

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**MEL WHEELER, INC.,
AS SELLER,**

AND

**BARRINGTON BROADCASTING MISSOURI CORPORATION,
AS BUYER,**

IN RESPECT OF

TELEVISION STATION KRCG-TV, JEFFERSON CITY, MISSOURI

AND

CERTAIN RELATED ASSETS

DATED AS OF NOVEMBER 12, 2004

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**") is made as of November 12, 2004 (the "**Effective Date**"), by and between Mel Wheeler, Inc., a Texas corporation ("**Seller**"), and Barrington Broadcasting Missouri Corporation, a Delaware corporation ("**Buyer**").

W I T N E S S E T H:

WHEREAS, Seller owns and operates, and is the licensee of, television station KRCG-TV, Jefferson City, Missouri (the "**Station**") and owns certain other assets that relate to the Station;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in and to substantially all of the assets used by Seller exclusively in connection with the operation of the Station, in each case, pursuant to the terms and subject to the conditions of this Agreement; and

WHEREAS, Barrington Broadcasting, LLC, a provider of certain management services to Buyer ("**Manager**"), and Seller entered into that certain letter of intent, dated July 21, 2004 (as amended, the "**LOI**"), which LOI provided for, among other things, an exclusive period during which Buyer and Seller would negotiate the definitive terms and conditions of this Agreement and Buyer would conduct related due diligence; and

WHEREAS, in consideration for the rights granted by Seller under the LOI, Manager paid to Seller on behalf of Buyer an amount equal to Twenty Five Thousand Dollars (\$25,000) (the "**Exclusivity Fee**"), which Exclusivity Fee is to be applied as a credit against the purchase price to be paid by Buyer at the Closing;

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and of the representations, warranties, conditions, agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I—DEFINITIONS; INTERPRETATION

Section 1.1. Definitions; Interpretation. Capitalized terms used herein have the respective meanings ascribed thereto in Part I of *Exhibit 1.1* and elsewhere in this Agreement. This Agreement shall be interpreted in accordance with the rules of construction set forth in Part II of *Exhibit 1.1*.

ARTICLE II—PURCHASE AND SALE

Section 2.1. Purchase and Sale of Assets; Purchase Price. Pursuant to the terms and subject to the conditions of this Agreement, including Section 5.17(d), at the Closing, Seller shall sell, convey, transfer and assign to Buyer, free and clear of all Liens (other than Permitted Liens), and Buyer shall purchase from Seller, the Purchased Assets. In consideration of the sale of the Purchased Assets and Seller's other covenants and obligations hereunder, at the Closing Buyer agrees, pursuant to the terms and subject to the conditions hereof, to (a) pay Seller an amount equal to Thirty-Eight Million Dollars (\$38,000,000) (the "**Purchase Price**") and (b) assume the Assumed Liabilities.

Section 2.2. Purchased Assets; Excluded Assets. (a) The term "**Purchased Assets**" means, except for the Excluded Assets, all of Seller's right, title and interest in and to all properties and assets (tangible or intangible) used or held for use by Seller in connection with the Station Business, including all of Seller's right, title and interest in and to the following:

(i) all of the land, buildings, structures, improvements, fixtures and other real property and the easements, rights of way, appurtenances thereon or thereto and other similar rights and interests in real property owned by Seller and used or held for use by Seller in connection with the Station Business (collectively, with the property described on *Schedule 2.2(a)(i)(A)*, the "**Owned Real Property**") and Seller's leasehold or license interest in all of the real property leased or licensed by Seller that is occupied, used or held for use by Seller in connection with the Station Business and all improvements thereon (collectively, with the property described on *Schedule 2.2(a)(i)(B)*, the "**Leased Real Property**");

(ii) all tangible assets and properties, including machinery and equipment, spare parts and supplies, vehicles, plant, inventory, accessories, tooling, tools, furniture, computers, telecommunications equipment, the Transmission Equipment, Transmission Structures, Central IT Resources, office equipment and supplies, furnishings and fixtures, owned or leased by Seller and used or held for use by Seller in connection with the Station Business (collectively, with the property described on *Schedule 3.3*, the "**Tangible Personal Property**");

(iii) all program and programming materials and elements of whatever form or nature owned by Seller and used by Seller in connection with the Station Business, whether recorded on tape or any other media or intended for live performance, and whether completed or in production, and all related common law and statutory Copyrights owned by or licensed to Seller and used or held for use by Seller in connection with the Station Business, together with all other Intellectual Property owned, used or held for use by Seller in connection with the Station Business (collectively, the "**Transferred Intellectual Property**");

(iv) all (A) information and data, FCC logs and other compliance records, sales and business records, files, invoices, inventory records, correspondence, technical information and engineering data, maintenance, operating and production records, advertising studies, lists of advertisers and other advertising materials, marketing and demographic data, local public files, publications, customer lists, cost and pricing information, business plans, quality control records and manuals, blueprints, litigation and regulatory files, personnel records,

customer credit records and all other books, documents and records owned or Controlled by Seller and used or held for use by Seller exclusively in connection with the Station Business or relating exclusively to the Purchased Assets, wherever located, (B) originals of all Station Accounting Books located at the Station or otherwise stored in the Market, and (C) subject to Section 5.17(d), complete and accurate copies of all Station Accounting Books located or stored outside of the Market (clause (C), collectively, the “**Out-of-Market Station Accounting Books**”);

(v) subject to Section 2.5, all rights in and to the Existing Contracts and the Contracts entered into between the Effective Date and the Closing Date in accordance with Section 5.2 and the other terms and conditions of this Agreement (collectively, the “**Assumed Contracts**”), including (A) all rights to receive goods and services purchased pursuant to such Assumed Contracts, and to assert claims and take other actions in respect of breaches or other violations thereof, and (B) all prepaid film and programming expenses and all barter receivables arising in connection with agreements (“**Trade-out Agreements**”).

(vi) subject to Section 2.5, (A) all Permits, (B) all rights and interests of Seller in the FCC Licenses and (C) all applications for any of the foregoing, together with any renewals, extensions, or modifications thereof and additions thereto;

(vii) all of Seller’s prepayments, deposits, claims for refunds and prepaid expenses relating to the Station Business, the Purchased Assets or the Assumed Liabilities;

(viii) all claims, counterclaims, credits, causes of action, choses in action, rights of recovery, and rights of indemnification or setoff against third parties and other claims arising out of or relating to the Station Business, the Purchased Assets or the Assumed Liabilities and all other intangible property rights which relate to the operation of the Station, the Purchased Assets or the Assumed Liabilities;

(ix) all goodwill of or relating to the Station or the Station Business, as well as the exclusive ownership of and right to use (A) the domain name “KRCG.com” (the “**Station Domain Name**”) and (B) the call-signs “KRCG-TV,” “KRCG-DT,” and “KRCG” (collectively and individually, the “**Station Call-Signs**”) and any derivative of the foregoing (clauses (A) and (B) inclusive);

(x) warranties covering Tangible Personal Property to the extent transferable by Seller;

(xi) all amounts payable to Seller, if any, from the United States Copyright Office or such arbitral panels as may be appointed by the United States Copyright Office which have not been paid to Seller as of the Closing and that relate to the Station Business; and

(xii) all other assets reflected on the Financial Statements, with such additions and subtractions thereto as are necessary to reflect acquisitions and dispositions, as appropriate, (A) made in the ordinary course of business from the Financial Statements Date through the Effective Date and (B) from the Effective Date through the Closing Date in accordance with Section 5.2 and the other terms of this Agreement.

(b) Buyer shall not acquire from Seller pursuant to this Agreement any of the Excluded Assets. "Excluded Assets" means:

(i) Seller's corporate charter, minute books, stock records and corporate seal;

(ii) any of the rights of Seller under this Agreement and the other agreements, certificates and documents delivered in connection herewith;

(iii) Tangible Personal Property disposed of or consumed in the ordinary course of Station Business and in accordance with Section 5.2 and the other terms of this Agreement, between the Effective Date and the Closing Date;

(iv) all claims for refunds of monies paid to any Governmental Authority prior to the Closing Date and all claims for Copyright royalties for broadcasts prior to the Closing Date;

(v) the Accounts Receivable;

(vi) all of the cash and cash equivalents, bank accounts, investment and other securities of the Station on hand and in accounts as of the Closing Date;

(vii) any Contract that is not an Assumed Contract;

(viii) any rights of Seller under any insurance policies owned by Seller;

(ix) refunds or claims for refunds with respect to Taxes paid or to be paid by Seller with respect to the period through the Closing Date;

(x) any of Seller's corporate records and other books and records that pertain to internal corporate matters of Seller;

(xi) any and all assets and property (including, without limitation, any and all information and data, compliance records (exclusive of FCC logs and any other compliance records with respect to FCC matters relating to the Station), sales and business records, books of account, files, invoices, inventory records, accounting records and account books of original entry, correspondence, technical information and engineering data, maintenance, operating and production records, advertising studies, lists of advertisers and other advertising materials, marketing and demographic data, local public files, publications, customer lists, cost and pricing information, business plans, quality control records and manuals, blueprints, litigation and regulatory files, personnel records and human resource files for employees unrelated to the Station Business, customer credit records and all other books, documents and records owned or Controlled by Seller) located at the corporate offices of Seller that (A) are used or useful in connection with accounting, legal, human resources, sales, marketing, engineering and other services and (B) that are not used exclusively with respect to the Station Business;

(xii) any other asset or property owned or leased by Seller and used in the operation of the Station or in connection with the conduct of the Station Business on a non-exclusive basis and that is set forth on *Schedule 2.2(b)(xii)*;

(xiii) original versions of all Out-of-Market Station Accounting Books;

(xiv) any refunds, claims for refunds or charge backs with respect to commissions paid by Seller prior to the Closing Date; and

(xv) all Real Property set forth on *Schedule 2.2(b)(xv)*, which Real Property is used by Seller to conduct the Station Business on a non-exclusive basis.

Section 2.3. Assumed Liabilities; Buyer Not Successor to Seller; Excluded Liabilities. (a) Pursuant to the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, convey, transfer and assign to Buyer, and Buyer shall assume from Seller, only the Assumed Liabilities. "Assumed Liabilities" means the following (and only the following), and only to the extent not excluded pursuant to Section 2.3(b):

(i) liabilities, obligations and commitments under the Assumed Contracts accruing with respect to the period commencing after the Closing Date (excluding, however, any liability or obligation arising from or relating to the performance or non-performance thereof on or prior to the Closing Date);

(ii) any liability or obligation to any Transferred Employee attributable to the period commencing after the Closing Date;

(iii) any liability or obligation arising out of any litigation, proceeding or claim by any Person relating to any of the Purchased Assets or the Station Business in connection with events or circumstances that occur or arise after the Closing Date;

(iv) except (A) as provided in Section 5.11 hereof and (B) with respect to any Grandfathered Obligations, any severance or other liability arising out of the termination of any Transferred Employee or any other employee's employment with or by Buyer after the Closing Date (including any severance or other liability under the Collective Bargaining Agreement to the extent accruing or arising out of the termination of any Transferred Employee by Buyer after the Closing Date) or any other similar severance obligations with respect to any Transferred Employee to the extent such obligations accrue with respect to the period after the Closing Date;

(v) all Taxes allocated to Buyer pursuant to the terms and subject to the conditions of Section 5.7.

(b) Buyer shall not be the successor to Seller, and Buyer expressly does not assume and shall not become liable to pay, perform or discharge, any obligation or liability whatsoever of Seller or relating to the Station Business or any of the Purchased Assets other than the Assumed Liabilities. All obligations, liabilities and commitments other than the Assumed Liabilities are referred to herein as the "Excluded Liabilities." Seller shall pay, perform and

discharge when due, all of the Excluded Liabilities. Without limitation of the foregoing, the term “**Excluded Liabilities**” includes the following liabilities, whether accrued or fixed, absolute or contingent, known or unknown, determined or determinable, and, unless otherwise expressly provided herein, whenever arising:

- Excluded Assets;
- (i) all liabilities and obligations relating to or arising out of the
 - (ii) all Taxes allocated to Seller pursuant to the terms and subject to the conditions of Section 5.7;
 - (iii) any claims, demands, liabilities or obligations of any nature whatsoever (including claims, demands, liabilities or obligations in respect of environmental matters, occupational safety, workers’ or workmen’s compensation, grievance proceedings or actual or threatened litigation, suits, claims, demands or governmental proceedings) which arose or were incurred on or before the Closing Date, or which arise from or are based on events occurring or conditions existing on or before the Closing Date;
 - (iv) except to the extent encompassed in Sections 2.3(a)(i) or 2.3(a)(iv), any liabilities or obligations with respect to the Employees and former Employees, including (A) the Accrued Compensation, (B) the COBRA Obligations, (C) any Grandfathered Obligation, (D) any liability or obligation arising under any labor or employment Contract, agreement or other arrangement that is not an Assumed Contract and (E) any liability or obligation arising under any Plan or other compensation arrangement of Seller, including any obligations under any Plan with respect to Persons who are not Employees or former Employees, including spouses and dependents;
 - (v) any liability or obligation to present or former shareholders of Seller;
 - (vi) all liabilities and obligations of Seller under this Agreement, the other agreements, certificates and documents delivered in connection herewith or otherwise in connection with the transactions contemplated hereby and thereby;
 - (vii) any obligations, liabilities or commitments under the Assumed Contracts to the extent such obligations, liabilities and commitments relate to the period prior to the Closing Date, and all obligations, liabilities and commitments under any Contract not listed on *Schedule 3.10(a)* other than (A) the Ordinary Course Contracts and (B) Contracts entered into by Seller in respect of the Station Business between the Effective Date and the Closing Date in accordance with Section 5.2 and the other terms of this Agreement;
 - (viii) any obligation of Seller under any agreement limiting Seller’s ability to compete in the Station Business, to the greatest extent possible under such agreement;
 - (ix) any liability or obligation to third parties and claims from third parties to the extent based on circumstances existing on or prior to the Closing Date or the conduct of the Station Business to the extent such conduct occurred on or before the Closing Date;

(x) except as otherwise provided in Section 2.3(a)(i), all other obligations and liabilities arising from the operation of the Station Business or the ownership of the Purchased Assets on or prior to the Closing Date;

(xi) any liabilities of Seller not related to the Station Business or the Purchased Assets; and

(xii) all Accounts Payable and any other accounts payable of Seller of any kind, whether or not relating to the Station.

Section 2.4. Closing. Pursuant to the terms and subject to the conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Covington & Burling in Washington, D.C., at 10:00 a.m. local time within five (5) Business Days after the date on which all conditions set forth in Article VI shall have been satisfied or waived, or such other time and place as Buyer and Seller may agree to in writing (such date of the Closing hereinafter referred to as the “Closing Date”).

Section 2.5. Procedures for Certain Purchased Assets Not Freely Transferable.

(a) If any property or right (other than the Permits) included in the Purchased Assets is not assignable or transferable to Buyer either by virtue of the provisions thereof or under applicable Law without the consent of one or more third Persons (each, a “Non-Assignable Right”), Seller shall use commercially reasonable efforts, at Seller’s sole cost and expense, to obtain such consents after the execution of this Agreement until such consent is obtained. If any such consent in respect of a Non-Assignable Right cannot be obtained prior to the Closing Date and the Closing shall occur, (i) this Agreement and the related instruments of transfer shall not constitute an assignment or transfer thereof, but (A) Seller shall use commercially reasonable efforts to obtain such consent as soon as possible after the Closing Date and (B) Buyer shall cooperate, to the extent commercially reasonable, with Seller in Seller’s efforts to obtain such consents; and (ii) Seller shall use commercially reasonable efforts to obtain for Buyer substantially all of the practical benefit and burden of such property or rights, including by (1) entering into appropriate and reasonable alternative arrangements on terms mutually agreeable to Buyer and Seller and (2) subject to the consent and control of Buyer, enforcement, at the cost and for the account of Buyer, of any and all rights of Seller against the other party thereto arising out of the breach or cancellation thereof by such other party or otherwise; *provided, however,* that Buyer shall undertake to pay or satisfy the corresponding liability for the enjoyment of such benefit to the extent that Buyer would have been responsible therefor hereunder if such consent or approval had been obtained. Seller shall not be required under this Section 2.5(a), as part of its “commercially reasonable efforts” or otherwise, to pay any amount to any party from whom a consent is sought in order to obtain such consent (exclusive, for the avoidance of doubt, of any amounts due from Seller prior to the Closing pursuant to the terms and subject to the conditions of any Contract).

(b) If any of the Permits included in the Purchased Assets are not so assignable or transferable without obtaining a replacement license or permit, this Agreement and the related instruments of transfer shall not constitute an assignment or transfer thereof, and Seller shall cooperate with Buyer in its efforts to obtain replacement licenses or permits issued in

Buyer's name. If any replacement license or permit cannot be obtained prior to the Closing Date and the Closing occurs, Seller agrees to allow Buyer to operate under its Permits if permitted by applicable Laws or applicable Governmental Authorities for a period of up to ninety (90) days after the Closing (or such longer period as may be reasonably necessary for Buyer, using its commercially reasonable efforts, to obtain the replacement licenses or permits).

Section 2.6. Accounts Receivable and Accounts Payable.

(a) On or as soon as practicable after the Closing Date, Seller shall (i) prepare invoices for all Accounts Receivable accrued but unbilled as of the Closing Date, including all unbilled time sales as of the Closing Date, and deliver such invoices to the applicable Accounts Receivable debtor, and (ii) prepare and deliver to Buyer a statement setting forth the outstanding Accounts Receivable and Accounts Payable (the "**Closing Accounts Statement**"). Seller shall assign to Buyer at the Closing all of the Accounts Receivable outstanding as of the Closing Date as provided herein solely for the purposes of collection by Buyer on behalf of Seller as Seller's agent. Pursuant to the terms and subject to the conditions of this Section 2.6, for a period of one hundred and twenty (120) days following the Closing Date (the "**Collection Period**"), Buyer shall collect the Accounts Receivable substantially in the same manner and with the same diligence that Buyer uses to collect its own Accounts Receivable. During the Collection Period, Seller shall not undertake, directly or indirectly, the collection of the Accounts Receivable other than pursuant to Buyer's obligations on Seller's behalf under the terms and conditions of this Section 2.6, except as otherwise provided in Section 2.6(d).

(b) All amounts received by Buyer during the Collection Period from an account debtor of Accounts Receivable shall be applied first to the Accounts Receivable of such account debtor in the order of their origination, unless the account debtor designates a specific invoice for payment or disputes such Accounts Receivable in writing, in which case the payment of such account debtor shall be applied as designated by the account debtor or, in the event of disputed Accounts Receivable, the payment shall be applied to the first undisputed Accounts Receivable invoice in the order of their origination. The payment by Buyer of collected Accounts Receivable to Seller hereunder shall in all events be net of commissions due to employees, national sales representatives and advertising agency sales representatives (except to the extent already paid) paid by Buyer on behalf of Seller, and Buyer shall promptly pay such commissions to the appropriate party solely to the extent of collections of Accounts Receivable.

(c) During the Collection Period, Buyer will use the net Accounts Receivable collected to pay, as Seller's agent, the Accounts Payable listed on the Closing Accounts Statement in a timely manner. Except for such actions as it would customarily take in the ordinary course, Buyer will not be obligated to take any other actions, including the institution of litigation, the employment of any collection agency, legal counsel, or other third party, or other means of collections or pay any expenses to third parties to collect the Accounts Receivable. Within fifteen (15) days after the end of each month during the Collection Period, Buyer will deliver to Seller a written report with respect to (i) the collections made with respect to the Accounts Receivable, (ii) the calculation of net Accounts Receivable, and (iii) payments remitted with respect to the Accounts Payable listed on the Closing Accounts Statement together with a copy of the invoices therefor. Such report shall be accompanied by a payment to Seller of the amount by which the net Accounts Receivable received during the period covered by such report

exceeded the amount of the Accounts Payable listed on the Closing Accounts Statement paid during such period. Within ten (10) days after the end of the Collection Period, Buyer shall deliver to Seller a final written report and remit final payment to Seller of the amount by which the net Accounts Receivable for the Station collected during the Collection Period exceeds the amount paid in respect of the Accounts Payable listed on the Closing Accounts Statement for the Station during the Collection Period, net of any amounts paid to Seller on an interim basis as provided above. The final report shall contain a statement of accounts and such accompanying documentation as Buyer shall determine to be reasonable and appropriate and, if the amount paid in respect of the Accounts Payables for the Station listed on the Closing Accounts Statement exceeds the amount of the collected net Accounts Receivable for the Station, Seller shall pay to Buyer such difference within fifteen (15) business days after the delivery to Seller of the final report; upon payment of such amount by Seller, Buyer covenants and agrees that it shall make such payment to the creditor of such corresponding Accounts Payable on behalf of Seller.

