

Asset Purchase Agreement

This Asset Purchase Agreement (this "Agreement") is made as of this 16th day of April, 2015, by and between **Optima Communications, Inc.**, a Colorado corporation ("Seller"), and **Pikes Peak Television, Inc.**, a Missouri corporation ("Purchaser").

Seller owns radio broadcast station KRDO-FM, Security, Colorado and any associated auxiliary facilities (the "Station"), pursuant to certain licenses, permits, authorizations and approvals issued by the Federal Communications Commission (the "FCC").

Seller and Pikes Peak Radio, LLC ("Pikes Peak Radio"), as assignee of Pikes Peak Broadcasting Company, are parties to that certain Time Brokerage Agreement with respect to the Station dated as July 30, 1992, as amended by that certain Amendment to Time Brokerage Agreement dated as of July 18, 2012 (the "TBA").

Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser all assets owned, used or held for use in the operation of the Station and in connection therewith, Purchaser has agreed to assume certain liabilities of Seller relating to the Station, all upon the terms and subject to the conditions set forth herein (such transactions sometimes being referred to herein as the "Transactions").

Now, therefore, in consideration of the mutual covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1. Certain Definitions. In addition to the other defined terms in this Agreement, the following terms shall have the respective meanings set forth below:

(a) "Action" means any claim, action, suit or proceeding, arbitral action, governmental inquiry, criminal prosecution or other investigation.

(b) "Affiliate" means, as applied to any Person, (i) any other Person directly or indirectly controlling, controlled by or under common control with, that Person, or (ii) any director, partner, member, officer, manager, agent, employee or relative of such Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by," and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities, by contract or otherwise.

(c) "Business Day" means any weekday (Monday through Friday) on which commercial banks in Colorado Springs, Colorado, are open for business.

(d) "Communications Act" means the Communications Act of 1934, as amended, any successor statute thereto, and all rules, regulations and published policies of the FCC promulgated thereunder.

(e) "Contract" means any contract, agreement, non-governmental license, sales and purchase orders, indenture, note, bond, instrument, lease, conditional sales contract, mortgage,

license, franchise agreement, concession agreement, security interest, guaranty, binding commitment or other agreement.

(f) “Encumbrance” means any security interest, pledge, mortgage, lien, charge, adverse claim of ownership or use, restriction on transfer (such as a right of first refusal or other similar right), defect of title, or other encumbrance of any kind or character.

(g) “Equipment” means all machinery, equipment, computers, motor vehicles, aircraft, furniture, fixtures, furnishings, transmission equipment, tools, parts and supplies, inventory, advertising and promotional materials, blank films, tapes, telecommunications equipment and all other items of tangible personal property listed and described on Schedule 4.5 (other than such items that are no longer in use as a result of obsolescence or having been replaced by other property).

(h) “FCC Consent” means the actions of the FCC (including any action duly taken by the FCC’s staff pursuant to delegated authority) granting consent to the assignment of the FCC Licenses necessary for the consummation of the Transactions.

(i) “FCC Licenses” means all of the FCC licenses, permits and other authorizations issued to Seller with respect to the Station, including the FCC licenses, permits and other authorizations identified in Schedule 4.10(a).

(j) “Governmental Authority” means any government, any governmental entity, department, commission, board, agency or instrumentality, and any court, tribunal, or judicial body, in each case whether federal, state, county, provincial, local or foreign.

(k) “Governmental Order” means any statute, rule, regulation, order, judgment, injunction, decree, stipulation or determination issued, promulgated or entered by or with any Governmental Authority of competent jurisdiction.

(l) “Law” means, as in effect on any date of determination, applicable common law or any applicable statute, permit, ordinance, code or other law, rule, regulation or order enacted, adopted, promulgated or applied by any Governmental Authority, including any applicable Governmental Order.

(m) “Liability” means any indebtedness, obligation and other liability (whether absolute, accrued, matured, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due), including, any fine, penalty, judgment, award or settlement respecting any judicial administrative or arbitration proceeding, damage, loss, claim or demand with respect to any Law.

(n) “License” means any franchise, approval, permit, order, authorization, consent, license, registration or filing, certificate, variance and any other similar right obtained from or filed with any Governmental Authority.

(o) “Organizational Documents” means, with respect to any Person (other than an individual), the articles or certificate of incorporation, bylaws, certificate of formation, limited liability company operating agreement, and all other organization documents of such Person.

(p) “Operative Agreements” means, collectively, this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption of Lease, and any other agreement delivered in connection with the Closing, if any.

(q) “Person” means any individual, general or limited partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

(r) “Tax” means any federal, state, local or foreign income, gross receipts, sales, use, ad valorem, employment, severance, transfer, gains, profits, excise, franchise, property, capital stock, premium, minimum and alternative minimum or other taxes, fees, levies, duties, assessments or charges of any kind or nature whatsoever imposed by any Governmental Authority (whether payable directly or by withholding), together with any interest, penalties (civil or criminal), additions to, or additional amounts imposed by, any Governmental Authority with respect thereto, and any expenses incurred in connection with the determination, settlement or litigation of any Liability therefor.

(s) “Tax Return” means a report, return or other information required to be supplied to a Governmental Authority with respect to any Tax.

