

(b) Additional Wire Transfer or Transfer of KPSW. Purchaser shall either:

(i) pay by wire transfer to City National Bank for credit as Sellers designate, the amount of the KPSW Cash Purchase Payment; or

(ii) take all steps necessary to place Apogeo Phoenix in actual possession and operating control of KPSW and deliver the following items as may be applicable in order to effect the transfer of the KPSW Property:

(A) General Assignment and Bill of Sale. General Assignment and Bill of Sale covering all of the assets of KPSW set forth in Schedule 2.1, substantially in the form attached hereto as Exhibit G (the “KPSW General Assignment and Bill of Sale”);

(B) Assignment and Assumption Agreement. Assignment and Assumption Agreement, covering all of the assumed liabilities of KPSW set forth in Schedule 2.1, substantially in the form attached hereto as Exhibit H (the “KPSW Assignment and Assumption Agreement”);

(C) Assignments of Leases. Assignments of all real property leases and personal property leases of KPSW set forth in Schedule 2.1;

(D) Other Conveyance Instruments. Such other specific instruments of sale, transfer, conveyance and assignment as Sellers may reasonably request;

(E) Other Documentation. Such other certificates, instruments or documents required pursuant to the provisions of this Agreement or otherwise necessary or appropriate to transfer KPSW in accordance with the terms hereof and consummate the Transaction, and to vest in Sellers and its successors and assigns full, complete, absolute, legal and equitable title to KPSW assets set forth in Schedule 2.1, free and clear of all Encumbrances.

(c) Certificate of Representations and Warranties. A Certificate executed on behalf of Purchaser by its authorized officer, certifying the matters in Section 9.2(a).

(d) Certificate of Good Standing. A certificate from the Secretary of State of Delaware as to Purchaser’s good standing.

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

Except as specifically set forth on Schedule 4 (the “Sellers Disclosure Schedule”) attached to this Agreement (the parts of which are numbered to correspond to the individual Section numbers of this Article 4), each Seller hereby jointly and severally represents and warrants (without limiting any other representations or warranties made by any Seller in this Agreement or any other Transaction Agreement) to Purchaser as follows:

##### **4.1 Organization, Good Standing, Qualification.**

The Sellers Disclosure Schedule sets forth each Seller’s jurisdiction of organization and each state or other jurisdiction in which each Seller is qualified to do business. Each Seller (a) is

formed as a limited liability company, duly organized and validly existing and in good standing under the laws of the state in which it is organized; (b) is duly qualified to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business (including the Business), the operation of its assets (including the Purchased Assets) or the ownership or leasing of its properties (including the Real Property and Personal Property) requires such qualification; and (c) has full power and authority required to own, lease and operate its assets and to carry on its business (including the Business) as now being conducted, except where the failure to have such power and authority would not have a Material Adverse Effect on each Seller.

#### **4.2 Charter Documents.**

(a) Each Seller has delivered to Purchaser accurate, correct and complete copies of its Organizational Documents, including all amendments thereto, as presently in effect.

(b) No Seller is in violation of any of the provisions of any of its Organizational Documents and to the Knowledge of Sellers, no condition or circumstance exists that likely would (with or without notice or lapse of time) constitute or result directly or indirectly in such a violation.

#### **4.3 Authority; Binding Nature of Agreements.**

Each Seller has all requisite power and authority to execute and deliver this Agreement and all other Transaction Agreements to which it is a party and to carry out the provisions of this Agreement and the other Transaction Agreements. The execution, delivery and performance by each Seller of this Agreement and the other Transaction Agreements have been approved by all requisite action on the part of such Seller. This Agreement has been duly and validly executed and delivered by each Seller. Each of this Agreement and the other Transaction Agreements constitutes, or upon execution and delivery, will constitute, the legal, valid and binding obligation of each Seller, enforceable against such Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors' rights generally and by general principles of equity.