(d) If during the Collection Period a dispute arises with regard to an account included among the Accounts Receivable, Buyer shall promptly advise Seller thereof and may (or, if requested by Seller, shall) return that account to Seller for the purposes of collection. Any amounts received by Buyer following the Collection Period that are designated by the account debtor, or otherwise reasonably determined by Buyer, as corresponding to an Account Receivable due prior to the Closing shall be remitted to Seller promptly.

(e) At the Closing Date, Seller will constitute and appoint Buyer, its successors and assigns, the true and lawful attorney of Seller with full power of substitution, in the name of Buyer, or the name of Seller, on behalf of and for the benefit of Seller, to collect the then-outstanding Accounts Receivable during the Collection Period, to endorse, without recourse, checks, notes and other instruments in the name of Seller during the Collection Period, to pay the Accounts Payable listed on the Closing Accounts Statement and to do all such further acts and things in relation thereto as is contemplated by this Section 2.6, substantially in the form attached as *Exhibit 2.6* hereto (the "**Power of Attorney**").

(f) In the event that there are any Accounts Payable that are not set forth on the Closing Accounts Statement, Seller shall be responsible and obligated in all respects for the payment in full of any such Accounts Payable, and any indemnification of Buyer pursuant to Section 8.1 hereof with respect to any Accounts Payable that are not set forth on the Closing Accounts Statement shall be without regard to the basket or cap limitation set forth in Sections 8.1(b)(i) and (ii) hereof.

Section 2.7. Purchase Price Allocation.

(a) As promptly as practicable, but in any event, within thirty (30) calendar days of the date hereof, Buyer shall cause to be prepared and deliver to Seller a schedule (the "**Allocation Schedule**") of its proposed allocation for tax purposes of the Purchase Price among the Purchased Assets. The Allocation Schedule shall be prepared in accordance with Code Section 1060 and the regulations of the U.S. Department of the Treasury promulgated thereunder. The Allocation Schedule shall be conclusive and binding on Seller and Buyer, unless Seller provides Buyer with a notice of objection (the "**Objection Notice**") within thirty (30) calendar days after Seller's receipt of the Allocation Schedule, which notice shall state the

allocation proposed by Seller (the "**Seller's Allocation Schedule**"). The Seller's Allocation Schedule shall be conclusive and binding on Seller and Buyer unless Buyer provides Seller with notice of objection within fifteen (15) calendar days after receipt of the Seller's Allocation Schedule. In the event that the parties are unable to agree on an allocation after good faith negotiations, then the parties agree to be bound by an appraisal of such assets by an independent nationally recognized firm of valuation experts mutually acceptable to Seller and Buyer. The cost of such appraisal shall be borne equally by Seller, on the one hand, and Buyer, on the other. Such appraisal shall be conclusive and binding for the purposes of this Section on Seller and Buyer.

(b) Buyer and Seller (i) shall execute and file all tax returns and prepare all financial statements, returns and other instruments in a manner consistent with the Allocation Schedule, (ii) shall not take any position before any Governmental Authority or in any judicial proceeding that is inconsistent with such allocation and (iii) shall cooperate with each other in a timely filing, consistent with such allocation, of their respective Form 8594 with the United States Internal Revenue Service. In the event that any Governmental Authority disputes the allocation prepared in accordance herewith, Seller or Buyer, as the case may be, shall promptly notify the other party of such dispute and provide a reasonable description of the nature of such dispute.

Section 2.8. Post-Closing Payment of and Wages. To the extent that any wages, salary, commissions or reimbursements owing to any Employee accrued as of the Closing Date have not been paid by Seller as of the Closing Date, Seller covenants and agrees to pay directly to each such Employee all such amounts following the Closing not later than the next date on which Seller would customarily pay such amounts consistent with Seller's past practice in the Station Business, but in no even later than thirty (30) days following the Closing Date.

Section 2.9. Estimate of Accruals; Accrual Adjustment Amount.

(a) Not less than one (1) Business Day prior to the Closing, Seller shall provide to Buyer a statement setting forth its estimate of all Accruals, exclusive of any such Accruals that are to be paid by Seller pursuant to Section 2.8 above (such net amount, the "**Accrual Adjustment Amount**"). The Accrual Adjustment Amount shall be applied against the Purchase Price due at Closing and, upon the Closing, Seller shall be deemed to have paid an amount equal to the Accrual Adjustment Amount for purposes of determining any payments pursuant to Section 2.10. Buyer covenants and agrees that it shall pay on behalf of Seller the obligations set forth in the statement provided by Seller pursuant to this Section 2.9(a) to the extent covered by the Accrual Adjustment Amount.

(b) As used in this Agreement, "**Accruals**" means, collectively, all Accrued Compensation (including vacation, but exclusive of sick leave), ad valorem, real estate and other property Taxes (which shall be prorated for the purposes of Section 2.10 in accordance with GAAP), business and license and other Permit fees, lease payments, rents, utility expenses, water and sewer use charges, prepaid fees, bonuses, commissions (including commissions payable to any national sales representatives of Seller) and expenses to the extent Seller has received a benefit thereof. For purposes of this Agreement, all Accruals will be calculated in accordance with GAAP.

Section 2.10. Prorations and Adjustments.

(a) To the extent not otherwise allocable to a specific period in accordance with GAAP, all items of income, costs and expenses arising from the operation of the Station and attributable to periods both before and after the Closing shall be prorated as of 11:59 p.m. Central time on the Closing Date in accordance with GAAP. Such prorations shall include all (x) Accruals and (y) all payments received by Seller before the Closing Date related to advertisements that will air (or other services that will be performed by Buyer) after the Closing Date and (z) all payments made by Seller before the Closing Date related to services that will be performed for Buyer (or products delivered to Buyer) after the Closing Date. The prorations shall not include (i) Accounts Receivable and Accounts Payable that are determined and allocated to the period ending on the Closing Date in accordance with Section 2.6 hereof, (ii) Transfer Taxes, which shall be paid in accordance with Section 5.7(a), and (iii) Taxes based on income of either Seller or Buyer. Seller and Buyer acknowledge and agree that the consideration for the Purchased Assets includes payment for the Assumed Contracts relating to motion pictures and other programming and for barter receivables arising in connection with Trade-out Agreements and that no further payment shall be due in respect thereof. Notwithstanding the foregoing, the prorations hereunder shall be adjusted to reflect any unreimbursed payments by Buyer of Accounts Payable set forth on the Closing Accounts Statement which payment was due and payable on a date prior to the date of the Final Proration Schedule.

(b) Notwithstanding the foregoing, Seller shall be responsible for any cash payments due on or before the Closing Date under any Contracts for motion pictures and other programming, and Buyer shall be responsible for any such payments after the Closing Date.

(c) As promptly as practicable, but in any event within sixty (60) days after the Closing, Buyer shall cause to be prepared and delivered to Seller a schedule of proposed prorations and which schedules shall (i) take account of the payment by Seller at the Closing of the Accrual Adjustment Amount and (ii) set forth in reasonable detail the basis for those determinations) (such schedule, the "**Final Prorations Schedule**"). The Final Prorations Schedule shall be conclusive and binding on the parties hereto, and Seller shall pay to Buyer, or Buyer shall pay to Seller, as the case may be, any amount due as a result of such adjustment, unless Seller provides Buyer with written notice of an objection (the "**Notice of Disagreement**") within thirty (30) calendar days after Buyer's receipt of the Final Prorations Schedule, which Notice of Disagreement shall state the prorations of expenses proposed by Seller (the "**Seller's Proration Amount**") and be accompanied by payment by Seller of the amount shown thereon to be due to Buyer by Seller. Buyer shall have thirty (30) calendar days from receipt of a Notice of Disagreement to accept or reject Seller's Proration Amount. Subject to Section 2.10(d) below, final payment pursuant to this Section 2.10 shall be due within five (5) Business Days after the last to occur of (y) Seller's failure to reject the Final Prorations Schedule during the time period provided hereon or (z) Buyer's failure to reject the Seller's Prorations during the time period provided therefor herein.

(d) Except as otherwise expressly provided herein, any prorations and adjustments pursuant to this Section 2.10 shall not include an adjustment for any Excluded Liability, which Excluded Liabilities shall remain the sole responsibility of Seller.

(e) In the event of any disputes between the parties as to the prorations and adjustments, the amounts not in dispute shall nonetheless be promptly paid and such disputes shall be determined by an independent certified public accountant of national recognition that does not then have a relationship with either Seller or Buyer, or any of their respective Affiliates, mutually acceptable to Seller and Buyer, with the fees and expenses of such accountant being shared equally by Seller, on the one hand, and Buyer, on the other.

(f) Any payment required by Seller to Buyer or Buyer to Seller, as the case may be, under this Section 2.10 shall be paid by wire transfer of immediately available funds to an account designated by such party. Notwithstanding the provisions of this Section 2.10, if the amount of any Taxes to be prorated pursuant to this Section 2.10 is not known by the time of determination of prorations hereunder, then the amount will be estimated as of such date.

Section 2.11. Escrow Agreement.

(a) Pursuant to the terms and subject to the conditions of the Escrow Agreement, concurrent with the execution hereof, Buyer has delivered the Escrow Amount to the Escrow Agent to be held by the Escrow Agent to secure Buyer's obligation to consummate the transactions contemplated hereby pursuant to the terms and subject to the conditions hereof. The Earnest Escrow Proceeds shall be held and disbursed by the Escrow Agent in accordance with the terms of the Escrow Agreement and the terms hereof.

(b) Upon the Closing, (i) the Escrow Amount together with all interest and proceeds earned thereon from and after the Closing Date as well as on such interest and proceeds (collectively, the "**Indemnity Escrow Proceeds**") shall be deemed an indemnity escrow to secure the performance of Seller's representations, warranties, covenants and obligations under Section 8.1 in accordance with the terms of this Agreement and the Escrow Agreement, and (ii) an amount equal to the Earnest Escrow Proceeds (calculated as of the Closing Date) less the Escrow Amount shall be released from escrow and delivered to Buyer.

(c) If on and as of the date that is one year following the Closing Date, there are no claims by Buyer for payment pursuant to the terms and subject to the conditions of Section 8.1 outstanding and unpaid (whether unpaid in whole or in part) as of such date, an amount equal to \$950,000 shall be released from escrow and delivered to Seller pursuant to the terms and subject to the conditions set forth in this Agreement and the Escrow Agreement.

(d) On the date that is eighteen (18) months following the Closing Date, an amount equal to (i) the amount of the Indemnity Escrow Proceeds (less, for the avoidance of doubt, any amounts released prior to such date pursuant to the terms and subject to the conditions of this Agreement and the Escrow Agreement (including Section 2.11(c) above)) less (ii) the amount of any claims by Buyer for payment pursuant to the terms and subject to the conditions of Section 8.1 hereof outstanding and unpaid as of such date, shall be released from escrow and delivered to Seller pursuant to the terms and subject to the conditions set forth in this Agreement and the Escrow Agreement; *provided* that such remaining amount of the Indemnity Escrow Proceeds (including all interest and proceeds subsequently earned thereon as well as on such interest and proceeds) shall be held in escrow by the Escrow Agent subject to release and

delivery upon a Final Determination (as defined in the Escrow Agreement) pursuant to the terms and subject to the conditions of this Agreement and the Escrow Agreement).

(e) Buyer and Seller shall share equally all of the fees and expenses of the Escrow Agent in connection with the establishment and maintenance of the Escrow Agreement and amounts and proceeds thereunder, exclusive, for the avoidance of doubt, of the attorneys fees of the parties hereto in connection therewith.

(f) The provisions of this Section 2.11 shall survive the Closing or the earlier termination of this Agreement until fully discharged in accordance with the terms and conditions hereof.

ARTICLE III—REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement and to purchase the Purchased Assets and assume the Assumed Liabilities, Seller hereby represents and warrants to Buyer as follows:

Section 3.1. Organization, Standing and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Seller is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted, except where any failure, individually or in the aggregate, to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

Section 3.2. Authority; Binding Agreements. The execution and delivery of this Agreement and the other agreements, certificates and documents delivered by Seller in connection herewith and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Seller. Seller has all requisite corporate power and authority to enter into this Agreement and the other agreements, certificates and documents delivered by Seller in connection herewith and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other agreements, certificates and documents delivered by Seller in connection herewith have been, or upon execution and delivery thereof by Seller will be, duly executed and delivered by Seller. This Agreement and the other agreements, certificates and documents delivered in connection herewith are, or upon execution and delivery thereof by Seller will be, the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

Section 3.3. Tangible Personal Property. Schedule 3.3 lists all material items of Tangible Personal Property included in the Purchased Assets and reflected in the Financial

Statements as of September 30, 2004. Except as otherwise set forth in *Schedule 3.3(a)*, all items of Tangible Personal Property are in good operating condition and adequate repair (ordinary wear and tear excepted) for property of comparable age, type, use and usage. Seller has, and on the Closing Date, Buyer will enjoy, peaceful and undisturbed possession under all leases of Tangible Personal Property. *Schedule 3.3(b)* lists all items of Tangible Personal Property used or useful in connection with, and when in good operating order material to, the Station Business, which items have been transferred or disposed without replacement thereof with functionally equivalent or superior Tangible Personal Property during the one (1) -year period prior to the Effective Date.

Section 3.4. Conflicts; Consents. Except as set forth in *Schedule 3.4*, and except for and subject to the receipt of the FCC Consent, and except for any consent required for the assignment to Buyer of any contract, agreement, lease, license or commitment included in the Purchased Assets as set forth in *Schedule 3.4* and except for required consents of, and approvals by, notification to or filings with, as applicable, any Governmental Authority in respect of certain Permits as set forth on *Schedule 3.4*, the execution and delivery by Seller of this Agreement and the other agreements, certificates and documents contemplated hereby, the consummation by Seller of the transactions contemplated hereby or thereby and compliance by Seller with any of the provisions hereof or thereof do not and will not:

- (a) conflict with or result in a breach of the articles of incorporation, by-laws or other constitutive or organizational documents of Seller;
- (b) conflict in any material respect with, result in a material default or give rise to any right of termination, cancellation, modification or acceleration under any of the provisions of any note, bond, lease, mortgage, indenture, license, franchise, permit, agreement or other instrument or obligation (other than the FCC Licenses) to which Seller is a party, or by which the Station or any of the Purchased Assets may be bound or affected;
- (c) violate in any material respect any Law applicable to Seller, the Station or any of the Purchased Assets;
- (d) result in the creation or imposition of any Lien (other than Permitted Liens) upon any of the Purchased Assets; and
- (e) require the consent or approval by, or any notification of or filing with, any Governmental Authority.

Section 3.5. Financial Information. *Schedule 3.5* contains the following unaudited financial statements in respect of the Station (collectively the "Financial Statements"): (i) balance sheet as of December 31, 2003; (ii) income statement for the calendar year ending December 31, 2003; (iii) balance sheet as of September 30, 2004; and (iv) income statement for the period from January 1, 2004 and ending September 30, 2004, in each case setting forth comparative figures for the actual financial results for the related periods in the prior fiscal year. As used herein, "OCBOA" means federal income tax basis accounting as an other comprehensive basis of accounting. The Financial Statements in the form set forth on *Schedule 3.5*, including with respect to matters redacted from the originals of such documents, have been

prepared in accordance with OCBOA and in conformity in all material respects with the Statement on Auditing Standards No. 62 of the Auditing Standards Board with respect to OCBOA, present fairly the financial condition of the Station at the respective dates thereof and the results of operations of the Station for the periods then ended in accordance with OCBOA and in conformity in all material respects with the Statement on Auditing Standards No. 62 of the Auditing Standards Board with respect to OCBOA, and are true and complete in all material respects in accordance with OCBOA and in conformity in all material respects with the Statement on Auditing Standards No. 62 of the Auditing Standards Board with respect to OCBOA; provided, however, that the balance sheet as of September 30, 2004; and the income statement for the period from January 1, 2004 and ending September 30, 2004 do not contain any monthly accruals for operating expenses (other than certain recurring expense entries for insurance, sales commissions, national sales representative expenses, depreciation and amortization, and certain other recurring prepaid items).

Section 3.6. Absence of Changes. Except as set forth in *Schedule 3.6*, since the Financial Statements Date, Seller has operated the Station in the ordinary course of business consistent with past practice, and there has not been in connection with or related to the Station:

(a) any material adverse change in the financial performance of the Station Business over the period since the Financial Statements Date, taken as a whole, except for (i) changes or conditions generally affecting the broadcast television industry, (ii) changes in general national, international or regional economic, regulatory, financial or political conditions, (iii) attrition of the Employees or other matters that result from the announcement or pendency of this Agreement or the transactions contemplated hereby, (iv) any matters that result from (x) any action taken by Buyer or (y) any action taken by Seller pursuant to the terms and subject to the conditions of this Agreement, (v) any change in Law or OCBOA, GAAP or other accounting principles, and (vi) any failure by the Station Business to meet internal projections or forecasts for any period.

(b) any obligation or liability (whether absolute, accrued, contingent or otherwise, and whether due or to become due) incurred by Seller, other than current obligations and liabilities incurred in the ordinary course of business and consistent with past practice;

(c) any payment, discharge or satisfaction of any claim or obligation of Seller, except in the ordinary course of business and consistent with past practice;

(d) any sale, assignment or other disposition of any tangible asset of Seller (except for obsolete equipment disposed of in the ordinary course of business consistent with past practice) or any sale, assignment, license, transfer or other disposition of any Intellectual Property or any other intangible assets;

(e) except in the ordinary course of business, any amendment, modification or termination of any Material Contract;

(f) any creation of any material claim or Lien (other than Permitted Liens) on any property of Seller;

(g) any material write-down of the value of any asset of Seller or any material write-off as uncollectible of any Account Receivable or any portion thereof except in the ordinary course of business consistent with past practice and except for write-downs of Accounts Receivable due from any client that has become insolvent or subject to a voluntary or involuntary bankruptcy proceeding, entered into any agreement with or for the benefit of its creditors, or declared itself to be unable to pay its debts as and when they fall due;

(h) any adverse change in cable carriage or channel position on which the Station is carried (on any cable system with more than 1,000 subscribers);

(i) any notice from any of the Station's sponsors as to any of such sponsor's intention not to conduct business with the Station, the result of which loss or potential loss of business, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect;

(j) any period of four (4) or more consecutive days during which the Station was off the air for any reason or a period of fifteen (15) or more days during which the Station operated at substantially reduced power;

(k) any cancellation of any debts or claims or any amendment, termination or waiver of any rights of material value to Seller;

(l) any increase in the compensation of any Employee, officer, shareholder, director, consultant or agent of Seller, including any increase pursuant to any bonus, pension, profit-sharing or other benefit or compensation plan, policy or arrangement or commitment except for increases required by Contract or made in the ordinary course of business consistent with past practice; *provided*, that this Section 3.6(l) shall be deemed to exclude any bonuses or other gratuity paid by Seller after the Closing Date to any Employee in connection with his or her performance relating to the transaction contemplated by this Agreement (which in no event shall modify the obligations or liabilities of Buyer);

(m) any material damage, destruction or loss (whether or not covered by insurance) affecting any asset or property of Seller which has not been or will not be repaired in prior to the Closing Date;

(n) any institution of, settlement of or agreement to settle any litigation, arbitration, action or proceeding;

(o) any change in the accounting methods or accounting practices followed by Seller or any change in depreciation or amortization policies or rates;

(p) any agreement or action not otherwise referred to in items (a) through (o) above entered into or taken that is material to the Station Business; or

(q) any agreement or commitment, whether in writing or otherwise, to take any of the actions specified in the foregoing items (a) through (p).

Section 3.7. Good Title; Sufficiency of Assets.

(a) Except as set forth in *Schedule 3.7*, and except for and subject to the receipt of the FCC Consent, and except for any consent required for the assignment to Buyer of any contract, agreement, lease, license or commitment included in the Purchased Assets, and except for required consents of, and approvals by, notification to or filings with, as applicable, any Governmental Authority in respect of certain Permits as set forth on *Schedule 3.4*, Seller has, and is the sole and exclusive holder of, good title to, or valid contract rights to, as applicable, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens and Liens to be discharged at Closing pursuant to the terms and subject to the conditions set forth in this Agreement) and, at the Closing, Buyer will acquire from Seller, good title to, or valid contract rights to, as applicable, all of the Purchased Assets, free and clear of all Liens (other than Permitted Liens and Liens to be discharged at Closing pursuant to the terms and subject to the conditions set forth in this Agreement).