1.2. Certain Additional Definitions. For all purposes of and under this Agreement, the following terms shall have the respective meanings ascribed thereto in the respective sections of this Agreement set forth opposite each such term below:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Assets	2.1
Assignment and Assumption of Lease	3.2
Assumed Liabilities	2.3
Bill of Sale	3.2
Closing	3.1
Closing Date	3.1
Damages	8.2
Deposit	2.5
Effective Time	3.1
Escrow Agent	2.5
Escrow Agreement	2.5
Excluded Liabilities	2.3
FAA	4.10(b)
FCC	Recitals
FCC Applications	6.2(b)
Final	7.1
Indemnified Party	8.5
Indemnifying Party	8.5
Lease	2.1

<u>Term</u>	<u>Section</u>
Leased Real Property	2.1
Pikes Peak Radio	Recitals
Proceeds	6.6
Promissory Note	2.4
Purchase Price	2.4
Purchaser	Preamble
Purchaser Indemnified Party	8.3
Purchaser Termination Event	9.1(d)
Seller	Preamble
Seller Indemnified Party	8.2
Station	Recitals
Stations	10.8
TBA	Recitals
Transactions	Recitals
Upset Date	9.1(a)(iii)

ARTICLE II PURCHASE AND SALE OF ASSETS

2.1. Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth herein, at the Closing, Purchaser shall purchase from Seller, and Seller shall sell, convey, transfer, assign and deliver to Purchaser, free and clear of all Encumbrances, all right, title and interest in and to all assets, except for the Excluded Assets, owned, used or held for use in the operation of the Station, including the following (collectively, the “Assets”):

- (a) The FCC Licenses and the call letters for KRDO – FM;
- (b) the lease between Cheyenne Propagation Co. and Seller dated November 1, 2007 described in Schedule 2.1(b) (the “Lease”) (the real property demised by the Lease being called, the “Leased Real Property”);
- (c) the Equipment set forth on Schedule 4.5 on an “as is, where is” basis;
- (d) the books and records of Seller necessary to operate the Station in compliance with the FCC’s rules and regulations, including, but not limited to, the Station’s public file;
- (e) to the extent assignable, all of Seller’s rights, claims, credits, causes of action or rights of set-off against third parties relating to the Assets, including claims pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and other third parties in connection with products or services purchased by or furnished to Seller affecting any of the Assets; and
- (f) all goodwill associated with the Assets.

2.2. Excluded Assets. Notwithstanding anything to the contrary contained herein, the Assets shall not include the following assets or any rights, title and interest therein (the “Excluded Assets”):

(a) all accounts receivable due from Pikes Peak Radio under the TBA, cash and cash equivalents of Seller, including, without limitation, certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) Seller's corporate and trade names not exclusive to the operation of the Station, charter documents, and books and records relating to the organization, existence or ownership of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(c) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies; and

(d) all deposits (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor upon Closing;

2.3. Assumption of Liabilities. Upon the terms and subject to the conditions set forth herein, at the Closing Purchaser shall assume from Seller Liabilities for the operation of the Station and under the Lease to the extent attributable to the period at or after the Effective Time (the "Assumed Liabilities"). Purchaser shall not assume, and the term "Assumed Liabilities" shall not mean, refer to or include (and, therefore, the "Excluded Liabilities" shall consist of) all Liabilities not expressly assumed by Purchaser, including any liability or obligation of Seller arising out of or relating to any Action by any Person, whether pending, threatened or asserted before, on or after the Closing Date, to the extent relating to the business or operations of the Station prior to the Closing Date.

2.4. Consideration for Assets. The purchase price for the Assets shall be Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Purchase Price"), and the assumption by Purchaser of the Assumed Liabilities pursuant to Section 2.3. Purchaser shall pay the Purchase Price at the Closing by (i) directing the Escrow Agent to transfer the Deposit to Seller and by delivering to Seller Four Hundred Twelve Thousand Five Hundred Dollars (\$412,500) (in each case by wire transfer of immediately available funds in accordance with written instructions delivered by Seller at least three (3) days prior to Closing), and (ii) delivering to Seller a promissory note in the principal amount of One Million Eight Hundred Thirty-Seven Thousand Five Hundred Dollars (\$1,837,500) in the form attached as **Exhibit A** (the "Promissory Note").

2.5. Deposit. On the date of this Agreement, Purchaser shall wire transfer the sum of Two Hundred Fifty Thousand Dollars (\$250,000) in immediately available funds (the "Deposit") to UMB Bank, N.A. (the "Escrow Agent"). The Deposit will be held by the Escrow Agent in accordance with the terms of an escrow agreement in the form of **Exhibit B** to be executed as of the date hereof (the "Escrow Agreement").

2.6. Allocation of Purchase Price. The consideration for the Assets shall be allocated among the Assets in accordance with the values set forth on Schedule 2.6. The parties shall execute and file all Tax Returns in a manner consistent with such allocation and shall not take any position before any Governmental Authority or in any judicial proceeding that is inconsistent with such allocation. Seller and Purchaser shall each timely file a Form 8594 reflecting such allocation with the IRS in accordance with the requirements of Section 1060 of the Internal Revenue Code.