#### **4.4 No Conflicts; Required Consents.**

The execution, delivery and performance of this Agreement or any other Transaction Agreement by any Seller do not and will not (with or without notice or lapse of time):

(a) conflict with, violate or result in any breach of (i) any of the provisions of any Seller's Organizational Documents; (ii) any resolutions; (iii) any of the terms or requirements of any Governmental Approval held by such Seller or any of its employees or that otherwise relates to the Business or any of the Purchased Assets or Assumed Liabilities; or (iv) except as set forth in Schedules 1.1(i)(i) and (i)(ii), any provision of any Assumed Contract;

(b) give any Governmental Authority (other than the FCC) or other Person the right to (i) approve the Transaction ; (ii) to each Seller's Knowledge exercise any remedy or obtain any relief under any Legal Requirement or any Order to which such Seller, or any of the

Purchased Assets or Assumed Liabilities, is subject; (iii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate, adversely modify or receive any payment under any Assumed Contract; (iv) revoke, suspend or modify any Governmental Approval; or (v) with respect to any Governmental Authority only, challenge the transaction;

(c) cause any Seller or Purchaser to become subject to, or to become liable for the payment of, any Tax (other than Transfer Taxes and Taxes arising in the ordinary course of business), or cause any of the Purchased Assets to be reassessed or revalued by any Tax Authority or other Governmental Authority;

(d) result in the imposition or creation of any Encumbrance other than Permitted Encumbrances upon or with respect to any of the Purchased Assets; or

(e) require any Seller to obtain any Consent or make or deliver any filing or notice to a Governmental Authority other than the FCC.

#### **4.5 Financial Statements; Projections**

(a) Sellers have previously delivered to Purchaser the following financial statements (collectively, the "Financial Statements"): (i) the unaudited balance sheets, and the related unaudited statements of operations of Sellers as of and for the fiscal years ended December 31, 2000 and 2001; and (ii) the unaudited balance sheets, and the related unaudited statements of operations and cash flows, of Sellers (the "Interim Balance Sheet") as of and for the eight (8) months ended August 31, 2002 (the "Interim Balance Sheet Date"). All of the Financial Statements (i) are true, accurate and complete in all material respects; (ii) are consistent with the Sellers' Books and Records; (iii) present fairly and accurately Sellers' financial condition as of the respective dates thereof and the Sellers' results of operations and cash flows for the periods covered thereby; and (iv) have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods covered; *provided, however*, that the Interim Balance Sheet is subject to year-end adjustments consistent with past practice (which will not be material individually or in the aggregate) and do not contain all of the footnotes required by GAAP and/or SAS 29. All reserves established by Sellers and set forth in the Interim Balance Sheet are adequate for the purposes for which they were established.

(b) Except as set forth on Schedule 4.5, from the Interim Balance Sheet Date, there has been no change in the financial condition, Business or assets of the Stations that would or could reasonably be expected to have a Material Adverse Effect, and each Seller has conducted the Business in the ordinary course of business and in the same manner as it was conducted before the Interim Balance Sheet Date in all material respects.

(c) The Sellers Disclosure Schedule sets forth an accurate, correct and complete breakdown and aging of each of the Sellers' accounts payable (including to all of its suppliers) as of August 31, 2002.

#### **4.6 Absence of Undisclosed Liabilities.**

No Seller has any Liabilities other than (a) those set forth in the Interim Balance Sheet; (b) those incurred in the ordinary course of business and not required to be set forth in the

Interim Balance Sheet under GAAP; (c) those incurred in the ordinary course of business since the Interim Balance Sheet Date; and (d) those incurred in connection with the execution of any of the Transaction Agreements.

#### **4.7 Absence of Changes.**

Since the Interim Balance Sheet Date, (a) each Seller has conducted the Business in the ordinary course of business; and (b) no Seller has taken any action, agreed to take any action, or omitted to take any action that would constitute a breach of Section 6.1 or 6.2 if such action or omission were taken between the date of this Agreement and the Closing Date.

#### **4.8 Transactions with Affiliates.**

Except as set forth in the Financial Statements and except for payments made pursuant to the South 33<sup>rd</sup> Lease, no Affiliate (a) owns, directly or indirectly, any debt, equity or other interest in any Entity with which any Seller is affiliated, has a business relationship or competes other than Affiliates that own less than five percent (5%) of the issued and outstanding capital stock of a publicly-traded competitor of Sellers; (b) is indebted to any Seller, nor is any Seller indebted (or committed to make loans or extend or guarantee credit) to any Affiliate other than with respect to such Seller's obligations to pay accrued salaries, reimbursable expenses or other standard employee benefits; (c) has any direct or indirect interest in any asset (including the Purchased Assets), property or other right used in the conduct of or otherwise related to the Business; (d) has any claim or right against any Seller, and no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for any claim or right in favor of any Affiliate against any Seller; (e) is a party to any Assumed Contract or has had any direct or indirect interest in, any Assumed Contract, transaction or business dealing of any nature involving any Seller; or (f) received from or furnished to any Seller any goods or services (with or without consideration) since the Interim Balance Sheet Date.