(b) The Purchased Assets, together with the Excluded Assets, constitute all of the properties, interests, assets and rights of Seller related to the Station and constitute all those necessary to continue to operate the Station Business consistent with current practice.

Section 3.8. Real Property.

(a) *Schedule 2.2(a)(i)(A)* sets forth a true and complete description of all Owned Real Property and *Schedule 2.2(a)(i)(B)* sets forth a true and complete description of all Leased Real Property. The Real Property comprises all real property interests used by Seller exclusively to conduct the Station Business as now conducted. *Schedule 2.2(b)(xv)* sets forth a true and complete list of all Real Property used by Seller to conduct the Station Business on a non-exclusive basis that does not constitute a Purchased Asset.

(b) Seller is the sole owner or holder of and has good and marketable fee simple title to, all Owned Real Property and has a good, valid and existing leasehold estate in each Leased Real Property, in each case, insurable at standard market rates and free and clear of all Liens affecting title to or the use and occupancy of such Owned Real Property or Leased Real Property, as applicable, except for Permitted Liens.

(c) *Schedule 3.8(c)* sets forth a true and complete list of (i) all title insurance policies and deeds relating to the Owned Real Property, (ii) all surveys in the possession or under the control of Seller related to the Owned Real Property, and (iii) all material documentation in the possession or under the Control of Seller, and Contracts, related to appurtenances or improvements to the Owned Real Property; Seller has provided to Buyer true and complete copies of the foregoing together with all other documentation in Seller's possession or under its Control evidencing ownership of any Owned Real Property.

(d) Seller has provided Buyer with true and complete copies of each of the leases, subleases, licenses and other Contracts with respect to all Leased Real Property, and except as set forth on *Schedule 3.8(d)*, Seller is the sole owner and holder of all of the leasehold interests and estates purported to be granted by such leases or subleases or the interests granted by such licenses or other Contracts. Seller has not granted any oral or written right to any Person other than Seller to lease, sublease, license or otherwise use or occupy any of the Leased Real Property through the end of the applicable periods of such lease, sublease, license or other

Contract. Seller has, and on the Closing Date, Buyer will receive possession under all leases, subleases or other Contracts with respect to the Leased Real Property. Seller has not received, nor sent to any tenant, subtenant, or licensee of Seller, any notice of default under any lease, sublease, license or other Contract with respect to the Leased Real Property that remains outstanding or uncured as of the Effective Date. To Seller's Knowledge, no event which now constitutes, or which upon the giving of notice or the passage of time, or both, would give rise to, any material default in the performance by it or any tenant, subtenant, or licensee of Seller of any obligation under any lease, sublease, license or other Contract exists with respect to the Leased Real Property.

(e) The Real Property and all appurtenances and improvements thereto or thereon, as used, constructed or maintained by Seller at any time, conform in all material respects to applicable Laws (including all building, fire, health and Environmental Laws) and no notices of violation of any such Laws have been received by Seller with respect to any Real Property. The Real Property (including the improvements thereon) (i) is in good operating condition and adequate repair (ordinary wear and tear excepted) for property of comparable age, type, use and usage, and, to Seller's Knowledge, no condition exists which could reasonably be expected to interfere with the customary use and operation thereof and (ii) is available for immediate use in the conduct of the Station Business.

(f) Except as set forth on *Schedule 3.8(f)*, all (x) Towers, buildings (including transmitter buildings) and other structures and improvements used in connection with the operation of the Station (collectively, "**Transmission Structures**"), (y) Transmission Equipment, and (z) all other Tangible Personal Property, comprising the Purchased Assets, including radar equipment, are located entirely on the Real Property, but excluding any Transmission Structures or Transmission Equipment constituting Excluding Assets. *Schedule 3.8(f)* identifies the specific parcel of Real Property on which (i) the Towers and Transmission Equipment are located and (ii) the main studio, and any other studios, of the Station are located and designates which of such studios, if more than one, is the main studio. Seller has, and upon the Closing Buyer shall acquire from Seller, access to Real Property, and each parcel of Real Property is accessible without charge by a public right of way or is otherwise reasonably accessible for purposes of conducting the use of each such property, as currently conducted, including reasonable access between and among each transmitter building, the Tower corresponding thereto and, if applicable, each guy anchor supporting each such Tower. All ingress and egress to, from, between and among the transmitter building, the Tower corresponding thereto and, if applicable, each guy anchor supporting each such Tower are located entirely on the Real Property; *provided* that to the extent that any transmitter building, Tower, or, if applicable, guy anchor supporting any Tower is located on an easement comprising the Real Property, such easement (and the corresponding transmitter building, Tower, or guy anchor thereon) is identified and described on *Schedule 3.8(f)*. None of the Transmission Structures or the use thereof violates any restrictive covenants or encroaches on any property owned by any other Person, and all such Transmission Structures are constructed in conformity with all "set-back" lines, easements and other restrictions or rights of record. No condemnation or eminent domain proceeding is pending or, to Seller's Knowledge, threatened which could reasonably be expected to preclude or impair in any material way the use of any Real Property. Except with respect to conditions set forth in the Tower Study and for ordinary wear and tear since the date of the Tower Study, there are no material structural or other material defects in the

Transmission Structures and all such Transmission Structures have been maintained in accordance with generally accepted standards in the broadcast industry. *Schedule 3.8(f)* sets forth a true and complete list of all Transmission Structures and Transmission Equipment used or useful in connection with the Station and which constitute Excluded Assets.

(g) No parcel of any Real Property is subject to any building or use restrictions that could reasonably be expected to prevent or materially restrict the present use and operation of such Real Property, and each parcel of Real Property is properly and duly zoned for its current use, and such current use is in all respects a conforming use. No Governmental Authority has issued or, to Seller's Knowledge, threatened to issue, any notice or order that could reasonably be expected to affect adversely the use or operation of any Real Property in any material respect, or require any repairs, alterations, additions or improvements thereto, or the payment or dedication of any money, fee, exaction or property. There is no actual, or to Seller's Knowledge, pending, imposition of any assessments for public improvements with respect to any Real Property and, to Seller's Knowledge, no such improvements have been constructed or planned that would be paid for by means of assessments upon any Real Property.

(h) Each part of the Real Property is located on public roads and streets, and all utility systems required in connection with the use, occupancy and operation of each parcel of Real Property are sufficient for their present purposes and are in working order in all material respects. The Real Property consists of sufficient land, parking areas, sidewalks, driveways and other improvements to permit the continued use of such Real Property in the manner and for the purposes to which each is currently devoted.

(i) No shareholder of Seller is a "foreign person" as defined in Section 1445 of the Code.

(j) The Contract identified as item 5 on *Schedule 2.2(a)(i)(A)* has been terminated and is in no longer in effect. Seller covenants and agrees to use commercially reasonable efforts to seek to remove such Contract from all title documentation evidencing the Real Property.

Section 3.9. Intellectual Property.

(a) The Transferred Intellectual Property includes all Intellectual Property reasonably necessary for the conduct of the Station Business as is it is presently conducted in all material respects. *Schedule 3.9(a)* sets forth a true and complete list of all registrations, applications for registration and similar filings with any Governmental Authority relating to the Transferred Intellectual Property owned by Seller and that are material to the Station Business.

(b) *Schedule 3.9(b)* lists all material license agreements in respect of any of the Transferred Intellectual Property either licensed by Seller as licensor to third parties or licensed by third parties to Seller as licensee.

(c) To Seller's Knowledge, none of the Transferred Intellectual Property infringes any rights owned or held by any other Person, and there is no claim pending or, to Seller's Knowledge, threatened contesting Seller's right exclusively to use any of the Transferred Intellectual Property. To Seller's Knowledge, no Person is infringing, misappropriating or

otherwise conflicting with the rights of Seller in any Transferred Intellectual Property. There are no claims pending or, to Seller's Knowledge, threatened by any Person in respect of the ownership, validity, enforceability or use of any of the Transferred Intellectual Property.

Section 3.10. Contracts.

(a) *Schedule 3.10(a)* sets forth a true and complete list of all Contracts related to the Station Business to which Seller is a party or by which it is bound, or to which any of the Purchased Assets are subject, except for (i) orders for the purchase of supplies, and (ii) routine maintenance Contracts, in each case entered into in the ordinary course of business, having an unexpired term of less than three (3) months or involving aggregate remaining payments of less than Five Thousand Dollars (\$5,000) ((i) and (ii), the "**Ordinary Course Contracts**"). All of the Ordinary Course Contracts, in the aggregate, do not involve payment of more than Twenty Five Thousand Dollars (\$25,000). All Contracts identified or otherwise referenced on *Schedule 3.10(a)* are collectively referred to herein as the "**Material Contracts**" and the Material Contracts, together with the Ordinary Course Contracts, are collectively referred to herein as the "**Existing Contracts.**" Seller has made available to Buyer true and complete copies of all written Material Contracts, and set forth on *Schedule 3.10(a)* are true and complete descriptions of the material terms and conditions of all oral Material Contracts.

(b) All of the Existing Contracts are, and on the Closing Date all Assumed Contracts will be, in full force and effect, constituting valid and binding obligations of the parties thereto and enforceable in accordance with their respective terms. There exists no default, or any event which upon notice or the passage of time, or both, could reasonably be expected to give rise to any default in the performance by Seller or, to Seller's Knowledge, by any other party under any Material Contract. Seller has not received any notice that any party to any of the Material Contracts intends to cancel or terminate any Material Contract.

Section 3.11. Compliance with Law; Permits. The business and operations of the Station are, and as of the Closing Date will have been, conducted in all material respects in compliance with all applicable Laws. *Schedule 3.11* sets forth a true and complete list of all of the material Permits, including any registrations of Transmission Structures (true and complete copies of which are attached thereto). Other than the FCC Licenses, the Permits set forth on *Schedule 3.11* constitute all material permits, approvals, franchises, concessions, licenses or other governmental authorizations of every character whatsoever that are required by applicable Law or Governmental Authorities for the lawful ownership and operation of the Station Business and the Purchased Assets. Seller is in compliance in all material respects with the terms of all of the Permits, the Permits are in full force and effect, and no violations are or have been recorded in respect of any thereof. No proceeding is pending or, to Seller's Knowledge, threatened, to cancel, suspend, revoke or limit any of the Permits and, to Seller's Knowledge, there is no basis for any such proceeding.

Section 3.12. Regulatory Matters.

(a) Seller is qualified under the Communications Act to perform its obligations hereunder, to be the licensee of, and to own and operate, the Station. To Seller's Knowledge, no fact or circumstance exists relating to the FCC qualifications of Seller that

(i) could reasonably be expected to prevent or delay the FCC from granting the Assignment Application or (ii) would otherwise disqualify Seller as the licensee, owner, operator or transferee of the Station.

(b) *Schedule 3.12(b)* accurately and completely lists all FCC Licenses and all material pending applications filed with the FCC by Seller with respect to the Station. True and complete copies of the FCC Licenses and material pending applications filed with the FCC by Seller with respect to the Station are attached to *Schedule 3.12(b)*.

(c) No application, action or proceeding is pending for the renewal of any FCC License as to which any petition to deny or objection has been filed and, to Seller's Knowledge, there is no investigation, proceeding, notice of violation, or order of forfeiture relating to the Station before the FCC that, if adversely determined, could reasonably be expected to have a Material Adverse Effect. There is not now pending and, to Seller's Knowledge, there is not threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or modify any of the FCC Licenses that, if adversely determined, could reasonably be expected to have a Material Adverse Effect (other than proceedings to amend the Communications Act or proceedings of general applicability to the broadcast television industry).

(d) The Station is owned and operated by Seller in material compliance with (i) the terms of the FCC Licenses and (ii) the Communications Act, including the Main Studio Rules. Seller has filed or made all material applications, reports, and other disclosures required by the FCC to be made in respect of the Station and has or will have timely paid all FCC regulatory fees in respect thereof. No licenses, authorizations, permits or other rights other than the Permits and the FCC Licenses are required to own and operate the Station in substantially the same manner as it is being operated as of the date hereof and as of the Closing Date. To Seller's Knowledge, the FCC Licenses are in full force and effect; and are not subject to any condition except conditions applicable to broadcast television licenses generally, or as otherwise disclosed on the face of the FCC Licenses. Seller has no reason to believe that the FCC will not renew any FCC Licenses in the ordinary course.

(e) *Schedule 3.12(e)* identifies the Tower on which the main analog antenna and the main digital antenna of the Station are mounted. The Transmission Structures are registered to the extent required by Law and all such Transmission Structures have been constructed, and are operated and maintained, in compliance in all material respects with the FCC Licenses and all applicable Laws, including the Communications Act and those promulgated by the FAA (and including, to the extent applicable, all such Laws concerning the marking, painting, lighting, height and registration of the Transmission Structures).

(f) Except with respect to any conditions set forth in the Tower Study and for ordinary wear and tear since the date of such Tower Study, the Towers have been constructed in a manner reasonably sufficient to hold and support the structures currently mounted thereon (including the Station's analog and digital antennae) by the Station pursuant to the FCC Licenses, any Contract or otherwise.

(g) The Station is operating at the effective radiated power authorized under the FCC Licenses.

(h) To Seller's Knowledge, the Station does not cause or receive any material interference that is in violation of the Communications Act or any other applicable Laws.

(i) All material returns, reports and statements that Seller is currently required to file with the FCC or FAA have been filed.

Section 3.13. Cable and Satellite Matters.

(a) *Schedule 3.13(a)* sets forth a true and complete list of:

(i) all MVPDs that carry the Station's signal, and the channel on which the Station's signal is carried;

(ii) (A) all MVPDs in the Market to which Seller has provided a must-carry notice or retransmission consent notice in accordance with the provisions of the Communications Act for the three (3) -year period ending December 31, 2005, for cable systems, and the four (4) -year period ending December 31, 2005, for Direct Broadcast Satellite ("DBS") systems, including a detailed description of the disposition and current status of each such must-carry or retransmission consent notice, and (B) all MVPDs in the Market to which Seller has not provided any such must-carry or retransmission consent notice;

(iii) (A) all retransmission consent or Copyright indemnification Contracts entered into with any MVPD in the Market with respect to the Station for the three (3) -year period ending December 31, 2005 for cable systems and the four (4) -year period ending December 31, 2005 for DBS systems, and (B) the expiration date for each such Contract;

(iv) all retransmission consent or Copyright indemnification Contracts entered into with any MVPD other than an MVPD in the Market with respect to the Station as of the Effective Date and the expiration date for each such Contract; and

(v) all modifications to the geographic area in which the Station is eligible for must-carry or retransmission consent rights under FCC rules that are pending with or have been approved by the FCC, including any appeals of such modifications to the FCC or a reviewing court.

(b) Except as set forth on *Schedule 3.13(b)*, to Seller's Knowledge, no MVPD has advised Seller of any signal quality or Copyright indemnity or other obstacle to carriage of the Station's signal, and no MVPD has declined or threatened to decline such carriage or failed to respond to a request for carriage or sought any form of relief from carriage from the FCC.

(c) Seller has delivered to Buyer true and complete copies of all material notices, Contracts, correspondence and other items described in Sections 3.13(a)(i)-(v).

(d) Except as set forth on *Schedule 3.13(d)*, Seller has elected and has been granted must-carry status for the Station on all of the cable systems operating in the Market.

Section 3.14. [Intentionally Left Blank.]

Section 3.15. [Intentionally Left Blank.]

Section 3.16. *Litigation.* Except as set forth in *Schedule 3.16*, there are no claims, actions, suits, proceedings or investigations pending or, to Seller's Knowledge, threatened before any court, arbitrator or Governmental Authority which affect Seller, the Station Business or the Purchased Assets or which would reasonably be expected to restrain, enjoin or otherwise prevent the consummation of the transactions contemplated by this Agreement or the other agreements, certificates and documents delivered in connection herewith. Seller has made available to Buyer true and complete copies of all court papers and other material documents with respect to the matters referred to in *Schedule 3.16*. Except as set forth in *Schedule 3.16*, there is no outstanding writ, judgment, stipulation, injunction, decree, determination, award or other order of any Governmental Authority against Seller relating to the Station Business or that has a Material Adverse Effect.

Section 3.17. *Labor Matters.* Except as disclosed in *Schedule 3.17*, with respect to the Station Business (a) there is no labor strike, Labor Dispute, slowdown, stoppage or lockout pending, affecting, or, to Seller's Knowledge, threatened against Seller, and during the last five (5) years there has not been any such labor strike, Labor Dispute, slowdown, stoppage or lockout; (b) there are no union claims to represent the Employees nor have there been any claims to represent Employees or former employees of Seller within the last five (5) years; (c) there is no written or oral Contract with any labor organization, nor work rules or practices agreed to with any labor organization or employee association, applicable to the Employees, nor is Seller a party to or bound by any collective bargaining or similar Contract; (d) there is, and within the last five (5) years has been, no representation of the Employees or former employees of Seller by any labor organization and, to Seller's Knowledge, there are no union organizing activities among the Employees, nor does any question concerning representation exist concerning such Employees; (e) Seller has not engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable Laws, and Seller is, and has for the past five (5) years been, in compliance in all material respects with all applicable Laws in respect of employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health; (f) there is no unfair labor practice charge or complaint against Seller pending or, to Seller's Knowledge, threatened before the National Labor Relations Board or any other Governmental Authority; (g) there is no grievance pending or, to Seller's Knowledge, threatened against Seller arising out of any collective bargaining agreement including the Collective Bargaining Agreement or other grievance procedure; (h) there are no charges with respect to or relating to Seller pending or, to Seller's Knowledge, threatened before the Equal Employment Opportunity Commission or any other Governmental Authority responsible for the prevention of unlawful employment practices; (i) during the last five (5) years, Seller has not received notice of the intent of any Governmental Authority responsible for the enforcement of labor or employment Laws to conduct an investigation with respect to or relating to Seller in respect of the Station Business and to Seller's Knowledge, no such investigation is in progress; and (j) no complaints, lawsuits or other proceedings are pending or, to Seller's Knowledge, threatened in any forum by or on behalf of any Employee or former employee of Seller, any applicant for employment or classes of the foregoing alleging breach of any express or implied Contract for employment, any Law governing employment or the

termination thereof or other discriminatory, wrongful or tortious conduct in connection with any employment relationship.

Section 3.18. Employees and Employee Benefits.

(a) *Schedule 3.18(a)(i)* contains a true and complete list of (i) each Employee, including details of title, date of hire, salary or wage rate, date of birth, commissions for past fiscal year, accrued leave and severance obligation and (ii) all written and oral Contracts (including employment and consulting agreements) between Seller on one hand, and any Employee or consultant of Seller with respect to the Station Business on the other, except for Contracts terminable at will by Seller. Except as set forth on *Schedule 3.18(a)(ii)*, no Employee is a party to, or is otherwise bound by, any restrictive covenants (or similar provisions) under any Contract that reasonably could be expected to materially interfere with the performance of his duties as an employee of Buyer if employed by Buyer pursuant to the terms and subject to the conditions of Section 5.11.

(b) *Schedule 3.18(b)* describes all personnel policies, rules or procedures (whether written or oral) applicable to Employees, and Seller has delivered or made available to Buyer true and complete copies of all such written policies, rules or procedures, together with summaries of all oral policies, rules or procedures.

(c) *Schedule 3.18(c)* contains a true and complete list of each Plan. Seller has delivered to Buyer true and complete copies of (i) each Plan for which a Plan document exists and (ii) the summary plan description for each Plan. Each Plan intended to be tax qualified under Sections 401(a) and 501(a) of the Code is, and has been determined by the IRS to be, tax qualified under Sections 401(a) and 501(a) of the Code and, since such determination, no amendment to or failure to amend any such Plan or any other circumstance adversely affects its tax qualified status.

(d) With respect to each Plan, Seller has paid all contributions (including employee salary reduction contributions) and all insurance premiums that have become due and any such expense accrued but not yet due has been properly reflected in the Financial Statements.

(e) To Seller's Knowledge, no Plan provides or is required to provide, now or in the future, health, medical, dental, accident, disability, death or survivor benefits to or in respect of any Person beyond termination of employment, except to the extent required under any state insurance Law or under Part 6 of Subtitle B of Title I of ERISA and under Section 4980(B) of the Code.