ARTICLE III THE CLOSING

3.1. Time and Place. The consummation of the Transactions shall (a) take place at a closing (the “Closing”) to be held at 10:00 a.m., Central time, on the date which is the third (3rd) Business Day after satisfaction and fulfillment or, if permissible pursuant to the terms hereof, waiver of the conditions set forth in Sections 7.1 and 7.2, other than those requiring a delivery of a certificate or other document, or the taking of other action, at the Closing, (b) be effective as of 11:59:59 p.m., local Colorado Springs, Colorado time, on the Closing Date (the “Effective Time”), and (c) by the exchange of signed documents by e-mail, in each case, unless another time, date or place is mutually agreed upon in writing by Seller and Purchaser. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

3.2. Closing Deliveries of Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following (which in the case of any instruments, certificates and other documents shall be dated as of the Closing Date and executed or acknowledged (as applicable) on behalf of Seller by a duly authorized officer thereof):

- (a) A bill of sale in a form mutually agreed to by the parties (the “Bill of Sale”);
- (b) An assignment and assumption of the Lease in a form mutually agreed to by the parties (the “Assignment and Assumption of Lease”);
- (c) An officer’s certificate to be delivered by Seller, which shall certify as to the satisfaction of the conditions set forth in Sections 7.1(a) and 7.1(b);
- (d) Certified copies of resolutions, duly adopted by the Board of Directors and Shareholders of Seller, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of this Agreement and the Operative Agreements and the consummation of the transactions contemplated hereby; and
- (e) Such other documents or instruments of transfer as Purchaser may reasonably request to convey any Assets to Purchaser.

3.3. Closing Deliveries of Purchaser. At the Closing, Purchaser shall make the payment and deliver, or cause to be delivered, to Seller the following (which in the case of any instruments, certificates and other documents shall be dated as of the Closing Date and executed or acknowledged (as applicable) on behalf of Purchaser by a duly authorized officer thereof):

- (a) The Purchase Price in accordance with Section 2.4;
- (b) The Promissory Note;
- (c) The Assignment and Assumption of Lease;
- (d) The Deposit under the Escrow Agreement;
- (e) An officer’s certificate, which shall certify as to the satisfaction of the conditions set forth in Sections 7.2(a) and 7.2(b); and
- (f) Certified copies of resolutions, duly adopted by the Board of Directors of Purchaser, which shall be in full force and effect at the time of the Closing, authorizing the

execution, delivery and performance by Purchaser of this Agreement and the Operative Agreements and the consummation of the transactions contemplated hereby.

3.4. Further Assurances. At and after the Closing, and without further consideration therefor, Seller shall execute, or arrange the execution of, and deliver to Purchaser such further instruments and certificates of conveyance and transfer as Purchaser may reasonably request in order to more effectively convey and transfer the Assets from Seller to Purchaser in accordance with the terms of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller hereby represents and warrants to Purchaser as follows:

4.1. Organization. Seller is duly organized, validly existing and in good standing under the Laws of its state of incorporation, with all requisite corporate power and authority to own, operate or lease the Assets as now owned, operated or leased by it, and to conduct the business of the Station substantially as presently conducted by it.

4.2. Authority. Seller has all requisite corporate power and authority to enter into and deliver this Agreement and the Operative Agreements, to perform its obligations hereunder and thereunder, and to consummate the Transactions. The execution and delivery by Seller of this Agreement and the Operative Agreements to which it is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the Transactions, have been duly authorized by all necessary corporate action. This Agreement and the Operative Agreements have been duly executed and delivered by Seller. This Agreement constitutes, and each of the Operative Agreements (when so executed and delivered) will constitute, a legal, valid and binding obligation of Seller, enforceable against it in accordance with their terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3. No Violation; Third Party Consents. Assuming that all consents, waivers, approvals, orders and authorizations described in Section 4.4 and consent to the assignment of the Lease have been obtained, the execution and delivery by Seller of this Agreement and the Operative Agreements, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the Transactions, will not conflict in any respect with or violate in any respect, constitute a default (or event which with the giving of notice or lapse of time, or both, would constitute a default) under, give rise to any right of termination, amendment, modification, acceleration or cancellation of any obligation or loss of any benefit under, result in the creation of any Encumbrance on any of the Assets pursuant to, or require Seller to obtain any consent, waiver, approval or action of, make any filing with, or give any notice to any Person as a result of or under, the terms and provisions of (i) the Organizational Documents of Seller, (ii) any Contract to which Seller is a party, or (iii) any Law applicable to Seller or any of the Assets, or any Governmental Order issued by a Governmental Authority by which Seller or any of the Assets bound or obligated.

4.4. Government Consents. No material consent, waiver, approval, order or authorization of, or notification, registration, qualification, designation, declaration or filing with, any Governmental Authority is required on the part of Seller in connection with the execution and delivery by Seller of this Agreement and the Operative Agreements, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the Transactions, except the FCC Consent.

4.5. Equipment. Seller has good and marketable title to all items of Equipment listed in Schedule 4.5, free and clear of all Encumbrances.