#### **4.9 Motor Vehicles.**

Schedules 1.1(h)(i) and (ii) set forth an accurate and complete list of all Owned and Leased Vehicles. All such Owned and Leased Vehicles are (a) properly licensed and registered in accordance with applicable law; (b) insured as set forth in the Sellers Disclosure Schedule; (c) in good operating condition and repair (reasonable wear and tear excepted); and (d) not subject to any Encumbrance.

#### **4.10 Assumed Contracts.**

(a) Schedules 1.1(i)(i) and (ii) set forth an accurate, correct and complete list of all Assumed Contracts other than Time Sales Agreements and certain Contracts that may be terminated without penalty on thirty (30) days or less notice and/or require monthly payments of \$750 or less;

(b) Sellers have delivered to Purchaser accurate, correct and complete copies of all the Assumed Contracts set forth on Schedule 1.1(i)(i) and (ii) (or written summaries of the

material terms thereof, if not in writing), including all amendments, supplements, modifications and waivers thereof;

(c) Each Assumed Contract is currently valid and in full force and effect, and is enforceable by Sellers in accordance with its terms (i) except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors' rights generally, including the effect of statutory and other laws regarding fraudulent conveyances and preferential transfers, and (ii) subject to the limitations imposed by general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity;

(d) (i) No Seller is in default, and no party has notified any Seller that it is in default, under any Assumed Contract. To the Knowledge of Sellers, no event has occurred, and no circumstance or condition exists, that might (with or without notice or lapse of time) (a) result in a violation or breach of any material provision of any Assumed Contract; (b) give any Person the right to declare a default or exercise any remedy under any Assumed Contract; (c) give any Person the right to accelerate the maturity or performance of any Assumed Contract or to cancel, terminate or modify any Assumed Contract; or (d) otherwise have a Material Adverse Effect on a Seller in connection with any Assumed Contract; and

(ii) No Seller has waived any of its material rights under any Assumed Contract.

(e) To the actual Knowledge of Sellers, each Person against which a Seller has or may acquire any rights under any Assumed Contract is (i) solvent and (ii) able to satisfy such Person's material obligations and liabilities to such Seller;

(f) To the Knowledge of Sellers, the performance of the Assumed Contracts will not result in any violation of or failure by any Seller to comply with any Legal Requirement; and

(g) The Assumed Contracts constitute all of the material Contracts necessary to enable Sellers to conduct the Business in the manner in which such Business is currently being conducted.

#### **4.11 Insurance.**

Each Seller, the Business and/or the Purchased Assets are insured against such risks as companies engaged in a similar business in accordance with prudent business practices customarily insure against the Business and/or the Purchased Assets (collectively, the "Insurance Policies"). Each Seller shall cause such insurance or comparable policies to be maintained in full force and effect in order to insure against any claim that is insurable for which the Sellers remain liable pursuant to Section 1.4. No Seller has received any notice of cancellation or non-renewal of any insurance policy. The consummation of the Transaction will not cause a breach, termination, modification, or acceleration of any Insurance Policy. There is no claim under any insurance policy as to which any insurer has questioned, disputed or denied Liability. No Seller has received any notice of a material increase in the premium for any insurance policy.

#### **4.12 Title; Sufficiency; Condition of Assets.**

(a) Sellers have good and marketable title to, are the exclusive legal and equitable owners of, and have the unrestricted power and right to sell, assign and deliver the Purchased Assets. The Purchased Assets are free and clear of all Encumbrances of any kind or nature, except (i) restrictions imposed in any Governmental Approval; (ii) Encumbrances disclosed on Schedule 4.12 which will be removed and released at or prior to Closing; and (iii) Permitted Encumbrances. Upon Closing, Purchaser will acquire exclusive, good and marketable title or license to or a valid leasehold interest in (as the case may be) the Purchased Assets and no restrictions will exist on Purchaser's right to resell, license or sublicense any of the Purchased Assets or Assumed Liabilities or engage in the Business arising solely as a result of such acquisition. For the avoidance of doubt, Purchaser acknowledges that certain of the Assumed Contracts contain restrictions on assignment and sublicensing as noted on Schedules 1.1(i)(i) and (ii).