(f) The consummation of the transactions contemplated by this Agreement and the other agreements, certificates and documents delivered in connection herewith do not and will not (i) entitle any Employee to severance pay, pension payments, or termination benefits for which Buyer or any of its Affiliates may become liable, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due to any such Employee or former employee of Seller for which Buyer or any of its Affiliates may become liable or (iii) obligate Buyer or any of its Affiliates to pay or otherwise be liable for any compensation, vacation days, pension

contribution or other benefits to any Employee, former employee, consultant or agent of Seller with respect to the Station Business for periods before the Closing Date or for personnel whom Buyer does not actually employ. *Schedule 3.18(f)* sets forth a true and complete list of all severance payments, pension payments, termination payments or any other payments that are due and owing to Employees as of the Closing Date or, thereafter, in connection with the consummation of the transactions contemplated hereby, whether pursuant to Contract, including employment or labor Contracts, or otherwise (collectively, "**Accrued Severance Payments**"), and all such Severance Payments have been or will have been made by Seller in full on or as of the Closing Date.

Section 3.19. Environmental Matters. Except as disclosed in *Schedule 3.19*, (a) to Seller's Knowledge, the operation of the Station Business and the use of the Purchased Assets as heretofore operated and used are not in violation of any applicable Environmental Law; (b) no inspection or investigation by any Governmental Authority at or about the Real Property or, with respect to the Station Business, any other facility or property currently or previously owned or operated by Seller or any third party has resulted in a citation, complaint, notice of violation, or letter demanding cleanup of any Hazardous Substances pursuant to any Environmental Law that in any case Seller or such third party has failed to remedy, nor is any such citation, complaint, notice of violation, or letter threatened; (c) Seller has (i) not disposed of, or stored for more than ninety (90) days, any Hazardous Substances on the Real Property, nor has there been any release, spill or leak of any Hazardous Substances at such sites reportable under any Environmental Law, and (ii) fully complied with all Environmental Laws relating to the generation, storage, treatment, recycling, removal, cleanup, transport or disposal of all Hazardous Substances at such sites and otherwise with respect to the Station Business; and (d) to Seller's Knowledge, there are no Hazardous Substances present at the surface or subsurface levels of the Real Property, or present in the air above, or the air and water immediately surrounding, such property which is in excess of any concentration levels or standards prescribed or permitted by any applicable Environmental Law.

Section 3.20. Insurance. *Schedule 3.20(a)* contains a true and complete list of all policies of casualty, liability, theft, fidelity, life and other forms of insurance related to the Station Business held by Seller. Each such policy is valid and binding, and is or has been in effect during the entire policy period stated therefor. All insurance policies are in the name of Seller and all premiums with respect to such policies are paid. Except as set forth on *Schedule 3.20(b)*, no claim under any such policy is pending.

Section 3.21. Related Party Transactions. Except as set forth on *Schedule 3.21*, no current or former partner, director, officer, employee, shareholder of Seller or any Associate or Affiliate thereof, or any relative with a relationship of not more remote than first cousin of any of the foregoing, is presently (a) a party to any transaction related to the Station Business with Seller, including any Contract providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such partner, director, officer, employee, member, shareholder, Associate or Affiliate, or (b) to Seller's Knowledge, the direct or indirect owner of an interest in any Person which is a present or potential competitor, supplier or customer of the Station Business, nor does any such Person receive income from any source other than Seller which relates to the business or should properly accrue to the Station Business.

Section 3.22. Taxes. Seller has timely filed or caused to be filed all Tax Returns that are required to have been filed by it with respect to the Purchased Assets or the Station Business. All such Tax Returns are true and complete in all material respects. Seller will have paid or properly accrued all Taxes relating to the Purchased Assets or the Station Business, whether or not shown on any Tax Return, to the extent such Taxes have come due pursuant to Applicable Law. Except with respect to Taxes not yet due and payable, none of the Purchased Assets are subject to any Lien arising in connection with the failure or alleged failure to pay any Tax. Seller has made available to Buyer true and complete copies of Tax Returns filed by or on behalf of Seller with respect to (a) payroll Taxes or withholding Taxes, each as filed under the Laws of Missouri, (b) unemployment Taxes, (c) property Taxes and (d) sales and use Taxes. Seller has, in all material respects, withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, stockholder, or other third party in respect of the Station Business.

Section 3.23. Brokers. No agent, broker, firm or other Person acting on behalf, or under the authority, of Seller is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from Buyer or its Affiliates in connection with any of the transactions contemplated hereby.

ARTICLE IV— REPRESENTATIONS AND WARRANTIES OF BUYER

In order to induce Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller as follows:

Section 4.1. Organization, Standing and Power. Buyer is a corporation, duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

Section 4.2. Authority; Binding Agreements. The execution and delivery of this Agreement and the other agreements, certificates and documents delivered in connection herewith 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 Buyer. Buyer has all requisite corporate power and authority to enter into this Agreement and the other agreements, certificates and documents delivered in connection herewith and to consummate the transactions contemplated hereby and thereby, and this Agreement and the other agreements, certificates and documents delivered in connection herewith have been, or upon execution and delivery thereof will be, duly executed and delivered by Buyer. This Agreement and the other agreements, certificates and documents delivered in connection herewith are, or upon execution and delivery thereof will be, the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except as enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditor's rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in a proceeding at law or in equity).

Section 4.3. Conflicts; Consents. The execution and delivery of this Agreement and the other agreements and documents to which Buyer is a party as contemplated by this Agreement, the consummation of the transactions contemplated hereby and thereby and compliance by Buyer with the provisions hereof and thereof do not and will not (a) conflict with or result in a breach of the certificate of incorporation, bylaws, or other constitutive or organizational documents of Buyer, (b) subject to receipt of the FCC Consent, violate any Law applicable to Buyer or Buyer's properties or assets, (c) require the consent or approval by, or any notification of or filing with, any Governmental Authority other than the FCC, or (d) require the consent or approval of a third party pursuant to a Contract to which Seller is a party.

Section 4.4. FCC Qualifications. Subject to obtaining the FCC Consent, Buyer is, and as of the Closing will be, qualified under the Communications Act to perform its obligations hereunder and to be the licensee of, and own and operate, the Station. Except as set forth in *Schedule 4.4*, to Buyer's Knowledge, no fact or circumstance exists relating to the FCC qualifications of Buyer that (a) could reasonably be expected to prevent the FCC from granting the Assignment Application or (b) would otherwise disqualify Buyer as the licensee, owner or operator of the Station. To Buyer's Knowledge, other than as otherwise provided on *Schedule 4.4*, no waiver of any FCC rule or policy is required for the grant of the FCC Consent.

Section 4.5. Brokers. No agent, broker, investment banker, firm or other Person acting on behalf, or under the authority, of Buyer is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from Seller or its Affiliates in connection with any of the transactions contemplated hereby.

ARTICLE V—ADDITIONAL AGREEMENTS

Section 5.1. FCC Matters.

(a) **FCC Consent.** The consummation of the transactions contemplated hereby is subject to the prior consent and approval of the FCC. Within five (5) Business Days after the date hereof, Seller and Buyer shall prepare and thereafter shall promptly file with the FCC the Assignment Application. In addition, each party hereto covenants and agrees to (i) prepare, file and prosecute any alternative application, petition, motion, request or other filing (including any motion for leave to withdraw or dismiss any Assignment Application filed by the parties with the FCC in connection with the transactions contemplated hereby) (the "**Additional Applications**"); (ii) file any amendment or modification to the FCC Applications; (iii) otherwise take any other action with respect to the FCC as may be reasonably necessary in connection with the transactions contemplated hereby; and (iv) cooperate in good faith with the other party hereto with respect to the foregoing, all as may be determined by Buyer and Seller to be necessary, appropriate or advisable in order to consummate the transactions contemplated by this Agreement.

(b) **Prosecution of FCC Applications.** Upon filing, the parties shall prosecute the FCC Applications with commercially reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Applications as expeditiously as practicable.

Each party shall promptly provide to the other party a copy of any pleading, order or other document served on them relating to any such FCC Application.

(c) **Certain Actions and Omissions.** Neither Seller nor Buyer shall take any action, or omit to take any action, or enter into any Contract which would, or could reasonably be expected to, prevent or interfere with the successful prosecution of any FCC Application or the consummation of the transactions contemplated by this Agreement, or which is or would be inconsistent with any FCC Application or the consummation of the transactions contemplated by this Agreement.

(d) **Certain FCC Conditions.** Each party agrees to comply with any condition imposed on it by any FCC Consent, except that no party shall be required to comply with a condition if (i) the condition was imposed on it as the result of a circumstance the existence of which does not constitute a breach by that party of any of its representations, warranties, covenants, obligations or agreements hereunder; or (ii) compliance with the condition could reasonably be expected to have, in the case of Seller, a Material Adverse Effect, or in the case of Buyer, a material adverse effect upon Buyer or its Affiliates. Buyer and Seller shall oppose any petitions to deny or other objections filed with respect to any FCC Application and any requests for reconsideration or review of any FCC Consent.

(e) **Certain Extensions.** If the Closing shall not have occurred for any reason within the original effective period of any FCC Consent, and neither party shall have terminated this Agreement pursuant to its right under Section 7.1, the parties shall jointly request an extension of the effective period of such FCC Consent. No extension of the effective period of any FCC Consent shall limit the exercise by either party of its right to terminate the Agreement under Section 7.1.

Section 5.2. Conduct of Station Business.

(a) **Certain Affirmative Covenants.** From the Effective Date until the Closing Date, except as otherwise consented to by Buyer in writing and subject to the provisions of Section 5.2(b) below, Seller shall use commercially reasonable efforts to:

(i) operate and control the Station in all material respects in the ordinary course of business and in a manner consistent with past practices (except where such conduct would conflict with the following covenants or with Seller's other obligations under this Agreement) and otherwise in compliance in all material respects with all applicable Laws, including the Communications Act, the FCC Licenses and all applicable Permits;

(ii) maintain and repair facilities and equipment related to Seller's operations with respect to the Station, including capital expenditures with respect to the facilities and equipment of the Station, maintain its inventory of supplies, parts and other materials and keep books of account, records and files, in each case in the ordinary course of Station Business consistent with past practices;

(iii) keep in full force and effect insurance in respect of the Station Business and the Purchased Assets comparable in amount and scope of coverage to that now maintained;

(iv) perform in all material respects all obligations under the Assumed Contracts and any other documents relating to or affecting the Purchased Assets or the Station Business;

(v) comply in all material respects with all applicable Laws;

(vi) preserve intact all goodwill of or relating to the Station or the Station Business;

(vii) take all actions reasonably necessary or appropriate to protect the Station from objectionable interference from other stations, including the filing of any and all necessary pleadings with the FCC to prevent or remedy such interference; and

(viii) remain qualified under the Communications Act to perform its obligations hereunder, to be the licensee of, and to own and operate the Station.

(b) *Certain Negative Covenants.* Seller shall not (to the extent the following restrictions are permitted by the FCC, the Communications Act and all other applicable Laws), except as otherwise consented to by Buyer in writing:

(i) other than in the ordinary course of business, assign, sell, lease (as lessor), transfer or dispose of, or agree to assign, sell, lease (as lessor), transfer or dispose of, any material Purchased Assets without replacement thereof with functionally equivalent or superior assets;

(ii) apply to the FCC for any FCC license, construction permit, authorization or any modification thereto that would materially restrict the Station's present operations or make any material adverse change in the buildings, leasehold improvements or fixtures owned by Seller and related to the Station, including any Transmission Structure;

(iii) enter into any Contract with any Affiliate or shareholder of Seller, or any of any such shareholders' parents, spouse, descendants (whether natural, step or adopted) or other family member in respect of the Station Business or the Purchased Assets;

(iv) enter into any material amendment or modification to, or grant any material waiver under, any lease, sublease, license, or other Contract with respect to the Real Property;

(v) incur, or suffer or permit to exist, any Lien (other than a Permitted Lien, subject to and without limiting Seller's obligation under Section 3.8(j)) on any Purchased Asset(s);

(vi) enter into, renew, amend or modify any Contract relating in any way to the Station or the Station Business except to the extent that such Contract is (A) entered into in the ordinary course of business and (B) does not involve liabilities or obligations in excess of Five Thousand Dollars (\$5,000) individually or Twenty Five Thousand Dollars (\$25,000) in the aggregate;

(vii) enter into any local marketing agreement, joint sales agreement, shared services agreement or other similar Contract in respect of the programming or operations of the Station;

(viii) except as required by applicable Laws or Existing Contract, (A) hire any employee except in the ordinary course of Station Business and consistent with past practices of Seller, or (B) enter into, renew, amend or modify any collective bargaining agreement including the Collective Bargaining Agreement, in each case in respect of the Station Business or the Purchased Assets;

(ix) enter into any new Plan or amend any existing Plan or grant any increases in employee compensation except for amendments to Plans solely to the extent required by applicable Law or increases in compensation in the ordinary course of business and consistent with past practice; *provided*, that Seller shall not make any statements or take any other action that may itself create a requirement to amend a Plan pursuant to applicable Law;

(x) take, or fail to take, any other action which could reasonably be expected to result in a breach or inaccuracy in any of the representations or warranties of Seller contained in this Agreement;

(xi) agree or commit, whether in writing or otherwise, to take any of the actions specified in the foregoing clauses; or

(xii) commit or suffer any of the acts described in clauses (a) through (q) of Section 3.6.

(c) ***FCC Licenses; Permits.*** During the period commencing on the Effective Date and ending on the earlier of the Closing Date or the termination of this Agreement, Seller shall (i) maintain in effect the FCC Licenses and all Permits that are required to carry on the Station Business, (ii) promptly execute any necessary applications for renewal of FCC Licenses necessary for the operation of the Station as presently conducted and will use reasonable efforts to cooperate with Buyer in any other respect as Buyer may reasonably request in order to enhance, protect, preserve or maintain the Purchased Assets or the Station Business; (iii) timely file with the FCC all required reports and pay any required annual regulatory fees for the operation of the Station; and (iv) deliver to Buyer, within ten (10) Business Days after filing, copies of any reports, applications or responses to the FCC related to the Station which are filed during such period. Upon request of Buyer, Seller shall consent, pursuant to 47 C.F.R. Section 73.3517, to the filing by, and in the name of Buyer (or any permitted assignee of Buyer) of an application requesting the authorization of the FCC to modify any FCC License or authorization of or relating to the Station, *provided*, that such authorization shall be contingent upon Closing. All filing costs related to such filings shall be borne by Buyer.

Section 5.3. Obligation to Consummate Transaction. Each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to the extent permissible under applicable Laws, to consummate and make effective the transactions contemplated by this Agreement as expeditiously as practicable and to ensure that the conditions set forth in Article

VI are satisfied, insofar as such matters are within the control of either of them. Without limitation to the foregoing or to Section 2.5, Seller shall use commercially reasonable efforts to obtain all Material Consents.

Section 5.4. Exclusivity. From the Effective Date until the earliest of (a) the Closing Date, and (b) the termination of this Agreement (other than as a result of the failure of Seller to comply with or perform its covenants and obligations under this Agreement), Seller shall not, and shall not permit any of its Affiliates or any partners, directors, officers or agents of the foregoing to, directly or indirectly, solicit or initiate, enter into or conduct discussions concerning, or exchange information (including by way of furnishing information concerning Seller or the Station Business) or enter into any negotiations concerning, or respond to any inquiries or solicit, receive, entertain or agree to any proposals for, the acquisition of, the Station Business, the Purchased Assets or any substantial part thereof. In addition, during such time period, Seller shall notify Buyer of the identity of any Person that approaches Seller and the contents of any such proposals, inquiries or discussions.

Section 5.5. Access and Information; Additional Disclosure.

(a) **Access and Information.** From the Effective Date until the earlier of the Closing Date and the termination of this Agreement, Seller shall permit Buyer and its representatives to make such reasonable investigation of the Station Business and the Purchased Assets as Buyer deems necessary or desirable in connection with the transactions contemplated hereby. Such investigation shall include access to the directors, officers, employees, agents and representatives (including legal counsel and independent accountants) of Seller and the operations, properties, books and records of the Station Business, reasonable access to review human resource files with respect to the Transferred Employees, the corporate ledger and accounts payable system to the extent related to the Station Business, provision of any documents contemplated by this Agreement, including copies of payroll Taxes filed under the Laws of Missouri with respect to Transferred Employees, that were not otherwise provided prior to the Effective Date. During such period, Seller shall furnish Buyer and its representatives with such financial, operating and other data and information, and copies of documents with respect to the Station Business or any of the transactions contemplated hereby, as Buyer shall from time to time reasonably request. Such access and investigation shall be (y) made at reasonable places and times and upon reasonable prior notice to Leonard Wheeler or, in the absence of Mr. Wheeler, to an officer or executive of Seller and (z) conducted in a manner which will not unduly interfere with the operation of the Station. Such access and information shall not in any way diminish or otherwise affect any of the representations or warranties hereunder or Buyer's rights to indemnification in respect of any breach thereof. Without limiting the foregoing, during such period, Seller shall (i) regularly provide to Buyer the following information with respect to the Station Business: (A) pacing reports, (B) sales reports, (C) financial statements and detail related thereto, (D) program listings and (E) other similar information reflecting the material aspects of the Station Business and the operations of the Station Business and shall be reasonably available to Buyer from time to time to discuss such information and the Station Business; and (ii) make available to Buyer the Out-of-Market Station Accounting Books in the manner and for the purposes contemplated in Section 5.17(d) hereof.

(b) **Additional Disclosure.** From the Effective Date until the earlier of the Closing Date and the termination of this Agreement, Seller shall give prompt written notice to Buyer of (i) the occurrence of any breach of any representation or warranty made by it in this Agreement or any Exhibit or Schedule hereto, and (ii) any failure to comply with or satisfy any covenant, condition or agreement required to be complied with or satisfied by it under this Agreement or any Exhibit or Schedule hereto; *provided, however*, that such disclosure shall not be deemed to cure any breach of representation, warranty, covenant or agreement or to satisfy any condition for purposes of determining whether the conditions set forth in Article VI have been satisfied.

Section 5.6. Confidentiality; Non-Competition and Non-Solicitation.

(a) **Seller Confidentiality Agreement.** Seller shall and shall cause its Affiliates and its and their respective counsel, accountants, financial advisors, lenders and other agents and representatives to: (i) protect the Buyer Confidential Information with at least the same degree of care, but no less than reasonable care, with which it protects its own most sensitive confidential information and not to disclose or reveal any Buyer Confidential Information to any Person other than to its or its Affiliates' respective officers, directors, employees, attorneys, accountants, other agents and representatives, including engineers, financial advisors, current and prospective lenders who need to know the Buyer Confidential Information in connection with any investigation of Seller or the negotiation, preparation or performance of this Agreement or any document to be delivered hereunder or for the purpose of evaluating Seller or the transactions contemplated hereby, except to the extent that disclosure of Buyer Confidential Information has been consented to in writing by Buyer; and (ii) not use the Buyer Confidential Information for any purpose other than (A) in connection with the evaluation or consummation of the transactions contemplated by this Agreement; (B) to the extent necessary in connection with any filing requirements under the laws of the United States or to obtain any Consents; or (C) to enforce Seller's rights and remedies under this Agreement. The obligations of Seller under this Section 5.6(a) shall survive the Closing or the termination of the Agreement for a period of three (3) years after such Closing or termination, as applicable.

(b) **Buyer Confidentiality Agreement.** Buyer shall and shall cause its Affiliates and its and their respective counsel, accountants, financial advisors, lenders and other agents and representatives to: (i) protect the Seller Confidential Information with at least the same degree of care, but no less than reasonable care, with which it protects its own most sensitive confidential information and not to disclose or reveal any Seller Confidential Information to any Person other than to its or its Affiliates' respective officers, directors, employees, attorneys, accountants, other agents and representatives, including engineers, financial advisors, current and prospective lenders who need to know the Seller Confidential Information in connection with the performance of this Agreement or any document to be delivered hereunder or for the purpose of evaluating the transactions contemplated hereby, except to the extent that disclosure of such Seller Confidential Information has been consented to in writing by Seller; and (ii) not use the Seller Confidential Information for any purpose other than (A) in connection with the evaluation or consummation of the transactions contemplated by this Agreement; (B) to the extent necessary in connection with any filing requirements under the laws of the United States or to obtain any Consents; or (C) to enforce Buyer's rights and remedies under this Agreement. The obligations of Buyer under this Section 5.6(b) shall survive

the Closing or the termination of the Agreement for a period of three (3) years after such Closing or termination, as applicable.

(c) **Non-Competition; Non-Solicitation.** Seller hereby acknowledges and recognizes its possession of confidential or proprietary information and the highly competitive nature of the Station Business and accordingly agrees that, in consideration of Buyer's entering into this Agreement and the other transactions contemplated hereby and the premises contained herein, including the payment of the Purchase Price and the assumption of the Assumed Liabilities as provided hereunder, neither Seller nor any of its Affiliates (now existing or hereafter incorporated, formed or otherwise organized) shall, for a period commencing on the Closing Date and concluding on the second (2nd) anniversary thereof, directly or indirectly, for any reason whatsoever, either individually or as shareholder, partner, agent or principal of another business firm:

(i) engage in the Market in any business involving, directly or indirectly, a business substantially similar to the Station Business, including the ownership or operation of, or the provision of any programming or advertising sales services to, any television station (a "**Competitive Business**"); or

(ii) assist any other Person in engaging in any Competitive Business.