4.6. Contracts. Except for the Lease and the TBA, Seller is not a party to any Contracts with respect to the Station. Seller has provided Purchaser with a true, correct and complete copy of the Lease. The Lease is in full force and effect (subject to expiration at the end of its current term) and is valid, binding and enforceable upon Seller and the other party thereto in accordance with its terms. Seller is in compliance with, and not in default under, the terms of the Lease, and to the knowledge of Seller, the other party thereto is in compliance with, and not in default under, the terms of the Lease.

4.7. Real Property. The Leased Real Property is all the real property leased to Seller and used or held for use in connection with the Station. Seller has good title to its leasehold interests in the Leased Real Property, free and clear of all Encumbrances. To Seller's knowledge, there does not exist any actual or threatened condemnation or eminent domain proceedings, planned public improvements, annexation, special assessments, zoning or subdivision changes, or other adverse claims affecting any of the Leased Real Property, and, as of the date hereof, Seller has not received any written notice of the intention of any Governmental Authority or other Person to take or use all or any part thereof. There are no contracts entered into by Seller, granting to any Person other than Seller, the right to occupy any Leased Real Property.

4.8. Litigation; Governmental Orders. There are no pending or, to the knowledge of Seller, threatened Actions by any Person or Governmental Authority against or relating to Seller with respect to the Station or to which any of the Assets are subject nor is there any reasonable basis therefore. Seller is not subject to or bound by any Governmental Order, other than those generally applicable to broadcast radio stations.

4.9. Compliance with Laws. Seller is in compliance with all Laws and Governmental Orders applicable to the Station. Seller has not received any notice alleging liability under or noncompliance with any Law or Governmental Order.

4.10. FCC/FAA Matters; Qualifications.

(a) Schedule 4.10(a) contains a list of the FCC Licenses and a list, as of the date hereof, of the material pending FCC applications held by Seller for use in the operation of the Station. The FCC Licenses are in full force and effect, and such FCC Licenses are not subject to any adverse conditions, except for those conditions appearing on the face of the FCC Licenses and conditions applicable to broadcast radio licenses generally.

(b) The Station is being operated in compliance with the Communications Act and the FCC Licenses with respect to the operation of the Station and Seller has filed or made all applications, reports, and other disclosures required by the FCC or the Federal Aviation Administration (the "FAA") to be made in respect of the Station and have or will have at the Closing timely paid all regulatory fees in respect thereof; provided that certain operational aspects of the Station's business are handled by Pikes Peak Radio pursuant to the TBA. There are no complaints, investigations, proceedings or other Actions pending or threatened in writing before the FCC with respect to the FCC Licenses, other than proceedings affecting the broadcast radio industry generally.

4.11. Insurance. Seller maintains general public liability insurance and no other insurance in respect of the Assets and the Station.

4.12. Taxes. Seller has filed, or caused to be filed, with the appropriate Governmental Authorities, all required Tax returns, and Seller has paid, caused to be paid or accrued all Taxes shown to be due and payable or claimed to be due and payable thereon, except where the failure to file such returns or pay or accrue such Taxes could not reasonably be expected to result in an Encumbrance on the Assets after the Closing or in the imposition of transferee liability on Purchaser for the payment of such Taxes. There are no proceedings pending pursuant to which Seller is or could be made liable for any taxes, penalties, interest, or other charges, the liability for which could extend to Purchaser as transferee of the Assets or as operator of the Station following the Closing.

4.13. Brokers. No finder, broker, agent, financial advisor or other intermediary has acted on behalf of Seller in connection with this Agreement or the Transactions or is entitled to any payment in connection herewith or therewith.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

5.1. Organization. Purchaser is duly organized, validly existing and in good standing under the laws of the State of Missouri and qualified as a foreign corporation under the laws of the State of Colorado.

5.2. Authority. Purchaser has all requisite corporate power and authority to enter into and deliver this Agreement and the Operative Agreements to which it is a party, to perform its obligations hereunder and thereunder, to consummate the Transactions, and to assume and perform the Assumed Liabilities. The execution and delivery by Purchaser of this Agreement and the Operative Agreements to which it is a party, the performance by Purchaser of its obligations hereunder and thereunder, the consummation by Purchaser of the Transactions, and the assumption and performance of the Assumed Liabilities, have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been, and the Operative Agreements to which Purchaser is a party shall be, duly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery of this Agreement and the Operative Agreements by Seller, this Agreement constitutes, and each of the Operative Agreements to which Purchaser is a party (when so executed and delivered) will constitute, a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.3. FCC Qualifications. The Purchaser is legally, technically, financially and otherwise qualified under the Communications Act to perform its obligations hereunder, and to be the licensee of the FCC Licenses and own and operate the Station. To Purchaser's knowledge, there is no fact or circumstance relating to Purchaser or any of its Affiliates that would reasonably be expected to prevent the FCC from granting the FCC Applications or that would otherwise reasonably be expected disqualify Purchaser as the licensee of the FCC Licenses or as the owner or operator of the Station. Purchaser has no reason to believe that the FCC Applications might not be granted by the FCC in the ordinary course due to any fact or circumstance relating to Purchaser or any of its Affiliates. No waiver of any FCC rule or policy is required for the grant of the FCC Applications.

5.4. Brokers. No finder, broker, agent, financial advisor or other intermediary has acted on behalf of Purchaser in connection with this Agreement or the Transactions or is entitled to any payment in connection herewith or therewith.

