, or similar restrictions relating to or affecting property which do not arise in connection with a violation of applicable Law; (f) customary utility and similar easements affecting property; and (g) Liens for which a proration adjustment is made pursuant to Section 3.6 of this Agreement.

**“Person”** or **“person”** shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, other form of business or legal entity or Governmental Authority.

**“Proration Amounts”** shall have the meaning set forth in Section 3.6.2.

**“Proration List”** shall have the meaning set forth in Section 3.6.2.

**“Purchased Assets”** shall have the meaning set forth in Section 2.1.

**“Purchase Price”** shall have the meaning set forth in Section 3.2.

**“Purchaser”** shall have the meaning set forth in the Preamble.

**“Purchaser's Indemnified Parties”** shall have the meaning set forth in Section 11.1.1.

**“Receiving Party”** shall have the meaning set forth in Section 6.4.

**“Seller”** shall have the meaning set forth in the Preamble.

**“Seller’s AR”** shall have the meaning set forth in Section 6.9.

**“Seller Indemnified Parties”** shall have the meaning set forth in Section 11.2.1.

**“Seller Real Property”** shall have the meaning set forth in Section 4.20.1.

**“Seller’s Knowledge”** (and similar references in the Agreement) shall mean the actual knowledge of Dennis Stortz, Director of Broadcast Operations, following reasonably inquiry within his or her respective area of responsibility with respect to the operation of the Station.

**“Station”** shall have the meaning set forth in the Recitals.

**“Taxes”** shall mean all federal, state and local taxes (including income, profit, franchise, sales, use, real property, personal property, ad valorem, excise, employment, social security and wage withholding taxes) and installments of estimated taxes, assessments, deficiencies, levies, imports, duties, license fees, registration fees, withholdings, or other similar charges of every kind, character or description imposed by any Governmental Authorities.

**“Third Party Consents”** shall have the meaning set forth in Section 4.13.

# SCHEDULES

(Attached)