In addition, neither Seller nor any of its Affiliates (now existing or hereafter incorporated, formed or otherwise organized) shall, for a period commencing on the Closing Date and concluding on the second anniversary thereof, directly or indirectly, for any reason whatsoever, either individually or as shareholder, partner, agent or principal of another business firm:

(A) solicit, professionally contact or provide consulting services to any client of the Station Business; (B) knowingly induce employees of Buyer or any of its Affiliates involved in the Station Business to terminate their employment with Buyer or such Affiliate; or (C) hire any employees of Buyer or any of its Affiliates involved in the Station Business to work with Seller or any of its Affiliates; *provided, however*, Seller shall not be precluded from soliciting employees, generally, by means of general advertisements or hiring any such employee who (y) has been terminated by Buyer or its Affiliates prior to commencement of employment discussions between Seller and such employee or (z) is responding, on his or her own initiative, to a general advertisement for employment not directed at Buyer.

Section 5.7. Certain Tax Matters.

(a) **Transfer Taxes.** All recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar Taxes, duties or governmental charges, and all recording or filing fees or similar costs, imposed or levied by reason of, in connection with or attributable to this Agreement or the transactions contemplated hereby (collectively, "**Transfer Taxes**") shall be borne equally by Seller and Buyer; *provided, however*, that Buyer and Seller shall reasonably cooperate with one another to lawfully minimize such Taxes. In the case of Transfer Taxes for which Buyer is liable to the pertinent taxing authority, at the Closing, Seller shall pay to Buyer fifty percent (50%) of the amount of such Transfer Taxes as reasonably estimated by Buyer, with subsequent additional payments by Seller to Buyer or refunds by Buyer

to Seller of amounts previously paid by Seller in the event it is subsequently determined that the amount of the subject Transfer Taxes was more or less than the estimated amounts.

(b) *Allocation of Taxes.*

(i) Seller shall pay all Taxes relating to the Purchased Assets or the operations of the Station Business for all periods or portions thereof ending on or before the Closing Date. Buyer shall pay all Taxes relating to the Purchased Assets or the operations of the Station Business (other than the Excluded Assets) for all periods or portions thereof beginning after the Closing Date.

(ii) Subject to Section 5.7(b)(i) above, in connection with the allocation of the payment obligations for Taxes set forth in such subsection (i) above, Seller and Buyer shall report for state and federal income tax purposes the items of income, gain, loss, and deduction relating to the Purchased Assets and the operations of the Station Business for any period including the Closing Date in accordance with their respective tax methods of accounting and, to the extent not inconsistent with such methods, in a manner consistent with the GAAP allocations and prorrations of such items of income, gain, loss, and deduction provided in this Agreement and as more specifically set forth in Sections 2.6, 2.8, 2.9, and 2.10 hereof, and Seller and Buyer shall be responsible for any Taxes imposed on their respective items so reported. For the avoidance of doubt, the parties acknowledge and agree that (A) all items of income, gain, loss, and deduction associated with Accounts Receivable and Accounts Payable are properly allocable to Seller and that Seller alone shall be responsible for any Tax in respect of such amounts (including any amounts collected after the Closing Date by Buyer as agent of Seller pursuant to Section 2.6) and (B) all items of income, gain, loss, and deduction associated with accounts receivable and accounts payable that accrue after the Closing Date are properly allocable to Buyer and that Buyer alone shall be responsible for any Tax in respect of such amounts. Subject to, and without limiting the generality of, Section 5.7(b)(i) above, the parties acknowledge and agree that this Section 5.7(b)(ii) is not intended to, and shall not be construed, to cause either party to incur any Tax liability solely by virtue of the tax methods of accounting used by the other party hereto.

(iii) In connection with the allocation of the payment obligations for Taxes set forth in subsection (i) above, in the case of any Taxes (other than Taxes based upon or related to income or receipts, to the extent such Taxes are addressed in Section 5.7(b)(ii), and ad valorem, real estate, and other property Taxes to the extent addressed in Section 2.9(b) for the purposes of Section 2.10 hereof) that are imposed on a periodic basis and that are payable for a period that begins on or before the Closing Date and ends after the Closing Date (the "**Straddle Period**"), (A) the portion of such Taxes that shall be deemed to be payable for the portion of the period ending on the Closing Date shall be deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), whether actually paid before, during, or after such period, multiplied by a fraction the numerator of which is the number of calendar days in the period ending on (and including) the Closing Date and the denominator of which is the number of calendar days in the entire period, and (B) the portion of such Taxes that shall be deemed to be payable for the portion of the period beginning on the calendar day after the Closing Date and ending on the last day of such Straddle Period shall equal the amount of Taxes payable for such

Straddle Period less the amount of Taxes deemed to be payable for the portion of the Straddle Period ending on the Closing Date. Any credits or Tax refunds received by Buyer or Seller with respect to Taxes that are imposed on a periodic basis and applicable to the Straddle Period shall be prorated and payable between Buyer and Seller in accordance with the allocation of the obligation to pay such Taxes. Seller shall pay all Taxes relating to the Excluded Assets for all periods or portions thereof ending on or after the Closing Date.

(c) **Cooperation and Exchange of Information.** Each of Seller and Buyer shall (i) provide the other with such assistance as may reasonably be requested by the other party in connection with the preparation of any Tax Return, audit or other examination by any taxing authority or judicial or administrative proceeding relating to liability for Taxes in connection with the Station Business or the Purchased Assets, (ii) retain and provide the other with any records or other information that may be relevant to such Tax Return, audit or examination, proceeding or determination, and (iii) provide the other with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period. In the event of any dispute between either Buyer or Seller and any taxing authority regarding Taxes owed for the Straddle Period, the party not initially involved in such dispute shall be permitted to participate in such dispute as that party may reasonably request.

(d) **Survival of Covenants.** The covenants contained in this Section 5.7 shall survive until thirty (30) days after the expiration of the applicable statute of limitations (including extensions thereof).

Section 5.8. Public Announcements. Prior to the Closing, neither Buyer nor Seller shall issue any press release or otherwise make any public statement with respect to the transactions contemplated hereby without the prior written consent of the other party hereto. At and after the Closing, (a) Buyer shall have the right to issue any press release or otherwise make any public statement with respect to the transactions contemplated hereby only upon the prior written consent of Seller (such consent not to be unreasonably withheld) and (b) Seller shall have the right to issue a press release or otherwise make a public statement with respect to the transactions contemplated hereby only upon the prior written consent of Buyer (such consent may not be unreasonably withheld). Notwithstanding anything to the contrary herein, any party may issue any press release or make any public statement with respect to the transactions contemplated hereby without the approval of the other party as may be required by applicable Law or court process, *provided that* notice is promptly delivered to the other party in order to provide an opportunity to seek a protective order or other similar order with respect to such information and the issuing party thereafter discloses only the minimum information required to be disclosed in order to comply with the request, whether or not a protective order or other similar order is obtained by the other party.

Section 5.9. Checks; Remittances and Refunds. Except with respect to the collection and receipt of any Accounts Receivable during the Collection Period (which shall be governed by Section 2.6), after the Closing, if Seller or its Affiliates receive any payment, refund or other amount which is attributable to, results from or is related to a Purchased Asset or is otherwise properly due and owing to Buyer in accordance with the terms of this Agreement, Seller shall promptly remit, or cause to be remitted, such amount to Buyer. Seller shall promptly

endorse and deliver to Buyer any notes, checks, negotiable instrument, letters of credit or other documents received on account of, attributable to or otherwise relating to the Purchased Assets which are properly due and owing to Buyer in accordance with the terms of this Agreement, and Buyer shall have the right and authority to endorse, without recourse, the name of Seller or any of its Affiliates on any such instrument or document. Except with respect to the collection and receipt of any Accounts Receivable during the Collection Period (which shall be governed by Section 2.6), after the expiration of the Collection Period, if Buyer or its Affiliates receive any payment, refund or other amount which is properly due and owing to Seller in accordance with the terms of this Agreement, including receipt of amounts relating to of any Accounts Receivable after the Collection Period or refunds with respect to commissions paid by Seller prior to the Closing Date, Buyer shall promptly remit, or cause to be remitted (but in no event later than 30 days after its receipt thereof), such amount to Seller. Buyer shall promptly endorse and deliver to Seller any notes, checks, negotiable instrument, letters of credit or other documents received on account of, attributable to or otherwise relating to the Excluded Assets which are properly due and owing to Seller in accordance with the terms of this Agreement.

Section 5.10. Cooperation in Litigation. From and after the Closing Date, Buyer and Seller shall fully cooperate with each other in the defense or prosecution of any litigation or examination, audit, or other proceeding instituted prior to the Closing or which may be instituted hereafter against or by such parties relating to or arising out of the conduct of the Station Business prior to or after the Closing (other than litigation between Buyer and Seller or their respective Affiliates arising out of the transactions contemplated hereby or by the other agreements, certificates and documents delivered in connection herewith). The party requesting such cooperation shall pay the reasonable out-of-pocket costs and expenses incurred in providing such cooperation (including legal fees and disbursements) as well as any applicable Taxes in connection therewith by the party providing such cooperation and by its officers, directors, employees and agents, but shall not be responsible for reimbursing such party or its officers, directors and employees for their time spent in such cooperation, *provided that* the amount of such time is reasonable and consistent with such person's other obligations.

Section 5.11. Employees and Employee Benefit Matters. Buyer shall offer employment as of the Closing Date to each Employee (whether active or inactive) who remains employed by Seller immediately prior to the Closing, provided that such offers to any Employee who is not actively at work on the Closing Date shall not be effective until the date such Employee is able to resume active employment. Subject to the foregoing, as of the Closing Date, Buyer shall employ each Employee who accepts Buyer's offer of employment (each, a "**Transferred Employee**") at a salary and on other terms and conditions that are at least as favorable in the aggregate to those provided to employees holding comparable positions at the Buyer Stations; *provided, however*, that nothing herein shall confer or be construed to confer on any such Transferred Employee any right to continue in the employment of Buyer or interfere in any way with the right of Buyer to terminate the employment of such Transferred Employee at any time, with or without cause; subject, however, to the provision of any employment agreement entered into or assumed by Buyer. Buyer shall provide each Transferred Employee credit for years of service prior to the Closing with such Seller or any prior owner of the Station for (i) the purposes of eligibility and vesting (but not for benefit accrual) under Buyer's health and vacation programs and policies as well as the Buyer's 401(k) plan; (ii) any and all pre-existing condition limitations and eligibility waiting periods under group health plans of Buyer,

and shall cause to be credited to any deductible or out-of-pocket expenses (which are applicable in the plan year of Buyer in which the Closing Date falls) under any health plans of Buyer any deductibles or out-of-pocket expenses incurred by Transferred Employee and their beneficiaries and dependents under health plans of Seller during the plan year of Seller in which the Closing Date falls; and (iii) rights and benefits of Transferred Employees pursuant to the terms and subject to the conditions of the Collective Bargaining Agreement. Seller shall take all and any action reasonably necessary to facilitate the rollover of any Transferred Employee's 401(k) account from the Seller's 401(k) plan to Buyer's 401(k) plan to the extent such Transferred Employee elects to have such account distributed and rolled over to Buyer's 401(k) plan, and Buyer shall reimburse Seller for any reasonable out-of-pocket expenses incurred by Seller in connection with facilitating such rollover.

Section 5.12. No Premature Assumption of Control. Nothing contained in this Agreement shall give Buyer any right to, directly or indirectly, control, supervise or direct, or attempt to control, supervise or direct, the programming, operations, or any other matter relating to the Station prior to the Closing Date, and Seller shall have complete control and supervision of the programming, operations, policies and all other matters relating to the Station up to the time of the Closing.

Section 5.13. WARN Act. Buyer and Seller agree to cooperate in good faith to determine whether any notification may be required under the WARN Act, as a result of the transactions contemplated under the Agreement and, if such notices are required, to provide such notice in a manner that is reasonably satisfactory to each of the parties hereto.

Section 5.14. Capital Expenditures. On or prior to the Closing, Seller shall deliver to Buyer a certificate of a duly authorized officer of Seller setting forth the aggregate amount of all capital expenditures undertaken by Seller with respect to the Purchased Assets during the period commencing on the Effective Date through the Closing Date (the "Capital Expenditure Amount"), such certificate to be accompanied by documentation reasonably satisfactory to Buyer evidencing such capital expenditures. In the event that the Capital Expenditure Amount is less than the product of (a) Fifteen Thousand Dollars (\$15,000), multiplied by (b) the number of months (calculated as thirty-day periods without respect to calendar months) between the Effective Date and the Closing Date, the amount of such difference (the "Capital Expenditure Credit") shall be applied as a credit against the Purchase Price due and payable at Closing.

Section 5.15. Environmental Audit.

(a) Within forty-five (45) calendar days from the Effective Date, Buyer shall have the right, at its sole cost and expense, to engage a reputable environmental engineering firm (the "**Consultant**") to conduct a Phase I Environmental Assessment, as such term is commonly understood (a "**Phase I Environmental Assessment**"), with respect to the Real Property, provided such inspections and interviews shall be conducted only (i) during regular business hours upon reasonable notice to Seller; (ii) in a manner which will not unduly interfere with the operation of the Station and/or the use of, access to or egress from the Real Property and (iii) without material damage to any property of Seller. Seller shall use commercially reasonable

efforts to assist Buyer and its employees, agents, and consultants in obtaining access to Real Property leased by Seller for purposes of conducting a Phase I Environmental Assessment.

(b) If the final assessment conducted in connection with Section 5.15(a) above details a Recognized Environmental Condition (as such term is defined in the American Society of Testing and Materials Standard for Phase I Environmental Assessments) (a "**Recognized Environmental Condition**") in connection with the Real Property, the Consultant reasonably recommends further investigatory action with respect to such Recognized Environmental Condition, and Buyer delivers such final assessment and recommendation to Seller promptly, but in no event later than 10 Business Days after receipt by Buyer of the Phase I Environmental Assessment, Buyer shall have the right, until 60 calendar days from the date of the receipt of the Phase I Environmental Assessment (the "**Phase II Time Period**") to conduct the investigation so recommended (the "**Phase II Inspection**"); *provided, however*, Seller shall have the right to review and approve the work plan for any Phase II Inspection so proposed, such approval not to be unreasonably withheld, and provided further, such Phase II Inspection shall be conducted only (i) during regular business hours upon reasonable notice to Seller; (ii) in a manner which will not unduly interfere with the operation of the Station and/or the use of, access to or egress from the Real Property and (iii) without material damage to any property of Seller. Any damage caused by Buyer or its agents in the course of the Phase I Environmental Assessment or any Phase II Inspection shall be promptly repaired by Buyer, at its sole cost and expense; *provided*, that the Phase II Time Period shall toll from that time when Seller first receives a Phase II Inspection work plan until such time as Seller has approved such Phase II Inspection work plan.

(c) If applicable, the Consultant shall estimate the cost and expense of clean up, removal, remedial, corrective or responsive action necessary to address any such Recognized Environmental Condition identified in the Phase I Environmental Assessment or as a result of the Phase II Inspection, as applicable (the "**Environmental Work**"), which estimate shall set forth in reasonable detail the basis for those estimates and a copy of which shall be delivered to Seller; *provided, however*, the Environmental Work shall be designed to meet the least stringent standards or requirements so as not to be a violation under applicable Environmental Law (taking into account the zoning of the applicable Real Property and the current uses of resources thereon).

(d) The parties understand and agree that the procedures outlined in this Section 5.15 shall in no event delay the Closing beyond the date on which the Closing would occur but for such procedures.

Section 5.16. Expenses.

(a) All filing fees and other charges levied by any Governmental Authority in connection with the transactions contemplated by this Agreement, including those fees relating to the FCC Applications, shall be paid one half by Buyer and one half by Seller.

(b) Except as expressly set forth herein, each party hereto shall bear its own costs and expenses incurred in connection with the transactions contemplated hereby.

Section 5.17. Preservation of Books and Records; Access.

(a) If at any time during the seven (7) -year period following the Closing Date, Buyer intends to dispose of any corporate, accounting, legal, auditing and other books and records of the Station Business (including any documents relating to any governmental or non-governmental actions, suits, proceedings or investigations) relating to the operation of the Station Business prior to the Closing, Buyer shall not do so without providing Seller thirty (30) Business Days' advance notice of such proposed disposal.

(b) After the Closing Date, Buyer shall permit Seller and its authorized representatives to have reasonable access to, and to inspect and copy (including by method of photocopying or, as reasonably practicable, electronic copying or downloading) (at Seller's sole cost and expense), all materials referred to in Section 5.17(a) and to meet with officers and employees of Buyer on a mutually convenient basis concerning background information with respect to such materials.

(c) If at any time during the seven (7) -year period following the Closing Date, Seller intends to dispose of any corporate, accounting, legal, auditing and other books and records (including, to the extent applicable, any documents relating to any governmental or non-governmental actions, suits, proceedings or investigations) relating to the operation of the Station Business prior to the Closing and which records are Excluded Assets (including, for the avoidance of doubt, all original versions of the Station Accounting Books), Seller shall not do so without providing Buyer thirty (30) Business Days' advance notice of such proposed disposal.

(d) After the Closing Date, Seller shall permit Buyer and its authorized representatives to have reasonable access to, and to inspect and copy (including by method of photocopying or, as reasonably practicable, electronic copying or downloading) (at Buyer's sole cost and expense), all Out-of-Market Station Accounting Books and all materials referred to in Section 5.17(c), and to meet with officers and employees of Seller on a mutually convenient basis concerning background information with respect to such Out-of-Market Station Accounting Books or materials referred to in Section 5.17(c). Without limiting this Section 5.17, Seller shall not be required to deliver to Buyer any of the items constituting the Out-of-Market Station Accounting Books notwithstanding anything herein contrary and notwithstanding that such assets constitute "Purchased Assets".

Section 5.18. Further Assurances. Each of Seller and Buyer shall, at any time and from time to time after the Closing Date, upon the request of the other, do, execute, acknowledge, deliver and file, or cause to be done, executed, acknowledged, delivered or filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the better transferring, conveying, assigning and assuring to Buyer, or for the aiding and assisting in the reducing to possession by Buyer of, any of the Purchased Assets, or for evidencing for the benefit of Seller the assumption by Buyer of the Assumed Liabilities pursuant to the terms and subject to the conditions of this Agreement, or for otherwise carrying out the purposes of this Agreement and the other agreements, certificates and documents delivered in connection herewith and the consummation of the transactions contemplated hereby and thereby.

Section 5.19. Guarantee.

(a) Pilot hereby unconditionally and irrevocably guarantees to and for the benefit of Seller, the full, complete and timely performance by Buyer of any and all of its representations, warranties, covenants, agreements, conditions, obligations, including the obligation to consummate the transactions and deliver to the Purchase Price, and to assume and perform the Assumed Liabilities, pursuant to the terms and subject to the conditions of this Agreement (the foregoing, the "Guarantee"). The Guarantee, and the obligation and liability of Pilot hereunder shall be direct and not conditional or contingent upon the pursuit of any remedies against Buyer; and Seller may at its election proceed in the first instance against Pilot to collect any of Buyer's obligations or compel performance of such obligations without first proceeding against Buyer; provided, however, that if Buyer is entitled to any notice or cure period under this Agreement, Seller agrees to: (y) afford Pilot the same period within which to cure such default or other breach of this Agreement pursuant to the terms and subject to the conditions of this Agreement, if any, it being understood that such right shall not operate nor be construed as delaying, extending or postponing the notice cure period within which Buyer (or Pilot as its guarantor) must cure any such default or breach; and (z) with respect to performance by Pilot within the period required by Buyer pursuant to the terms and subject to the conditions of this Agreement, accept performance by Pilot of any term, covenant, condition or agreement to be performed by Buyer under this Agreement with the same force or effect as though performed by Buyer. Except as otherwise provided herein, Pilot hereby waives demand for observance, performance or enforcement of, or notice of default and all other demands and notices otherwise required by law which it may lawfully waive other than such notices or demands provided pursuant to the terms and subject to the conditions of this Agreement or applicable Law with respect to Buyer. The Guarantee shall be deemed a continuing guarantee and shall remain in full force and effect until the obligations of Buyer are fully paid and discharged or otherwise fully performed by Buyer pursuant to the terms and subject to the conditions of this Agreement.