ARTICLE VI COVENANTS AND AGREEMENTS

6.1. Conduct of Business. Subject to the TBA, at all times during the period commencing upon the execution and delivery hereof by the parties hereto and terminating upon the earlier of the Closing or the termination of this Agreement pursuant to and in accordance with the terms of Section 9.1 hereof, unless Purchaser shall otherwise consent in writing, and except as otherwise required by Law or to enable Seller to comply with its obligations hereunder or as otherwise set forth in Schedule 6.1, Seller shall conduct the operations of the Station in the ordinary course of business, consistent with past practice.

6.2. Further Actions.

(a) Upon the terms and subject to the conditions set forth in this Agreement, Seller and Purchaser shall each use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable under applicable Laws to consummate the Transactions.

(b) Also in furtherance and not in limitation of Section 6.2(a), Purchaser and Seller each shall prepare and file with the FCC as soon as practicable, but in no event later than five Business Days after the execution of this Agreement, the requisite applications (the “FCC Applications”) and other necessary instruments or documents requesting the FCC Consent and thereafter prosecute such applications with all reasonable diligence to obtain the FCC Consent as soon as practicable; provided, however, except as provided in the following sentence, neither Purchaser nor Seller shall be required to pay consideration to any third party to obtain the FCC Consent. The Purchaser and Seller each shall oppose any petitions to deny or other objections filed with respect to the FCC Applications to the extent such petition or objection relates to such party. Neither Purchaser nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the receipt of the FCC Consent. If the Closing shall not have occurred for any reason within the original effective period of the FCC Consent, and neither party shall have terminated this Agreement under Section 9.1, Purchaser and Seller shall jointly request that the FCC extend the effective period of the FCC Consent. No extension of the FCC Consent shall limit the right of either party to exercise its rights under Section 9.1.

(c) In connection with the efforts referenced in this Section 6.2 to obtain the FCC Consent, Purchaser and Seller shall each use its respective commercially reasonable efforts to (i) cooperate in all respects with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, (ii) keep the other party informed in all material respects of any material communication received by such party from, or given by such party to, the FCC or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, (iii) permit the other party the opportunity to review in advance any submissions to any Governmental Authority or material agreement that relates to the consummation of the transactions contemplated by this Agreement and (iv) permit the other party

to attend any meetings with any Governmental Authority or participate in any communications with any Governmental Authority.

(d) The parties shall use commercially reasonable efforts to obtain the landlord's consent necessary for the assignment of the Lease to Purchaser (which shall not require any payment to any such third party). Receipt of consent to assign the Lease to Purchaser is a condition precedent to Purchaser's obligation to close under this Agreement.

(e) Seller has provided Purchaser with a list showing employee positions and certain compensation information for Seller's employees of the Station who are available to Purchaser for hire (if any). Purchaser may, but is not obligated to, offer post-Closing employment to such employees. With respect to Seller's employees of the Station hired by Purchaser, Seller shall be responsible for all compensation and benefits arising before the Effective Time (in accordance with Seller's employment terms), and Purchaser shall be responsible for all compensation and benefits arising after the Effective Time (in accordance with Purchaser's employment terms). Purchaser shall grant credit to each such employee for all unused vacation and sick leave accrued as of the Effective Time as an employee of Seller, and Purchaser shall assume and discharge Seller's obligation to provide such leave to such employees (such obligations being a part of the Assumed Liabilities).

6.3. Publicity. Seller and Purchaser shall cooperate with each other in the development and distribution of all news releases and other public disclosures relating to the transactions contemplated by this Agreement. Neither Seller nor Purchaser shall issue or make, or allow to have issued or made, any press release or public announcement concerning the transactions contemplated by this Agreement without the consent of the other party hereto, except as otherwise required by applicable Law, but in any event only after giving the other parties hereto a reasonable opportunity to comment on such release or announcement in advance, consistent with such applicable legal requirements.

6.4. Transaction Costs. Each party shall pay all transaction costs and expenses (including legal, accounting and other professional fees and expenses) that it incurs in connection with the negotiation, execution and performance of this Agreement and the consummation of the Transactions; provided, however, that each party will pay one-half of (a) all transfer Taxes (including sales Taxes) associated with the transfer of the Assets from Seller to Purchaser pursuant to this Agreement, and (b) the FCC filing fees relating to the Transactions.

6.5. Control Prior to Closing. Subject to the TBA, the parties acknowledge and agree that, for the purposes of the Communications Act and any other applicable Law, this Agreement and, without limitation, the covenants in this ARTICLE VI, are not intended to, and shall not be construed to, transfer control of the Station or to give Purchaser 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 until the Closing Date.

6.6. Risk of Loss. If, prior to the Closing, any of the Assets shall be damaged or destroyed by fire or other casualty, Seller shall take all reasonable steps to repair, replace and restore the Assets to the operating condition they were in prior to the damage or destruction as soon as possible after any loss or damage, it being understood that Seller will have no obligation to repair, replace or restore and that Purchaser's sole remedy if Seller elects not to fully repair, replace or restore will be to close and receive an abatement or reduction in the Purchase Price in an amount equal to the cost to repair, replace or restore.