(b) The Purchased Assets include all the assets necessary to permit Purchaser to conduct the Business after the Closing in a manner substantially equivalent to the manner as it is being conducted on the date of this Agreement in compliance in all material respects with all Legal Requirements and to perform all Assumed Liabilities.

(c) All Purchased Assets are (i) in operating condition and repair; ordinary wear and tear excepted; (ii) suitable and adequate for continued use in the manner in which they are presently being used; (iii) adequate to meet all present requirements of the Business; and (iv) free of any known defects (latent and patent).

#### **4.13 Real Property Leases; Personal Property Leases.**

(a) The Sellers own no Real Property.

(b) Schedules 1.1(g)(i) and (ii) set forth an accurate, correct and complete list of all Real Property Leases (including the street address of each Leased Real Property and the name of the lessor and lessee) and a list of Contracts affecting each Leased Real Property. The applicable Seller has been in lawful possession of the premises covered by each Real Property Lease since the commencement of the original term of such Lease. Sellers have delivered to Purchaser accurate, correct and complete copies of each Real Property Lease and copies of existing title insurance policies, title reports, surveys, Environmental Reports and Contracts in Sellers' possession, if any, for the real property subject to the Real Property Leases.

(c) Schedules 1.1(i) and (ii) set forth an accurate, correct and complete list of all Personal Property Leases. Sellers have delivered to Purchaser accurate, correct and complete copies of each Personal Property Lease. All Personal Property Leases are in good standing and are valid and effective in accordance with their respective terms and, to the Knowledge of Sellers, there exists no default thereunder or occurrence or condition which could result in a default thereunder or termination thereof.

#### **4.14 Intellectual Property.**

(a) Schedules 1.1(f)(i) and (ii) list all of the Seller's Intellectual Property, specifying in each case whether such Seller Intellectual Property is owned or controlled by or for, licensed to or otherwise held by or for the benefit of Sellers, including all Registered Intellectual Property Rights owned by, filed in the name of or applied for by Sellers and used in the Business.

(b) Each item of Seller Intellectual Property (i) is valid, subsisting and in full force and effect; (ii) has not been abandoned or passed into the public domain; and (iii) is free and clear of any Encumbrances.

(c) The Seller Intellectual Property constitutes all the Intellectual Property Rights used in and/or necessary to the conduct of the Business as it is currently conducted, and as it is currently planned or contemplated to be conducted by Sellers prior to the Closing.

(d) No Seller has Knowledge of any facts, circumstances or information that (i) would render any Seller Intellectual Property invalid or unenforceable; or (ii) would adversely affect or impede the ability of any Seller to use any Seller Intellectual Property in the conduct of the Business as it is currently conducted or as it is currently planned or contemplated to be conducted by Sellers prior to Closing.

(e) No Seller has made any claim of violation or infringement by others of its rights to or in connection with the Seller Intellectual Property Rights and knows of no basis for the making of any such claim.

(f) The operation of the Business as it is currently conducted, or as it is currently planned or contemplated to be conducted by Sellers prior to the Closing, does not and will not, infringe or misappropriate any Intellectual Property Rights of any Person, violate any right of any Person (including any right to privacy or publicity), defame or libel any Person or constitute unfair competition or trade practices under the laws of any jurisdiction, and no Seller has received notice from any Person claiming that such operation infringes or misappropriates any Intellectual Property Rights of any Person (including any right of privacy or publicity), or defames or libels any Person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does any Seller have Knowledge of any basis therefor).

(g) All Seller Intellectual Property will be fully transferable, alienable or licensable by Purchaser without restriction and without payment of any kind to any third party. The consummation of the Transaction as contemplated hereby will not result in any loss of, or the diminishment in value of, any Seller Intellectual Property or the right to use any Seller Intellectual Property.

(h) Neither this Agreement nor the Transaction, including the assignment to Purchaser, by operation of law or otherwise, of any Assumed Contracts will result in (i) Purchaser granting to any third party any right to, or with respect to, any Intellectual Property Right owned by, or licensed to, Purchaser; (ii) Purchaser being bound by, or subject to, any non-

compete or other restriction on the operation or scope of its businesses, including the Business; or (iii) Purchaser being obligated to pay any royalties or other amounts to any third party.