(b) Pilot represents and warrants to Seller (i) that it is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) that it has the requisite partnership power to execute and deliver this Agreement and to comply with the terms, conditions and provisions hereof, (iii) that the execution, delivery and performance of this Agreement by Pilot have been duly authorized and approved by all necessary partnership action of Pilot and its general partner and do not require any further authorization or consent of Pilot, its general partner or any other Person, (iv) that this Agreement is a legal, valid and binding obligation of Pilot, enforceable against it in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, (v) the execution, delivery and performance by Pilot of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time or both): (A) do not require the consent of any other Person; (B) will not conflict with any applicable organizational and governing documents of Pilot or any subsidiary of Pilot; and (C) will not conflict in any material respect with, result in a material breach of or constitute a material default under any Applicable Law or any material contract or agreement to which Pilot or any subsidiary of Pilot is a party or by which Pilot or any subsidiary of Pilot may be bound.

Section 5.20. Risk of Loss; Transmission Default.

(a) The risk of loss to any of the Purchased Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any Purchased Assets that are lost or damaged prior to Closing; *provided, however*, that in the event that Purchased Assets with a book value of greater than Two Hundred Fifty Thousand Dollars (\$250,000) are damaged or lost as of the date otherwise scheduled for Closing, Buyer may, at its sole election, either (i) postpone Closing for a period of up to 60 days while Seller repairs or replaces such Purchased Assets, or (ii) elect to close with the Purchased Assets in their then-current condition, in which case Seller shall assign all proceeds from insurance on such lost or damaged Purchased Assets to Buyer and pay to Buyer (or, to the extent not known as of the Closing, indemnify Buyer without regard to the basket or cap limitations in Sections 8.1(b)(i) and (ii)) the cost of repair and replacement of such damaged or lost Purchased Assets to the extent not covered by insurance, *provided, further, however*, that Seller shall have no obligation to repair or replace lost or damaged Purchased Assets, or make a payment to, or indemnify Buyer therefor to the extent the amount not covered by insurance exceeds Two Hundred Fifty Thousand Dollars (\$250,000).

(b) Should the Station (i) not operate for a period in excess of seventy-two (72) consecutive hours or (ii) not operate at more than eighty-five percent (85%) of its maximum authorized power for a period of ten (10) consecutive days; *provided, however*, that in the event that it is not reasonably practicable to remedy such operational condition due to weather conditions or a Force Majeure (including the inability to remedy the operational condition because repairmen qualified to perform the necessary repair work are unavailable), such period shall be extended for the duration of such weather conditions or Force Majeure but in no event for more than fifteen (15) days (either (i) or (ii) a “**Transmission Default**”), and it is reasonably expected that the Transmission Default could not be remedied within a reasonable period of time, Buyer may, by written notice to Seller within five (5) days of the occurrence of the Transmission Default, either elect to terminate this Agreement pursuant to Section 7.1(e) by Notice of Termination to Seller or postpone the Closing for a period of up to sixty (60) days while Seller attempts to cure the Transmission Default condition, and if such cure occurs within such sixty (60) day period, then the parties shall consummate the transaction at the earliest practicable date thereafter.

(c) In no event shall this Section 5.20 be deemed or otherwise construed to limit Sections 6.1 or 7.1 hereof.

Section 5.21. Construction and Updating of Schedules.

(a) Any information disclosed by Seller in this Agreement or pursuant to any of Seller's Schedules hereto shall be deemed to be disclosed to Buyer for all purposes of this Agreement. Neither the specification of any Dollar amount in any representation or warranty contained in this Agreement nor the inclusion of any specific item in any Schedule hereto is intended to imply that such amount, or higher or lower amounts, or the item so included or other items, are or are not material, and no party shall use the fact of the setting forth of any such amount or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in any Schedule is or is

not material for purposes of this Agreement. Unless this Agreement specifically provides otherwise, neither the specification of any item or matter in any representation or warranty contained in this Agreement nor the inclusion of any specific item in any Schedule hereto is intended to imply that such item or matter, or other items or matters, are or are not in the ordinary course of business, and no party shall use the fact of the setting forth or the inclusion of any such item or matter in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in any Schedule is or is not in the ordinary course of business for purposes of this Agreement.

(b) Seller shall promptly disclose in writing to Buyer any information contained in its respective representations and warranties or Seller's schedules hereto which, because of an event occurring after the Effective Date, is incomplete or is no longer correct as of all times after the Effective Date and until the Closing Date. No such disclosure shall be deemed amend the representations and warranties of Seller or Seller's schedules hereto, except pursuant to the terms and subject to the conditions of paragraph (c) below.

(c) Seller shall have the right to update each of Seller's schedules to reflect any matters arising following the Effective Date that are expressly permitted or contemplated by this Agreement, and such disclosures pursuant to this paragraph (c) shall be deemed to amend and supplement Seller's representations and warranties contained herein and its Schedules in connection herewith.

Section 5.22. Inspection of Certain Purchased Assets. Seller shall permit Buyer and its employees, agents and contractors to enter onto the Real Property no later than three (3) Business Days prior to the Closing Date for the purpose of walking through and inspecting the Real Property and the Tangible Personal Property.

Section 5.23. Grandfathered Obligations. Seller shall pay and discharge in full all and any Grandfathered Obligations prior to the Closing Date, and any indemnification of Buyer pursuant to Section 8.1 hereof with respect to any Grandfathered Obligations shall be without regard to the basket or cap limitations set forth in Sections 8.1(b)(i) and (ii) hereof.

ARTICLE VI—CONDITIONS PRECEDENT

Section 6.1. Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or, to the extent permitted by applicable Law, waiver by Buyer on or before the Closing Date of the following conditions:

(a) **Representations and Warranties.** Pursuant to the terms and subject to the conditions of this Agreement, including Section 5.21, the representations and warranties of Seller contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects and the representations and warranties of Seller contained herein that are not so qualified shall be true and correct in all material respects as of the Effective Date and as of the Closing Date as if made on and as of the Closing Date, (i) except to the extent any such representation and warranty is expressly stated only as of a specified earlier date or dates, in which case such representation and warranty shall be true and correct as of such earlier specified

date or dates, (ii), except for the representations and warranties of Seller set forth in Section 3.19 with respect to, and solely to the extent of, any Recognized Environmental Condition set forth in the Phase I Environmental Assessment or, as applicable, the Phase II Inspection, and (iii) except for changes permitted by the terms of this Agreement, and (iv) except for the representations and warranties of Seller set forth in Section 3.6(j) solely to the extent that (A) the failure of such representation and warranty to be true and correct in all material respects is caused, in whole or in part, by weather conditions or a Force Majeure (including the inability to remedy the operational condition because repairman qualified to perform the necessary repair work are unavailable) and (B) the condition giving rise to the failure of such representation and warranty to be true and correct in all material respects shall have been remedied as of the Closing.

(b) **Covenants.** Seller shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) **Officer's Certificate.** Buyer shall have received a certificate, dated as of the Closing Date, duly executed by an authorized officer of Seller certifying that:

(i) the conditions set forth in Sections 6.1(a) and (b) have been fulfilled;

(ii) all documents to be executed by Seller and delivered at the Closing have been executed by a duly authorized officer of Seller; and

(iii) (A) Seller's articles of incorporation and bylaws, attached to the certificate, are true and complete, (B) such organizational documents have been in full force and effect in the form attached since the date of the adoption of the resolutions referred to in clause (C) below and no amendment to such organizational documents has occurred since the date of the last amendment annexed thereto, if any, and (C) the resolutions adopted by the board of directors of Seller (or a committee thereof duly authorized) and the shareholders of Seller authorizing the execution, delivery and performance of this Agreement, attached to the certificate, were duly adopted at a duly convened meeting thereof, at which a quorum was present and acting throughout or by unanimous written consent, remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto.

(d) **No Injunction.** No Law shall have been enacted, entered, promulgated or enforced by any Governmental Authority that prohibits the consummation of all or any part of the transactions contemplated by this Agreement and the other agreements, certificates and documents delivered in connection herewith, and no action or proceeding shall be pending or threatened by any Governmental Authority or other Person seeking any such order or decree or seeking to recover any damages or obtain other relief as a result of the consummation of such transactions.

(e) **Material Consents.** Buyer shall have received duly executed and delivered copies of all Material Consents.

(f) **Certain Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer:

6.1(f)(i);

(i) a duly executed Bill of Sale, substantially in the form of *Exhibit*

(ii) a duly executed Assignment and Assumption Agreement, substantially in the form of *Exhibit 6.1(f)(ii)*;

(iii) a duly executed Assignment and Acceptance Agreement in respect of the FCC Licenses, substantially in the form of *Exhibit 6.1(f)(iii)*;

(iv) special warranty deeds of conveyance in recordable form for each of the parcels of Owned Real Property, conveying the Owned Real Property to Buyer in the form of *Exhibit 6.1(f)(iv)*;

(v) an assignment for each of the leases, subleases, licenses or other Contracts in respect of the Leased Real Property;

(vi) assignments for the registrations and applications included in the Transferred Intellectual Property in such form or forms as shall be recordable in all jurisdictions in which such registrations have been made or such applications have been filed;

(vii) a receipt, in a form reasonably satisfactory to Buyer, acknowledging receipt of the Purchase Price in satisfaction in full of Buyer's obligations pursuant to Sections 2.1 and that certain condition set forth in Section 6.2(e)(i);

(viii) the Power of Attorney contemplated in Section 2.6;

(ix) a certificate of Seller, in compliance with Section 1.1445-2(b)(2) of the regulations under the Code, listing Seller's name, address and U.S. employer identification number and stating that Seller is not a foreign person;

(x) an opinion (or opinions) of Seller's counsel and Seller's communications counsel, as applicable, dated as of the Closing Date, substantially in the form of *Exhibit 6.1(f)(x)*;

(xi) a certificate of Seller in accordance with Section 5.14 hereof;

(xii) the Closing Accounts Statement; and

(xiii) Notice to the Escrow Agent substantially in the form of Exhibit C to the Escrow Agreement with respect to the occurrence of the Closing and release and delivery to Buyer of the amount provided in Section 2.11(b) hereof.

(g) **Release of Liens.** Buyer shall have received at Closing either (i) a completed UCC-3 Termination Statement, in a proper form for filing, in respect of each Lien identified on *Schedule 3.7* (other than Permitted Liens) or (ii) a payoff letter from the secured party thereunder, in form and substance reasonably acceptable to Buyer, certifying that upon receipt by or on behalf of Seller of the amount specified in such payoff letter, such Lien shall be released with no further action and that such secured party will, promptly upon receipt of the

specified amount, deliver to Buyer a duly executed UCC-3 Termination Statement, in a proper form for filing, in respect of such Lien.

(h) ***Certificate of Good Standing.*** Buyer shall have received a certificate of good standing in respect of Seller certified by the Secretary of State or other appropriate official of the State of Texas, dated as of a date not more than ten (10) days prior to the Closing Date.

(i) ***Owned Real Property.*** Buyer shall have received a commitment of a title insurance company, reasonably satisfactory to Buyer, to issue a fee owner's title insurance policy on current American Land Title Company forms for each of the parcels of Owned Real Property reasonably satisfactory in form and substance to Buyer, insuring Buyer's good and marketable title in fee simple to each such parcel of Owned Real Property, subject only to Permitted Liens; *provided*, that all standard exceptions which can be deleted by the use of owner's or seller's affidavits shall be deleted from the title commitment and the title policy.

(j) ***FCC Consent.*** The FCC Consent shall have been granted by Final Order and shall be effective.

(k) ***Notice of Closing to Escrow Agent.*** Seller shall have executed and delivered to the Escrow Agent notice that the Closing has occurred as contemplated in the Escrow Agreement.

(l) ***Missouri Tax Clearance Certification.*** Seller shall have delivered to Buyer a certificate from the Missouri Director of Revenue evidencing that Seller has no outstanding obligation with respect to Taxes, interest, additions to Tax, in accordance with Missouri Revised Statutes § 144.150 and Missouri Code Regulations § 10-101.600.

Section 6.2. Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, or to the extent permitted by applicable Law, waiver by Seller on or before the Closing Date of the following conditions, unless waived by Seller:

(a) ***Representations and Warranties.*** The representations and warranties of Buyer contained herein that are qualified by materiality or subject to thresholds shall be true and correct in all respects and the representations and warranties of Buyer that are not so qualified contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date as if made on and as of the Closing Date, except for changes permitted by the terms of this Agreement.

(b) ***Covenants.*** Buyer shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with on or prior to the Closing Date.

(c) ***Officer's Certificate.*** Seller shall have received a certificate, dated as of the Closing Date, duly executed by an authorized officer of Buyer, certifying that:

(i) the conditions set forth in Sections 6.2(a) and (b) have been fulfilled;

(ii) all documents to be executed by Buyer and delivered at the Closing have been executed by a duly authorized officer of Buyer; and

(iii) (A) Buyer's certificate of incorporation and bylaws, attached to the certificate, are true and complete, (B) such organizational documents have been in full force and effect in the form attached since the date of the adoption of the resolutions referred to in clause (C) below and no amendment to such organizational documents has occurred since the date of the last amendment annexed thereto, if any, and (C) the resolutions adopted by the board of directors of Buyer (or a committee thereof duly authorized) authorizing the execution, delivery and performance of this Agreement, attached to the certificate, were duly adopted at a duly convened meeting thereof, at which a quorum was present and acting throughout or by unanimous written consent, remain in full force and effect, and have not been amended, rescinded or modified, except to the extent attached thereto.

(d) **No Injunction.** No Law shall have been enacted, entered, promulgated or enforced by any Governmental Authority that prohibits the consummation of all or any part of the transactions contemplated by this Agreement and the other agreements, certificates and documents delivered in connection herewith, and no action or proceeding shall be pending or threatened by any Governmental Authority or other Person seeking any such order or decree or seeking to recover any damages or obtain other relief as a result of the consummation of such transactions.

(e) **Certain Closing Deliveries.** Buyer shall have delivered or caused to be delivered to Seller:

(i) payment in an amount equal to (A) the Purchase Price less (B) an amount equal to the sum of (1) the Accrual Adjustment Amount, (2) the Capital Expenditure Credit, (3) the Escrow Amount and (4) the Exclusivity Fee (and, to the extent applicable such other adjustments pursuant to the terms and subject to the conditions of this Agreement); the payment hereunder shall be by wire transfer of immediately available funds directly to the account set forth on *Schedule 6.2(e)(i)* (or such other method of funds transfer as may be agreed upon in writing by Buyer and Seller);

(ii) a duly executed Bill of Sale, substantially in the form of *Exhibit 6.1(f)(i)*;

(iii) a duly executed Assignment and Assumption Agreement, substantially in the form of *Exhibit 6.1(f)(ii)*;

(iv) a duly executed Assignment and Acceptance Agreement in respect of the FCC Licenses, substantially in the form of *Exhibit 6.1(f)(iii)*; and

(v) Notice to the Escrow Agent that the Closing has occurred substantially in the form of Exhibit C to the Escrow Agreement.

(f) **FCC Consent.** The FCC Consent shall have been granted and shall be effective.

(g) **Certificate of Good Standing.** Seller shall have received a certificate of good standing in respect of Buyer and Pilot certified by the Secretary of State or other appropriate official of the State of Delaware, dated as of a date not more than ten (10) days prior to the Closing Date.

Section 6.3. Frustration of Closing Conditions. With respect to the conditions to its obligations to consummate the transactions contemplated by this Agreement as provided hereunder and its rights to terminate this Agreement as provided in Section 7.1, neither party may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was caused by such party's failure to act in good faith or to use its commercially reasonable efforts to cause the Closing to occur to the extent required by Section 5.3.

ARTICLE VII—TERMINATION

Section 7.1. Termination. This Agreement shall terminate on the earlier to occur of any of the following events:

- (a) the mutual written agreement of Buyer and Seller;
- (b) by Notice of Termination of Buyer or Seller, if the Closing shall not have occurred prior to the close of business on the first (1st) anniversary of the Effective Date (other than as a result of the failure on the part of such party to comply with or perform any of its material covenants, agreements and obligations under this Agreement);
- (c) by Notice of Termination of Buyer to Seller, if Seller shall have materially breached any of its representations, warranties, covenants, agreements or obligations hereunder and such breach has not been cured within thirty (30) days after the giving of written notice to Seller of such breach; *provided, however*, that Buyer's right under this Section 7.1(c) may not be exercised after the Closing;
- (d) by Notice of Termination of Seller to Buyer, if Buyer shall have materially breached any of its representations, warranties, covenants, agreements or obligations hereunder and such breach has not been cured within thirty (30) days after the giving of written notice to Buyer of such breach; *provided, however*, that Seller's right under this Section 7.1(d) may not be exercised after the Closing;
- (e) by Notice of Termination of Buyer to Seller prior to the Closing pursuant to the terms and subject to the conditions of Section 5.20 hereof; or
- (f) by Notice of Termination of Buyer to Seller delivered within ten (10) Business Days after the expiration of the Phase II Time Period, if the reasonable estimate of costs and expenses of the Environmental Work pursuant to Section 5.15(c), exceed Seventy-Five Thousand Dollars (\$75,000) (the "**Remediation Threshold**"); *provided, however*, that Seller may elect, in writing, to pay the excess of the costs and expenses of the Environmental Work over the Remediation Threshold (which payment, for the avoidance of doubt, shall be without respect to the limitations set forth in Section 8.1(b)) and in such event Buyer may not elect to terminate this Agreement under this Section 7.1(f). With respect to the indemnification

thresholds set forth in Sections 8.1(b)(i) and 8.1(b)(ii), in no event shall any payment made by Seller pursuant to this Section 7.1(f) be deemed Losses for the purpose of calculating the amount of Losses for the purposes of Sections 8.1(b)(i) and 8.1(b)(ii).

Section 7.2. Procedure and Effect of Termination.

(a) ***Notice of Termination.*** Any termination by either party shall be communicated by a written notice to the other party (the “**Notice of Termination**”). The Notice of Termination shall indicate the termination provision in this Agreement claimed to provide a basis for termination of this Agreement. Termination of this Agreement pursuant to the terms and subject to the conditions of Section 7.1 shall be effective upon and as of the date of delivery of a Notice of Termination.

(b) ***Certain Effects of Termination.***

(i) If this Agreement is terminated pursuant to Section 7.1(d), Seller shall have the right to receive the Earnest Escrow Proceeds as liquidated damages for and as the exclusive remedy of Seller as a consequence of Buyer’s default, as provided in Section 7.3.

(ii) If this Agreement is terminated other than pursuant to Section 7.1(d), the Earnest Escrow Proceeds shall be returned to Buyer.

(iii) Nothing in this Article shall relieve either party of any liability for a breach of (Y) any of the covenants, agreements or obligations hereunder to be performed by such party prior to the termination hereof or (Z) any material breach by such party of its representations and warranties as of the Effective Date, provided that, for the avoidance of doubt, the parties acknowledge and agree that in connection with any termination of this Agreement by Buyer pursuant to Section 7.1(c), Seller shall not be liable to Buyer in respect of any breach of Seller’s representations and warranties in this Agreement to the extent such breach accrued after the Effective Date, provided further that the foregoing shall not be construed to limit the foregoing clause (Y). Except as provided in the foregoing sentence, (A) upon the termination of this Agreement, all rights and obligations of the parties under this Agreement shall terminate, except their respective obligations under Sections 2.11, 5.6(a), 5.6(b) and 7.3, Article VIII and this Section 7.2(b), which shall survive the termination of this Agreement except as specifically provided in such sections and (B) neither of the parties hereto nor any of their respective partners, directors, officers, shareholders, employers, agents or Affiliates (each, a “**Related Party**”) shall have any liability or further obligation to the other party or any of their respective Related Parties pursuant to this Agreement with respect to which termination has occurred, except in respect of the rights and obligations identified in clause (A) above, which shall survive as provided in this Section 7.2(b).

(c) ***Withdrawal of Certain Filings.*** All filings, applications and other submissions relating to the transactions contemplated by this Agreement as to which termination has occurred shall, to the extent practicable, be withdrawn from the agency or other Person to which made.

Section 7.3. Limitation on Damages.

(a) The parties hereto agree that, if this Agreement is terminated pursuant to Section 7.1(d), Seller's sole and exclusive remedy shall be the right to receive the Earnest Escrow Proceeds as full and complete liquidated damages, as provided in Section 7.2(b)(i). The parties hereto acknowledge and agree that such liquidated damages are intended to limit the claims that Seller may have against Buyer in the circumstances described in Sections 7.1(d). The parties hereto further acknowledge and agree that (a) the liquidated damages provided in Section 7.2(b)(i) bear a reasonable relationship to the anticipated harm which would be caused by the Buyer's breach or nonfulfillment of the terms hereof and does not constitute a penalty and (b) the amount of actual loss caused by Buyer's breach or nonfulfillment of the terms hereof is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder.