ARTICLE VII CLOSING CONDITIONS

7.1. Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction or fulfillment at or prior to the Closing of the following conditions, any of which may be waived in whole or in part by Purchaser in writing:

(a) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing.

(b) Seller shall have performed and complied in all material respects with all the covenants and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing.

(c) There shall be in effect no Law or injunction issued by a court of competent jurisdiction making illegal or otherwise prohibiting or restraining the consummation of the Transaction.

(d) The FCC Consent shall have been granted, shall be in full force and effect, without any conditions materially adverse to Purchaser, and on terms that are not materially more onerous to Purchaser than are the terms to Seller under the existing FCC Licenses, in each case, other than those of general applicability to all licensees of broadcast radio stations, and such grant shall have become Final, except that the requirement that such grant shall have become Final may be waived by Purchaser. For purposes of this Agreement, the term “Final” shall mean that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(e) Seller shall have delivered to Purchaser all of the certificates, instruments and other documents required to be delivered by it at or prior to the Closing pursuant to Section 3.2.

(f) All Encumbrances shall be released of record and there shall be no liens in respect of the Assets.

(g) The consent by the landlord to the assignment of the Lease shall have been obtained.

7.2. Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or fulfillment at or prior to the Closing of the following conditions, any of which may be waived in whole or in part by Seller in writing:

(a) All representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and at and as of the

Closing with the same effect as though such representations and warranties were made at and as of the Closing.

(b) Purchaser shall have performed and complied in all material respects with the covenants and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing.

(c) There shall be in effect no Law or injunction issued by a court of competent jurisdiction making illegal or otherwise prohibiting or restraining the consummation of the transactions contemplated by this Agreement.

(d) The FCC Consent shall have been granted and shall be in full force and effect.

(e) Purchaser shall have delivered to Seller the Purchase Price and all of the certificates, instruments and other documents required to be delivered by Purchaser at or prior to the Closing pursuant to Section 3.3.

ARTICLE VIII INDEMNIFICATION

8.1. Survival. The representations and warranties in this Agreement shall survive Closing for a period of eighteen (18) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (a) those under Section 4.1 (Organization), Section 4.2 (Authority), Section 4.5 (Equipment), and Section 4.12 (Taxes), which shall survive until the expiration of any applicable statute of limitations, and (b) that if within such applicable period the Indemnified Party gives the Indemnifying Party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed (other than covenants to be performed in whole or in part after the Closing, each of which shall survive the Closing until 30 days after it has been performed). Representations and warranties made by any party and contained in or made pursuant to this Agreement shall survive (and not be affected in any respect by) the Closing, any investigation conducted by any party hereto and any information which any party may receive.

8.2. Indemnification by Purchaser. After the Closing, Purchaser agrees to indemnify Seller, its Affiliates and their respective officers, directors, employees and representatives (each, a "Seller Indemnified Party") against and hold them harmless from and reimburse them for all losses, damages, Liabilities and expenses, including reasonable attorneys' fees (collectively, "Damages") which such Seller Indemnified Party may at any time sustain or incur as a result of or arising out of: (a) the breach of any representation or warranty of Purchaser herein or in any Operative Agreement; (b) the breach of any covenant or agreement of Purchaser contained herein or in any Operative Agreement; (c) the Assumed Liabilities; and (d) the operation of the Station after the Effective Time.

8.3. Indemnification by Seller. Subject to the TBA after the Closing, Seller agrees to indemnify Purchaser, its Affiliates and their respective officers, directors, employees and representatives (each, a "Purchaser Indemnified Party") against and hold them harmless from and reimburse them for all Damages which such Purchaser Indemnified Party may at any time sustain or incur as a result of or arising out of: (a) the breach of any representation or warranty of Seller herein or in any Operative Agreement; (b) the breach of any covenant or agreement of Seller contained herein or in any Operative Agreement; (c) the Excluded Liabilities; and (d) subject to the TBA, the operation of the Station before the Effective Time.

8.4. Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) neither party shall have any liability to the other party under Sections 8.2(a) and (b) and 8.3(a) and (b), as the case may be, until the party seeking indemnification's aggregate Damages exceed \$25,000, after which such threshold amount shall be included in, not excluded from, any calculation of Damages, and (ii) the maximum aggregate liability of either party under Section 9.2 shall be an amount equal to 40% of the Purchase Price.

8.5. Procedures.

(a) A party entitled to be indemnified pursuant to Section 8.2 or 8.3 (the "Indemnified Party") shall give prompt written notice to the party or parties liable for such indemnification (the "Indemnifying Party") of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the Indemnified Party's rights or the Indemnifying Party's obligations except to the extent the Indemnifying Party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 8.1.

(b) The Indemnifying Party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it that is reasonably acceptable to the Indemnified Party, provided that the Indemnifying Party unconditionally agrees in writing that it shall provide indemnity to the Indemnified Party for all Damages relating to the Claim and demonstrates the financial wherewithal to satisfy such Claim. Notwithstanding the foregoing, the Indemnifying Party may not assume or control the defense if the named parties to the Claim (including any impleaded parties) include both the Indemnifying Party and the Indemnified Party and representation of both parties by the same counsel would be inappropriate (based on a written opinion of outside counsel) due to actual or potential differing interests between them, in which case the Indemnified Party shall have the right to defend the action and to employ counsel, and, to the extent the matter is determined to be subject to indemnification hereunder, the Indemnifying Party shall reimburse the Indemnified Party for all reasonable costs associated with such defense. In the event that the Indemnifying Party does not undertake such defense or opposition in a timely manner, the Indemnified Party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the Indemnifying Party's cost (subject to the right of the Indemnifying Party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) In the event the Indemnifying Party does not elect or is not entitled to assume control of the defense of any Claim, the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Claim. In the event that the Indemnifying Party assumes control of the investigation of, defense of, or opposition to, any Claim, the Indemnifying Party shall have the right in good faith to settle or compromise any such claim, provided that (i) at least ten (10) business days' prior notice of such settlement or compromise is given to the Indemnified Party, and (ii) such settlement or compromise must not require the Indemnified Party to take or refrain from taking any action, contain any admission by or on behalf of the Indemnified Party, or otherwise fail to hold the Indemnified Party fully harmless with respect to such claim.

ARTICLE IX TERMINATION

9.1. Termination.

(a) This Agreement may be terminated prior to Closing by either Purchaser, on the one hand, or Seller, on the other hand, upon written notice to the other following the occurrence of any of the following:

(i) by either Purchaser, on the one hand, or Seller, on the other hand, if the other party is in breach or default of this Agreement or does not perform in all material respects the obligations to be performed by it under this Agreement on or prior to the Closing Date and such breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 7.1 or Section 7.2, as applicable, if such breach or failure to perform had occurred at the time scheduled for Closing and (B) such breach has not been substantially cured as set forth in Section 9.1(c);

(ii) by either party if there shall be any Law that prohibits consummation of the Transactions or if a Governmental Authority of competent jurisdiction shall have issued a final, non-appealable Governmental Order enjoining or otherwise prohibiting consummation of the Transactions;

(iii) by either party if the Closing has not occurred on or prior to the date that is twelve (12) months from the date of this Agreement (the “Upset Date”);

(b) This Agreement may be terminated prior to Closing by mutual written consent of Purchaser and Seller.

(c) If either party asserts that the other is in breach or default of this Agreement, the non-defaulting party shall, prior to exercising its right to terminate under Section 9.1(a)(i), provide the defaulting party with notice specifying in reasonable detail the nature of such breach or default. Except for a failure to pay the Purchase Price or otherwise perform any obligations to be performed at the time scheduled for Closing (to which the cure period described hereinafter shall not apply), the defaulting party shall have 5 days from receipt of such notice to cure such default; provided, however, that if the breach or default is incapable of cure within such 5-day period, the cure period shall be extended as long as the defaulting party is diligently and in good faith attempting to effectuate a cure and there is a reasonable likelihood that a cure will be achieved. Nothing in this Section 9.1(c) shall be interpreted to extend the Upset Date.

(d) If this Agreement is terminated by Seller pursuant to Section 9.1(a)(i) of this Agreement due to the Purchaser’s default or breach of this Agreement and Seller is not in breach of this Agreement in a manner that would give rise to the failure of a condition to Closing (the “Purchaser Termination Event”), then Seller shall be entitled to the Deposit and all interest and earnings thereon as liquidated damages. The parties understand and agree that the amount of the Deposit and all interest and earnings thereon represents Seller’s and Purchaser’s reasonable estimate of actual damages and does not constitute a penalty. Notwithstanding any other provision of this Agreement to the contrary, in the event that this Agreement is terminated as a result of the Purchaser Termination Event, the payment of the Deposit and all interest and earnings thereon pursuant to this Section 9.1(d), shall be Seller’s sole and exclusive remedy for damages of any nature or kind that Seller may suffer under this Agreement, and Seller shall have

no further remedy against Purchaser for any claim or Damages arising out of, relating to or in connection with this Agreement or the Transactions.

(e) Upon termination, (i) if this Agreement is terminated for any reason other than the Purchaser Termination Event, the Deposit and any interest or earnings thereon shall be returned to Purchaser by the Escrow Agent; (ii) if neither Seller nor Purchaser is in material breach of any provision of this Agreement, neither shall have any further liability to each other; or (iii) if Seller shall be in material breach of any provision of this Agreement, Purchaser shall have the rights and remedies provided in Section 9.2, or otherwise available at law or equity.

(f) Each party agrees to take such action as is necessary or desirable to effectuate the payment of the Deposit and all interest or earnings thereon as set forth in this Section 9.1, including promptly providing to the Escrow Agent written instructions related to the payment thereof in the manner set forth in the Escrow Agreement.

9.2. Specific Performance. In the event of failure or threatened failure by Seller to comply with the terms of this Agreement, Purchaser shall be entitled to an injunction restraining such failure or threatened failure and to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. In the event of failure or threatened failure by Purchasers to comply with the terms of this Agreement, Seller shall be entitled to an injunction restraining such failure or threatened failure to, and enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. In the event of a default by either Purchaser or Seller that results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses (whether incurred in arbitration, at trial, or on appeal).