(b) Notwithstanding anything contained herein to the contrary, including Section 8.1, the parties hereto agree that, if this Agreement is terminated by Buyer pursuant to Section 7.1(c), Seller's liability to Buyer for any and all claims made by Buyer, for whatever reason, shall be limited to the actual out-of-pocket expenses incurred by Buyer, including attorneys fees, in connection with its negotiation and preparation of this Agreement, the agreements and documents contemplated hereby, and its due diligence in connection with the transactions contemplated hereby, but in all events an amount not to exceed an aggregate amount equal to Two Hundred Fifty Thousand Dollars (\$250,000), and Buyer waives and releases and shall have no recourse against Seller in excess of such amount as a result of the breach of any representation, warranty or covenant of Seller contained herein or otherwise arising out of or in connection with the termination of the transactions contemplated hereby pursuant to such Section 7.1(c).

ARTICLE VIII—INDEMNIFICATION

Section 8.1. Indemnification by Seller.

(a) Subject to Section 8.1(b), Seller shall indemnify and hold harmless Buyer and its Affiliates, and the directors, officers, employees and other agents and representatives of Buyer and its Affiliates from and against any and all liabilities, judgments, claims, settlements, losses, damages, fees, Liens, Taxes, penalties, obligations and expenses (including reasonable attorney's fees and expenses and costs and expenses of investigation) (collectively, "Losses") incurred or suffered, directly or indirectly, by any such Person arising from, by reason of or in connection with:

(i) any breach or inaccuracy of any representation or warranty of Seller contained in this Agreement or any certificate, instrument or other document delivered by Seller hereunder or in connection with the consummation of the transactions contemplated hereby or thereby (exclusive of the representations and warranties of Seller set forth in Section 3.19 with respect to and solely to the extent of, any Recognized Environmental Condition set forth in the Phase I Environmental Assessment or, as applicable, the Phase II Inspection);

(ii) the non-fulfillment or breach of any covenant, obligation or agreement made by Seller in this Agreement;

(iii) any Excluded Liability (exclusive of any obligations, liabilities, or commitments with respect to, and solely to the extent of, any Recognized Environmental Condition set forth in the Phase I Environmental Assessment or, as applicable, the Phase II Inspection, except as otherwise provided in Section 7.1(f));

(iv) the failure of Seller to comply with any Laws relating to bulk sales or Tax applicable to the transactions contemplated by this Agreement;

(v) any Accounts Payable to the extent the amount thereof was not set forth in the Closing Accounts Statement; and

(b) Subject to, and except as otherwise provided in, Sections 2.6(f), 5.23 and 7.1(f), Seller's obligation to indemnify Buyer pursuant to Section 8.1(a) shall be subject to all of the following limitations:

(i) No indemnification shall be required to be made by Seller until the aggregate amount of Losses of Buyer exceeds Seventy Five Thousand Dollars (\$75,000), and then only with respect to the amount of such Losses in excess of Seventy Five Thousand Dollars (\$75,000).

(ii) The payment of any and all claims made by Buyer for indemnification hereunder, for whatever reason, shall be limited to an aggregate amount equal to Five Million Dollars (\$5,000,000), and Buyer waives and releases and shall have no recourse against Seller in excess of such amount as a result of the breach of any representation, warranty or covenant of Seller contained herein or otherwise arising out of or in connection with the transactions contemplated hereby or the Purchased Assets.

(iii) Following the Closing, the sole and exclusive remedy for Buyer for any claim (whether such claim is framed in tort, contract or otherwise) arising out of a breach of any representation, warranty, covenant or other agreement herein or otherwise arising out of or in connection with the transactions contemplated by this Agreement, the Purchased Assets or the operation of the Station shall be a claim for indemnification pursuant to this Article VIII.

(iv) No Related Party of Seller shall have (A) any personal liability to Buyer as a result of the breach of any representation, warranty, covenant or agreement of Seller contained herein or otherwise arising out of or in connection with the transactions contemplated hereby, the operation of the Station or the Purchased Assets or (B) any personal obligation to indemnify Buyer for any of Buyer's claims pursuant to Section 8.1(a), and Buyer waives and releases and shall have no recourse against any of such Related Parties as a result of the breach of any representation, warranty, covenant or agreement of Seller contained herein or otherwise arising out of or in connection with the transactions contemplated hereby, the operation of the Station or the Purchased Assets.

Section 8.2. Indemnification by Buyer.

(a) Subject to Section 8.2(b), Buyer shall indemnify and hold harmless Seller and its Affiliates, and the directors, officers, employees and other agents and representatives of Seller and its Affiliates from and against any and all Losses incurred or suffered, directly or indirectly, by any such Person arising from, by reason of or in connection with:

(i) any breach or inaccuracy of any representation or warranty of Buyer contained in this Agreement or any certificate or other document delivered by Buyer hereunder or in connection with the consummation of the transactions contemplated hereby or thereby;

(ii) the non-fulfillment or breach of any covenant, obligation or agreement made by Buyer in this Agreement;

(iii) any of the Assumed Liabilities; and

(iv) any and all acts or omissions of Buyer in connection with the operation of the Station and the conduct of the Station Business from and after the Closing Date.

(b) Buyer's obligation to indemnify Seller pursuant to Section 8.2(a) shall be subject to all of the following limitations:

(i) No indemnification shall be required to be made by Buyer until the aggregate amount of Losses of Seller exceeds Seventy Five Thousand Dollars (\$75,000), and then only with respect to the amount of such Losses in excess of Seventy Five Thousand Dollars (\$75,000).

(ii) The payment of any and all claims made by Seller for indemnification hereunder, for whatever reason, shall be limited to an aggregate amount equal to Five Million Dollars (\$5,000,000), and Seller waives and releases and shall have no recourse against Buyer in excess of such amount as a result of the breach of any representation, warranty or covenant of Buyer contained herein or otherwise arising out of or in connection with the transactions contemplated hereby or the Purchased Assets.

(iii) Following the Closing, the sole and exclusive remedy for Seller for any claim (whether such claim is framed in tort, contract or otherwise) arising out of a breach of any representation, warranty, covenant or other agreement herein or otherwise arising out of or in connection with the transactions contemplated by this Agreement, the Purchased Assets or the operation of the Station shall be a claim for indemnification pursuant to this Article VIII.

(iv) Except for Pilot's obligations pursuant to the terms and subject to the conditions set forth in Section 5.19, no Related Party of Buyer shall have (A) any personal liability to Seller as a result of the breach of any representation, warranty, covenant or agreement of Buyer contained herein or otherwise arising out of or in connection with the transactions contemplated hereby, the operation of the Station or the Purchased Assets or (B) any personal obligation to indemnify Seller for any of Seller's claims pursuant to Section 8.1(a), and Seller waives and releases and shall have no recourse against any of such Related Parties as a result of

the breach of any representation, warranty, covenant or agreement of Buyer contained herein or otherwise arising out of or in connection with the transactions contemplated hereby, the operation of the Station or the Purchased Assets.

Section 8.3. Losses and Purchase Price Adjustment. Any indemnity payment hereunder shall be treated as an adjustment to the Purchase Price to the extent permitted by applicable Law.

Section 8.4. Certain Procedures for Indemnification. (a) In the event that any Person entitled to indemnification under this Agreement (an "Indemnified Party") asserts a claim for indemnification, or receives notice of the assertion of any claim or of the commencement of any action or proceeding by any Person not a party to this Agreement against such Indemnified Party, for which a party to this Agreement is required to provide indemnification under this Article VIII (an "Indemnifying Party"), the Indemnified Party shall promptly notify the Indemnifying Party in writing of the claim or the commencement of that action; provided, however, that the failure to so notify the Indemnifying Party shall not relieve it from any liability which it may have to the Indemnified Party, except to the extent that the Indemnifying Party is materially prejudiced in its ability to defend such action.

(b) With respect to third party claims for which indemnification is claimed hereunder, the Indemnifying Party shall be entitled to (i) assume defense of any such claim; *provided that* such defense shall be conducted by legal counsel reasonably satisfactory to the Indemnified Party; and (ii) to settle and compromise any such claim or action for money damages alone, *provide that* this indemnity (including with respect to the cap on indemnification set forth in Section 8.1(b)(ii) or 8.2(b)(ii), as the case may be) fully covers the claim or litigation; *provided, further,* that if the Indemnified Party has elected to be represented by separate counsel pursuant to the proviso below, or if such settlement or compromise does not include an unconditional release of the Indemnified Party for any liability arising out of such claim or action, such settlement or compromise shall be effected only with the written consent of the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party under this Section 8.4 for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation or of assistance as contemplated by this Section 8.4; *provided, however,* that the Indemnified Party shall have the right to employ, at its sole cost and expense, counsel to represent it if, in the reasonable opinion of the Indemnified Party, it is advisable for the Indemnified Party to be represented by separate counsel due to actual or potential conflicts of interest. In the event that the Indemnified Party shall in good faith determine that the conduct of the defense of any claim subject to indemnification hereunder or any proposed settlement of any such claim by the Indemnifying Party might be expected to affect adversely the ability of Buyer to conduct its business, or that the Indemnified Party may have available to it one or more defenses or counterclaims that are inconsistent with one or more of those that may be available to the Indemnifying Party in respect of such claim or any litigation relating thereto, the Indemnified Party shall have the right at all times to take over and assume control over the defense, settlement, negotiations or litigation relating to any such claim at the sole cost of the Indemnifying Party; *provided, however,* that if the Indemnified Party does so take over and assume control, the Indemnified Party shall not settle such claim or litigation without the written

consent of the Indemnifying Party to the extent that any such settlement would be subject to the Indemnifying Party's indemnification obligations hereunder, such consent not to be unreasonably withheld. In the event that the Indemnifying Party does not accept the defense of any matter as above provided, the Indemnified Party shall have the full right to defend against any such claim or demand and shall be entitled to settle or agree to pay in full such claim or demand with applicable Losses in connection therewith subject to indemnification pursuant to the terms and subject to the conditions of this Article 8. In any event, the Indemnifying Party and the Indemnified Party shall cooperate in the defense of any claim or litigation subject to this Section 8.2 and the records of each shall be available to the other with respect to such defense (except to the extent counsel of a party advises non-disclosure is reasonably necessary to preserve the attorney-client privilege or similar doctrine, including the work-product doctrine). The Indemnified Party and the Indemnifying Party shall each render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such claim or proceeding. The Indemnified Party and the Indemnifying Party shall each render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such claim or proceeding.

(c) Upon making any payment to an Indemnified Party in respect of any Losses, the Indemnifying Party will, the extent of such payment, be subrogated to all rights of the Indemnified Party (and its Affiliates) against any third party in respect of the Losses to which such payment relates. Such Indemnified Party (and its Affiliates) and Indemnifying Party will execute upon request all instruments reasonably necessary to evidence or further perfect such subrogation rights.

Section 8.5. Survival; Expiration.

(a) Notwithstanding any investigation made by or on behalf of Seller or Buyer prior to, on or after the Closing Date, the representations and warranties contained in this Agreement (including the Schedules hereto) and in any document, instrument or certificate executed and delivered in connection herewith shall survive the consummation of the transactions contemplated hereby and thereby and shall terminate on the date that is eighteen (18) months following the Closing Date, except that the representations and warranties:

(i) set forth in Sections 3.1, 3.2, 3.7(a), 3.8(b), 4.1 and 4.2 shall survive forever; and

(ii) set forth in Section 3.22 shall survive until the expiration of the applicable statute of limitation.

Unless otherwise expressly provided herein, (y) all covenants, agreements and obligations made by any party hereunder which are to be performed on or prior to the Closing Date shall expire at the Closing, and (z) all covenants, agreements and obligations made by any party hereunder which are to be performed after the Closing Date shall survive in accordance with their terms until the applicable statute of limitations therefor has expired with respect to any breach thereof.

(b) Any right of indemnification or reimbursement pursuant to this Article VIII with respect to a claimed breach, inaccuracy or non-fulfillment of any representation,

warranty, covenant, agreement or obligation shall expire on the applicable date of termination of the representation, warranty, covenant, agreement or obligation claimed to be breached as set forth in Section 8.5(a) (the “**Expiration Date**”), unless on or prior to the applicable Expiration Date, the Indemnifying Party has received written notice from the Indemnified Party of such breach, inaccuracy or non-fulfillment from the Indemnified Party, in which case the Indemnified Party may continue to pursue its right of indemnification or reimbursement hereunder beyond the Expiration Date of the applicable representation, warranty, covenant, agreement or obligation.

ARTICLE IX—MISCELLANEOUS

Section 9.1. Governing Law. Construction and interpretation of this Agreement shall be governed by the law of the State of Delaware, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

Section 9.2. Notices. All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this Agreement (including Notices of Termination) shall be in the English language and in written or electronic form, and shall be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment; *provided, however*, that any such communication delivered by facsimile or other electronic transmission shall only be effective if such communication is also delivered by hand or deposited with a reputable overnight courier maintaining records of receipt within two (2) Business Days after its delivery by facsimile or other electronic transmission. All such communications shall be addressed to the parties at the address set forth in *Exhibit 9.2*, or at such other address as a party may designate upon ten (10) days’ prior written notice to the other party.

Section 9.3. Benefits of Agreement. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except for the provisions of Article VIII, this Agreement is for the sole benefit of the parties hereto and not for the benefit of any third party, including, for the avoidance of doubt, any Employee.

Section 9.4. Amendments and Waivers. Except as provided in Section 5.21(c), no modification, amendment or waiver of any provision of, or consent or approval required by, this Agreement, nor any consent to or approval of any departure herefrom, shall be effective unless it is in writing and signed by the party against whom enforcement of any such modification, amendment, waiver, consent or approval is sought. Such modification, amendment, waiver, consent or approval shall be effective only in the specific instance and for the purpose for which given. Neither the failure of either party to enforce, nor the delay of either party in enforcing, any condition or part of this Agreement at any time shall be construed as a waiver of that condition or part or forfeit any rights to future enforcement thereof. No action taken pursuant to this Agreement, including any investigation by or on behalf of either party

hereto, shall be deemed to constitute a waiver by the party taking action of compliance by the other party with any representation, warranty, covenant or agreement contained herein.

Section 9.5. Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by either party hereto (including in connection with a merger, consolidation, sale of substantially all of the assets of such party or otherwise by operation of law) without the prior written consent of the other party hereto. Any attempted assignment in violation of this Section 9.5 shall be null and void. No assignment or other transfer permitted by this Section 9.5 shall operate as a release of the assignor's obligations or liabilities hereunder, and the assignor shall remain liable hereunder notwithstanding such assignment or other transfer. In the event of any assignment or other transfer permitted by this Section 9.5, an instrument of assignment shall be executed by the assignee and shall expressly state that the assignee assumes all of the applicable obligations and liabilities of the assignor contained herein.

Section 9.6. Enforceability; Severability. (a) If any covenant or provision hereof is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity of any other covenant or provision, each of which is hereby declared to be separate and distinct, (b) if any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable, and (c) if any provision of this Agreement is declared invalid or unenforceable for any reason other than overbreadth, the offending provision will be modified so as to maintain the essential benefits of the bargain among the parties hereto to the maximum extent possible, consistent with Law and public policy.

Section 9.7. Disclaimer of Warranties. Seller makes no representations or warranties with respect to any projections, forecasts or forward-looking statements provided to Buyer. There is no assurance that any projected or forecasted results will be achieved. EXCEPT TO THE EXTENT OF THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III HEREOF, SELLER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR IMPLIED WARRANTIES.

Section 9.8. Entire Agreement. This Agreement, together with the Schedules and Exhibits expressly contemplated hereby and attached hereto and the other agreements, certificates and documents delivered in connection herewith or otherwise in connection with the transactions contemplated hereby and thereby, contains the entire agreement among the parties with respect to the transactions contemplated by this Agreement and supersede all prior agreements or understandings among the parties with respect to the subject matter hereof, including the LOI and the CA.

Section 9.9. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MEL WHEELER, INC.

BARRINGTON BROADCASTING MISSOURI CORPORATION

By: *Leonard Wheeler*
Name: Leonard Wheeler
Title: President

By: _____
Name: _____
Title: _____

PILOT GROUP, L.P.
(solely for purposes of Section 5.19)

By: _____
Its General Partner

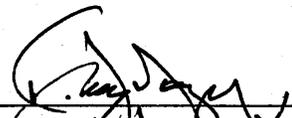
By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MEL WHEELER, INC.

BARRINGTON BROADCASTING MISSOURI CORPORATION

By: _____
Name: _____
Title: _____

By:  _____
Name: James Yacetz
Title: CEO

PILOT GROUP, L.P.
(solely for purposes of Section 5.19)

By: _____
Its General Partner

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MEL WHEELER, INC.

BARRINGTON BROADCASTING MISSOURI CORPORATION

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

PILOT GROUP, L.P.
(solely for purposes of Section 5.19)

By: Pilot Group GP LLC
Its General Partner

By: *Pauline*
Name:
Title:

EXHIBIT 1.1—CERTAIN DEFINED TERMS; CERTAIN INTERPRETATIONS

I. Certain Defined Terms. The capitalized terms contained and used in this Agreement which are defined below shall have the respective meanings ascribed to them as follows:

“**Accounts Payable**” means the accrued or outstanding cash accounts payable arising out of the Station Business relating to the time period prior to the Closing Date (whether or not invoiced as of the Closing Date) but in all events exclusive of all Accruals.

“**Accounts Receivable**” means all of Seller’s accounts and notes receivable, deferred charges, chattel paper and other rights to receive payments, in each case, arising from the operation of the Station Business prior to the Closing Date, including (i) the rights of Seller as of the Closing Date to payment for the sale of advertising time and other goods and services by the Station prior to the Closing Date and (ii) all other current assets of Seller as of the time prior to the Closing Date that are goods or services receivable under any Assumed Contract pursuant to which Seller has sold or traded commercial air time of the Station in consideration for any property or services in lieu of or in addition to cash.

“**Accruals**” has the meaning set forth in Section 2.9(b).

“**Accrual Adjustment Amount**” has the meaning set forth in Section 2.9(a).

“**Accrued Compensation**” means any and all salary and wages, accrued vacation and sick leave, accrued bonuses (pro rated as of the Closing Date) and commissions and reimbursements for expenses due and owing to each Employee.

“**Accrued Severance Payments**” has the meaning set forth in Section 3.18(f).

“**Additional Applications**” has the meaning set forth in Section 5.1(a).

“**Affiliate**” means, with respect to any Person, any other Person which, directly or indirectly, Controls, is Controlled by, or is under common Control with, the specified Person.

“**Agreement**” has the meaning set forth in the preamble hereof.

“**Allocation Schedule**” has the meaning set forth in Section 2.7(a) hereof.

“**Assignment Application**” means the application to be filed with the FCC in order to obtain the consent of the FCC to an assignment to Buyer or, as may be designated by Buyer, any Affiliate of Buyer, of the FCC Licenses.

“**Associate**” has the meaning ascribed to such term in Rule 405 under the Securities Act of 1933, as amended.

“**Assumed Contracts**” has the meaning set forth in Section 2.2(a)(v).

“**Assumed Liabilities**” has the meaning set forth in Section 2.3(a).

“Business Day” means any day excluding Saturdays, Sundays and any day that is a legal holiday under the laws of the United States or that is a day on which banking institutions located in New York, New York, Chicago, Illinois, or Jefferson City, Missouri are authorized or required by law or action of a Governmental Authority to close.

“Buyer” has the meaning set forth in the preamble hereof.

“Buyer Confidential Information” means (i) all financial, technical, commercial, proprietary or other information disclosed by Buyer or an Affiliate of Buyer to Seller, its Affiliates or any of their officers, directors, employees, representatives or agents (each, a **“Seller Recipient”**) in connection with the transactions contemplated by this Agreement, (ii) each of the terms, conditions and other provisions contained in this Agreement and the agreements or documents to be delivered pursuant to this Agreement, (iii) all financial, technical, commercial, proprietary or other information of Buyer or its Affiliates disclosed by Buyer to any Governmental Authority in connection with any filings or review in connection with the transactions contemplated hereunder, (iv) from and after the Closing, all financial, technical, commercial, proprietary or other information of Seller or its Affiliates relating to the Station, the Station Business or the Purchased Assets, including all Intellectual Property of Seller or its Affiliates relating thereto. Notwithstanding the preceding sentence, the definition of Buyer Confidential Information does not include any information that (A) is in the public domain at the time of disclosure to a Seller Recipient or becomes part of the public domain after such disclosure through no fault of a Seller Recipient, (B) except with respect to information set forth in subclause (iv) above, which, upon the Closing shall constitute Buyer Confidential Information, is already in the possession of a Seller Recipient at the time of disclosure to such Seller Recipient that has not been provided by Buyer or its Affiliates, (C) is disclosed to a party by any Person other than a party to this Agreement; *provided*, that the party to whom such disclosure has been made does not have actual knowledge that such Person is prohibited from disclosing such information (either by reason of Contract or legal or fiduciary obligation), (D) is developed independently by any party without the use of any Buyer Confidential Information, or (E) is required to be disclosed under Law or court order (*provided* that prompt notice of such disclosure will be given as far in advance as possible to Buyer and Buyer shall be given reasonable opportunity to determine whether disclosure is required and to assess the extent of Buyer Confidential Information required to be disclosed).