ARTICLE X MISCELLANEOUS

10.1. Notices. All notices, requests, demands, claims and other communications that are required or may be given pursuant to this Agreement must be in writing and delivered personally against written receipt, by a nationally recognized overnight delivery service, by telecopy or by registered or certified mail, return receipt requested, postage prepaid, to the parties at the following addresses (or to the attention of such other Person or such other address as any party may provide to the other parties by notice in accordance with this Section 10.1):

if to Purchaser, to:

News-Press & Gazette Company
825 Edmond Street
St. Joseph, Missouri 64502
Attention: J. Timothy Hannan
Telephone: 816-271-8500
Telecopier: _____

with copies to:

Spencer Fane Britt & Browne LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106
Attention: Michael L. McCann, Esq.
Telephone: 816-292-8110
Telecopier: 816-474-3216

if to Seller, to:

Optima Communications, Inc.
2910 Electra Drive
Colorado Springs, Colorado 80906
Attention: Jody McCoy
Telephone: 719-630-3111
Telecopier: _____

with copies to:

Wiley Rein LLP
1776 K St. NW
Washington, DC 20006
Attention: Brian A. Johnson
Telephone: 202-719-3480
Telecopier: 202-719-7049

Any such notice or other communication will be deemed to have been given (i) if personally delivered, when so delivered, against written receipt, (ii) if sent by a nationally recognized overnight delivery service when so delivered against written receipt, (iii) if given by telecopier, once such notice or other communication is transmitted to the facsimile number specified above and the appropriate answer back or telephonic confirmation is received, or (iv) if mailed by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth above, when so delivered against written receipt. Any notice, request, demand, claim or other communication given hereunder using any other means (including ordinary mail or electronic mail) shall not be deemed to have been duly given unless and until such notice, request, demand, claim or other communication is actually received by the individual for whom it is intended.

10.2. Assignment. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. No party hereto may assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other parties, and any such attempted assignment or delegation without such consent shall be void; provided, however, that Purchaser may assign its rights and delegate its duties to an Affiliate of Purchaser provided that (a) any such assignment does not delay processing of the FCC Application, grant of the FCC Consent or Closing, (b) any such assignee delivers to Seller a written assumption of this Agreement, (c) Purchaser shall remain liable for all of its obligations hereunder and shall guaranty the Promissory Note delivered by any such Affiliate, and (d) Purchaser shall be solely responsible for any third party consents necessary in connection therewith (none of which are a condition to Closing).

10.3. Amendments and Waiver. The terms of this Agreement may be changed only by a written instrument executed by the parties. The failure of any party at any time or times to require compliance with any provision of this Agreement shall in no manner affect the right of such party at a later date to enforce the same. No waiver by any party of any condition or the breach of any covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

10.4. Entire Agreement. This Agreement and the related documents contained as Exhibits and Schedules hereto or expressly contemplated hereby (including the Operative Agreements) contain the entire understanding of the parties relating to the subject matter hereof and supersede all prior written or oral and all contemporaneous oral agreements and understandings relating to the subject matter hereof. The Exhibits and Schedules to this Agreement are hereby incorporated by reference into and made a part of this Agreement for all purposes.

10.5. No Third Party Beneficiary. This Agreement is made for the sole benefit of the parties hereto, and their respective successors, executors and permitted assigns, and nothing contained herein, express or implied, is intended to or shall confer upon any other Person any third party beneficiary right or any other legal or equitable rights, benefits or remedies of any nature whatsoever under or by reason of

this Agreement (except to the extent that certain third parties are expressly covered by the indemnity herein).

10.6. Governing Law. This Agreement will be governed by and construed and interpreted in accordance with the substantive Laws of the State of Colorado without giving effect to any conflicts of Law, rule or principle that might require the application of the Laws of another jurisdiction.

10.7. Severability. It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced in any manner materially adverse to any party and that such provision cannot be narrowly drawn, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the fullest extent possible.


10.8. Heading; Interpretation; Schedules and Exhibits. In this Agreement (a) the words “hereof,” “herein,” “hereto,” “hereunder,” and words of similar import may refer to this Agreement as a whole and not merely to a specific section, paragraph, or clause in which the respective word appears, (b) words used herein, regardless of the gender specifically used, shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context requires, (c) any terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference, (d) unless otherwise stated, references to any Section, Article, Schedule or Exhibit are to such Section or Article of, or Schedule or Exhibit to, this Agreement, (e) the words “include”, “includes”, and “including” are deemed in each case to be followed by the words “without limitation”, (f) the word “shall” denotes a directive and obligation, and not an option, and (g) the term “Stations” shall mean any or all of the Stations. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

10.9. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission or by means of portable document format (pdf) transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

10.10. Time of Essence. Time is of the essence in the performance of the Operative Agreements.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date first above written.

PIKES PEAK TELEVISION, INC.

By: 
Name: J. Timothy Hannan
Title: Vice President, Secretary, Treasurer

OPTIMA COMMUNICATIONS, INC.

By: _____
Name: Joseph B. McCoy III
Title: President

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date first above written.

PIKES PEAK TELEVISION, INC.

By: _____
Name: J. Timothy Hannan
Title: Vice President, Secretary, Treasurer

OPTIMA COMMUNICATIONS, INC.

By: Joseph B. McCoy III
Name: Joseph B. McCoy III
Title: President