“Buyer’s Knowledge” (and similar phrases) means the knowledge of any officer or director of Buyer, and the knowledge any such Person would have had if he had performed his services and duties in the ordinary course of business on behalf of Buyer in a reasonably diligent manner.

“Buyer Stations” means those certain broadcast television stations managed by Manager as of the Effective Date.

“CA” means that certain Confidentiality Agreement by and between Manager and Seller, dated as of July 23, 2004.

“Capital Expenditure Amount” has the meaning set forth in Section 5.14.

“Capital Expenditure Credit” has the meaning set forth in Section 5.14.

“Central IT Resources” means all computer servers, database servers, mainframe computers or other computers used principally to process data for multiple users owned or leased by Seller or hosted for Seller in connection with the Station Business, and all internal data networks, all leased or owned data telecommunications lines or virtual private networks of Seller, and all software operated on any of the foregoing in connection with the Station Business (but not including single-user resources such as personal computers limited to one principal user at a time).

“Closing” has the meaning set forth in Section 2.4.

“Closing Accounts Statement” has the meaning set forth in Section 2.6(a).

“Closing Date” has the meaning set forth in Section 2.4.

“COBRA Obligations” means all obligations of Seller under Section 601 *et seq.* of ERISA and similar state Law.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means that certain Articles of Agreement, dated December 1, 2003, by and between Seller and the Communications Workers of America, AFL-CIO.

“Collection Period” has the meaning set forth in Section 2.6(a).

“Communications Act” means collectively, the Communications Act of 1934, as amended, and the rules, regulations and polices of the FCC promulgated thereunder.

“Competitive Business” has the meaning set forth in Section 5.6(c).

“Consent” means, with respect to a Contract or a Permit, any consent or approval of any Person other than any party to this Agreement which, in accordance with the terms of such Contract or Permit, is required to be obtained for the assignment thereof to Buyer.

“Consultant” has the meaning set forth in Section 5.15(a).

“Contracts” means contracts, commitments, arrangements, agreements, leases, licenses, purchase orders for the sale or purchase of goods or services and any other understandings.

“Control” including its various tenses and derivatives (such as **“Controlled”** and **“Controlling”**) means (i) when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by Contract or otherwise and (ii) when used with respect to any security, the possession, directly or indirectly, of the power to vote, or to direct the voting of, such security or the power to dispose of, or to direct the disposition of, such security.

“Copyrights” means all copyrights, copyright applications and copyright registrations and foreign counterparts thereof, including all rights to computer software programs (including object and source code, program documentation, disks, tapes, manuals, guides and other materials with respect thereto), works of authorship and rights to databases of any kind under the Laws of any jurisdiction and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist in the world.

“DBS” has the meaning set forth in Section 3.13(a)(ii).

“Dollars” or **“\$”** means United States dollars.

“Earnest Escrow Proceeds” means the Escrow Amount, in whatever form invested as provided in the Escrow Agreement, together with all interest and proceeds earned thereon, as well as on such interest and proceeds.

“Escrow Amount” means an amount equal to One Million Nine Hundred Thousand Dollars (\$1,900,000).

“Effective Date” has the meaning set forth in the preamble hereof.

“Employee” means an individual employed by Seller in respect of the Station Business as of the Effective Date and identified as such on *Schedule 3.18(a)(i)* and any individual(s) hired by Seller between the Effective Date and the Closing Date in accordance with Section 5.2 and the other terms of this Agreement.

“Environmental Law” means any Law relating to (i) pollution or protection of the environment, including natural resources, disposal of pollutants, toxic, hazardous, or other waste, and discharge and treatment of stormwater or sanitary and industrial wastewater; (ii) health and safety, including exposure of employees or other persons, to toxic or hazardous substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of any chemical or other substances from industrial or commercial activities; or (iv) regulation of the manufacture, use or introduction into commerce of chemical or other substances, including their manufacture, importation, exportation, formulation, labeling, distribution, transportation, handling, storage, treatment, recycling, removal and disposal, specifically including petroleum and petroleum derived products.

“Environmental Work” has the meaning set forth in Section 5.15(c).

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

“Escrow Agent” means United Bank, N.A., a Virginia Bank.

“Escrow Agreement” means that certain Earnest Money Escrow Agreement, dated as of even date herewith, by and among Seller, Buyer and Escrow Agent.

“Excluded Assets” has the meaning set forth in Section 2.2(b).

“Excluded Liabilities” has the meaning set forth in Section 2.3(b).

“Exclusivity Fee” has the meaning set forth in the recitals hereto.

“Existing Contracts” has the meaning set forth in Section 3.10(a).

“Expiration Date” has the meaning set forth in Section 8.5(b).

“FAA” means the United States Federal Aviation Administration.

“FCC” means the United States Federal Communications Commission.

“FCC Applications” means the Assignment Application, together with any Additional Applications.

“FCC Consent” means action by the FCC granting its consent to the FCC Applications and the consummation of the transactions contemplated hereby.

“FCC Licenses” means the FCC license for the Station and any other licenses, permits or other authorizations issued by or pending before the FCC to Seller in connection with the Station or the Station Business.

“Final Order” means an action by the FCC or other Governmental Authority, as applicable, having jurisdiction (i) with respect to which action no timely request for stay, motion or petition for reconsideration or rehearing, application or request for review or notice of appeal or other judicial petition for review is pending and (ii) as to which the time for filing any such request, motion, petition, application, appeal or notice and for the entry of orders staying, reconsidering or reviewing on the FCC’s or such other Governmental Authority’s own motion has expired.

“Final Prorations Schedule” has the meaning set forth in Section 2.10(c).

“Financial Statements” has the meaning set forth in Section 3.5.

“Financial Statements Date” means September 30, 2004.

“Force Majeure” means (i) acts of God; (ii) civil insurrection, public disaster, acts of war or terrorism; (iii) acts of civil or military authorities; (iv) any governmental action or order; or (v) any other contingencies beyond the reasonable control of such party.

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

“Governmental Authority” means any federal, state, local or foreign government, legislature, governmental or administrative agency or commission, any self-regulatory association or authority, any court or other tribunal of competent jurisdiction, or any other governmental authority or instrumentality anywhere in the world.

“Guarantee” has the meaning set forth in Section 5.19.

“Grandfathered Obligations” means any severance or other obligation or liability of Seller arising out of the termination of any Employee or former Employee, which is due or accruing under any Contract, agreement, understanding or similar arrangement and which arose or was incurred on or before the Closing Date, including (i) Seller’s obligation to pay Leland Jungmeyer for unused sick days and accrued severance and (ii) Seller’s obligation to pay Lee Gordon certain agreed upon amounts upon retirement; *provided, however*, that Grandfathered Obligations shall be deemed to exclude (i) the Collective Bargaining Agreement; (ii) the Termination Arrangement; and (ii) any other Assumed Contract.

“Hazardous Substances” means any and all pollutants, contaminants, hazardous substances, hazardous wastes, toxic pollutants, toxic substances, caustics, radioactive substances or materials, hazardous materials, chemicals, industrial wastes, and any and all other sources of pollution or contamination, or terms of similar import that are identified, listed, regulated under any Environmental Law and including under any Federal Law, including those with respect to crude oil, petroleum and its derivatives, products and by-products, natural or synthetic gas, any other hydrocarbons, heavy metals, asbestos, asbestos-containing materials, lead, lead-based paint, urea formaldehyde, pesticides, nuclear fuel and polychlorinated biphenyls.

“Indemnified Party” has the meaning set forth in Section 8.4(a).

“Indemnifying Party” has the meaning set forth in Section 8.4(a).

“Indemnity Escrow Proceeds” has the meaning set forth in Section 2.11(b).

“Intellectual Property” means Patents, Trademarks, Copyrights, and Know-How, and all copies and tangible embodiments thereof (in whatever form or media).

“Know-How” means all inventions (whether patentable or unpatentable and whether or not reduced to practice), compositions, manufacturing and production techniques, technical data, designs, drawings, specifications, molds, dies, casts, product configurations, discoveries, trade secrets, improvements, formulae, practices, processes, methods, technology, know-how, and confidential or proprietary information, whether or not patentable, including any of the foregoing in the process of development and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist in the world.

“Labor Dispute” means all and any disputes between Seller and any union or other labor collective with respect to the Collective Bargaining Agreement or any other labor Contract or any unfair labor practices, as defined in the National Labor Relations Act, relating to the Station Business.

“Law” means any federal, state, local or foreign constitution, treaty, law, statute, ordinance, rule, regulation, interpretation, directive, policy, order, writ, decree, injunction, judgment, stay or restraining order, provisions and conditions of permits, licenses, registrations and other operating authorizations, any ruling or decision of, agreement with or by, or any other requirement of, any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 2.2(a)(i).

“Lien” means any lien (statutory or otherwise), claim, charge, option, security interest, pledge, mortgage, restriction, financing statement or similar encumbrance of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing and any assignment or deposit arrangement in the nature of a security device).

“LOI” has the meaning set forth in the recitals hereto.

“Losses” has the meaning set forth in Section 8.1.

“Main Studio Rules” means the provisions of 47 C.F.R. § 73.114, together with any other provisions or rules of, or promulgated under, the Communications Act with respect to the establishment, location, materials to be maintained at, or otherwise relating to the main studio of a broadcast television station.

“Manager” has the meaning set forth in the recitals hereto.

“Market” means The Nielsen Designated Market Area encompassing Columbia and Jefferson City, Missouri.

“Material Adverse Effect” means any effect that is materially adverse to the business, assets, operations, condition (financial or otherwise), or results of operations of the Station Business, including the Station and the Purchased Assets, taken as a whole, *provided, however*, that any of the following effects shall not be deemed to constitute a Material Adverse Effect or be considered in determining whether a Material Adverse Effect has occurred: (A) changes or conditions generally affecting the broadcast television industry, (B) changes in general national, international or regional economic, regulatory, financial or political conditions, (C) attrition of the Employees or other matters that result from the announcement or pendency of this Agreement or the transactions contemplated hereby, (D) any matters that result from (x) any action taken by Buyer or (y) any action taken by Seller pursuant to the terms and subject to the conditions of this Agreement, (E) any change in Law or OCBOA, GAAP or other accounting principles, and (F) any failure by the Station Business to meet internal projections or forecasts for any period.

“Material Consent” means any Consent under (i) any Assumed Contract designated with an asterisk on *Schedule 3.10(a)*; (ii) any Assumed Contract entered into between the Effective Date and the Closing; or (iii) any Permit designated on *Schedule 3.4*.

“Material Contracts” has the meaning set forth in Section 3.10(a).

“MVPDs” means multichannel video programming distributors, including cable systems, satellite master antenna television, open video systems, multipoint distribution service, multichannel multipoint distribution service and DBS systems.

“Non-Assignable Right” has the meaning set forth in Section 2.5(a).

“Notice of Disagreement” has the meaning set forth in Section 2.10(c).

“Objection Notice” has the meaning set forth in Section 2.7.

“OCBOA” has the meaning set forth in Section 3.5.

“Ordinary Course Contracts” has the meaning set forth in Section 3.10(a).

“Out-of-Market Station Accounting Records” has the meaning set forth in Section 2.2(a)(iv)(C).

“Owned Real Property” has the meaning set forth in Section 2.2(a)(i).

“Patents” means patents, patent disclosures, design patents, design rights and registered designs, utility models and similar related rights under the Laws of any jurisdiction and all registrations, applications and foreign counterparts thereof, and any foreign equivalents, additions, divisions, continuations, continuations in-part, substitutions, reissues, extensions and renewals of any of the foregoing and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist in the world.

“Permits” means all licenses, permits, construction permits, approvals, concessions, franchises, certificates, consents, qualifications, registrations, privileges and other authorizations and other rights, other than the FCC Licenses, from any Governmental Authority to Seller currently in effect and used in connection with the Station Business including in connection with any use of any Real Property or Tangible Personal Property, together with any additions thereto between the Effective Date and the Closing Date.

“Permitted Liens” means (a) Liens for Taxes or assessments which are not yet due or which are being contested in good faith by appropriate proceedings, (b) statutory mechanics’, materialmen’s, contractors’, warehousemen’s, repairmen’s and other similar statutory Liens arising in the ordinary course of business and which are not delinquent, (c) pledges or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, (d) deposits to secure the performance of bids, contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, (e) statutory and contractual Liens on the property of Seller in favor of landlord’s securing leases, and (f) Liens identified on *Schedule 2.2(a)(i)(A)*.

“Person” means a human being, labor organization, partnership, firm, enterprise, association, joint venture, corporation, limited liability company, cooperative, legal representative, foundation, society, political party, estate, trust, trustee, trustee in bankruptcy, receiver or any other organization or entity whatsoever, including any Governmental Authority.

“Phase I Environmental Assessment” has the meaning set forth in Section 5.15(a).

“Phase II Inspection” has the meaning set forth in Section 5.15(b).

“Phase II Time Period” has the meaning set forth in Section 5.15(b).

“Plan” means any pension, retirement, savings, deferred compensation, and profit-sharing plan and each stock option, stock appreciation, stock purchase, performance share, bonus or other incentive plan, severance plan, health, group insurance or other welfare plan, or other plan, agreement or policy applicable to Seller’s Employees and any “employee benefit plan” within the meaning of Section 3(3) of ERISA related to the Station Business, under which Seller has any current or future obligation or liability or under which any Employee or former employee (or any dependent, beneficiary or alternate payee of any Employee or former employee) of Seller in respect of the Station Business has or may have any current or future right to benefits on account of employment with Seller.

“Pilot” means the Pilot Group, L.P., a Delaware limited partnership.

“Power of Attorney” has the meaning set forth in Section 2.6(e).

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

“Purchased Assets” has the meaning set forth in Section 2.2(a).

“Real Property” means, collectively, the Owned Real Property and the Leased Real Property.

“Recognized Environmental Condition” has the meaning set forth in Section 5.15(b).

“Related Party” has the meaning set forth in Section 7.2(b)(iii).

“Remediation Threshold” has the meaning set forth in Section 7.1(f).

“Seller” has the meaning set forth in the preamble hereof.

“Seller’s Allocation Schedule” has the meaning set forth in Section 2.7(a).

“Seller Confidential Information” means (i) all financial, technical, commercial, proprietary or other information of Seller or an Affiliate of Seller disclosed by Seller or an Affiliate of Seller to Buyer, its Affiliates or any of their officers, directors, employees, representatives or agents (each, a **“Buyer Recipient”**) in connection with the transactions contemplated by this Agreement that does not relate in any manner to the Station, the Purchased Assets or the Station Business, (ii) each of the terms, conditions and other provisions contained in this Agreement and the agreements or documents to be delivered pursuant to this Agreement, (iii) all financial, technical, commercial, proprietary or other information of Seller or an Affiliate of Seller disclosed by Seller or an Affiliate of Seller to any Governmental Authority in connection with any filings or review in connection with the transactions contemplated hereunder not relating in any manner to the Station, the Purchased Assets or the Station Business, (iv) until such time as the Closing occurs, all financial, technical, commercial, proprietary or other information of Seller or its Affiliates relating to the Station, the Station Business or the Purchased Assets, including all Intellectual Property of Seller or its Affiliates relating thereto. Notwithstanding the preceding sentence, the definition of Seller Confidential

Information does not include any information that (A) is in the public domain at the time of disclosure to a Buyer Recipient or becomes part of the public domain after such disclosure through no fault of such Buyer Recipient, (B) is already in the possession of a Buyer Recipient at the time of disclosure to such Buyer Recipient that has not been provided by Seller or its Affiliates, (C) is disclosed to a party by any Person other than a party to this Agreement; *provided that* the party to whom such disclosure has been made does not have actual knowledge that such Person is prohibited from disclosing such information (either by reason of Contract or legal or fiduciary obligation), (D) is developed independently by any party without the use of any Seller Confidential Information or (E) is required to be disclosed under Law or court order (*provided that* prompt notice of such disclosure will be given as far in advance as possible to Seller and Seller shall be given reasonable opportunity to determine whether disclosure is required and to assess the extent of Seller Confidential Information required to be disclosed).

"Seller's Knowledge" (and similar phrases) means the actual knowledge of (i) Leonard Wheeler, (ii) Steve Wheeler, (iii) Gretchen Cummings, (iv) the comptroller or other similar employee of the Company (iv) the general manager of the Station, and (v) each department-head at the Station, including, in all events, the chief engineer of the Station, in each case without regard to whether such Person performed his services and duties in the ordinary course of business on behalf of Seller in a reasonably diligent manner.

"Station" has the meaning set forth in the recitals hereof.

"Station Accounting Books" means (i) books of account, (ii) accounting records and (iii) account books of original entry, owned or Controlled by Seller and used or held for use by Seller exclusively in connection with the Station Business or relating exclusively to the Purchased Assets.

"Station Call-Signs" has the meaning set forth in Section 2.2(a)(ix).

"Station Domain Name" has the meaning set forth in Section 2.2(a)(ix).

"Station Business" means the business of the Station, taken as a whole, including the Purchased Assets and the operations thereof, and the Assumed Liabilities to be sold or assumed pursuant to this Agreement at the Closing pursuant to the terms and subject to the conditions hereof.

"Straddle Period" has the meaning set forth in Section 5.7(b).

"Tangible Personal Property" has the meaning set forth in Section 2.2(a)(ii).

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement relating to Taxes, including any schedule or attachment thereto, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and shall include any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Tax authority.

“Termination Arrangement” means any obligation of the Station not to involuntarily terminate George Huey or Leland Jungmeyer pursuant to any Contract, agreement, understanding or similar arrangement, whether written or oral, including any agreement or understanding evidenced by or relating to that certain letter by Betsy Farris, Vice President and General Manager of the Station, to Mark Franken, President of CWA Local 5314, an unexecuted and undated copy of which is attached to *Schedule 3.18(a)(i)*.

“Towers” means all antenna support structures, including any guy anchors and guy wires, used in connection with the operation of the Station.

“Tower Study” means that certain Guyed Tower Report, dated December 18, 1996, prepared by Malouf Engineering Intl., Inc. and related documents from Precision Communications, Inc., copies of which are attached to *Schedule 3.12(e)*.

“Trade-out Agreements” has the meaning set forth in Section 2.2(a)(v).

“Trademarks” means trademarks, trade names, trade dress, service marks and service names, logos, slogans, brand names and domain names (including the Station Domain Name and Station Call-Signs) and all registrations, applications for registration, renewals and foreign counterparts thereof, together with the goodwill of the business associated therewith and symbolized thereby, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which subsist in the world.

“Transferred Employee” has the meaning set forth in Section 5.11.

“Transfer Taxes” has the meaning set forth in Section 5.7(a).

“Transferred Intellectual Property” has the meaning set forth in Section 2.2(a)(iii).

“Transmission Default” has the meaning set forth in Section 5.20(b).

“Transmission Equipment” means all digital, analog or other equipment used in connection with the Station, including the antenna, transmitter and all associated transmission equipment, lines and facilities.

“Transmission Structures” has the meaning set forth in Section 3.8(f).

“WARN Act” means the Worker Adjustment and Retraining Notification Act.

II. *Descriptive Headings; Certain Interpretations.*

(a) Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

(b) Except as otherwise expressly provided in this Agreement or as the context otherwise requires, the following rules of interpretation apply to this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" and "any" are not exclusive and the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation"; (iii) a reference to any Contract includes permitted supplements and amendments; (iv) a reference to a Law includes any amendment or modification to such Law; (v) a reference to a Person includes its successors, heirs and permitted assigns; (vi) a reference to one gender shall include any other gender; and (vii) a reference in this Agreement to an Article, Section, Exhibit or Schedule is to the referenced Article, Section, Exhibit or Schedule of this Agreement.

(c) The parties hereto agree that they have been represented by counsel during the negotiation, drafting, preparation and execution of this Agreement and, therefore, waive the application of any Law or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.