#### **4.15 Cable and Satellite Matters.**

(a) Schedule 4.15 sets forth:

(i) a list of all multichannel video programming distributors, including but not limited to, cable systems, SMATV, open video systems, MMDS, MDS and DBS systems (hereinafter "MVPDs") that carry the signal of KHRR and/or KDRX, and the channel on which each signal is carried;

(ii) a list of all MVPDs in the Tucson DMA to which Sellers have provided a must-carry notice or retransmission consent notice in accordance with the provisions of the Communications Act of 1934, as amended, and the rules and written policies of the FCC (the "Communications Act") for the current three-year election cycle ending December 31, 2002, and the upcoming three-year election cycle ending December 31, 2005, for cable systems, and the four-year election cycle ending December 31, 2005, for DBS systems, including a detailed description of the disposition and current status of each such must-carry or retransmission consent notice; and a list of all MVPDs in the Tucson DMA to which Sellers have not provided any such must-carry or retransmission consent notice;

(iii) a list of all retransmission consent and/or Copyright indemnification Contracts entered into with any MVPD in the Tucson and/or Phoenix DMAs with respect to KHRR or KDRX for the current three-year election cycle ending December 31, 2002, and the upcoming three-year election cycle ending December 31, 2005, for cable systems, and the four-year election cycle ending December 31, 2005, for DBS systems, and the expiration date for each such Contract; and

(iv) a list of all retransmission consent and/or Copyright indemnification Contracts entered into with any MVPD other than an MVPD in the Tucson or Phoenix DMA with respect to KHRR or KDRX as of the date of this Agreement and the expiration date for each such Contract.

(b) Sellers have delivered to Purchaser true and complete copies of all material notices, Contracts, correspondence and other items described in clauses (a)(i)-(iv) of this Section 4.15. Except as set forth on the Sellers Disclosure Schedule, consummation of the transactions contemplated hereunder will not require Consent of any Person with respect to carriage pursuant to a retransmission consent agreement on any MVPD identified on the Sellers Disclosure Schedule.

#### **4.16 Digital Build-Out and Operation of KHRR; Modifications to KDRX.**

(a) KHRR has been assigned digital channel 42 by the FCC for the provision of digital television service and is in compliance in all material respects with the FCC's build-out and operation requirements for digital television. Sellers are in the process of constructing the digital television facilities for KHRR and will continue such process until the Closing Date (the



“DTV Buildout”). Schedule 4.16(a) describes all material steps taken and to be taken by Sellers to comply with such requirements.

(b) Sellers are in the process of modifying the transmission facilities and the FCC Authorization for KDRX (the “KDRX Modifications”). Schedule 4.16(b) describes all material steps taken and to be taken by Sellers to implement the KDRX Modifications.

#### **4.17 Employees and Consultants.**

(a) Employees and Contracts. Except as set forth on Schedule 4.17(a), no employee of any Seller has been granted the right to continued employment by such Seller or to any material compensation following termination of employment with such Seller. No Seller has Knowledge that any employee or consultant of such Seller (collectively, the “Contractors”) intends to terminate his or her employment or other engagement with such Seller, nor does that Seller have a present intention to terminate the employment or engagement of any Contractor.

(b) Compensation. Schedule 4.17(b) sets forth an accurate, correct and complete list of all (i) employees of each Seller, including each employee’s name, title or position, present annual compensation (including bonuses, commissions and deferred compensation), accrued and unused paid vacation and other paid leave, years of service, and interests in any incentive compensation plan, and (ii) individuals who are currently performing services for any Seller related to the Business who are classified as “consultants” or “independent contractors,” including descriptions of the scope and material terms of such individual’s engagement. No employee of any Seller is eligible for payments that would constitute “parachute payments” under Section 280G of the Code.

(c) Disputes. There are no claims, disputes or controversies pending or, to the Knowledge of Sellers, threatened involving any employee or group of employees. No Seller has suffered or sustained any work stoppage and no such work stoppage is threatened.

(d) WARN Act. Each Seller is in full compliance with the Worker Readjustment and Notification Act (the “WARN Act”) (29 USC §2101), including all obligations to promptly and correctly furnish all notices required to be given thereunder in connection with any “plant closing” or “mass layoff” to “affected employees”, “representatives” and any state dislocated worker unit and local government officials. No reduction in the notification period under the WARN Act is being relied upon by any Seller. The Sellers Disclosure Schedule sets forth an accurate, correct and complete list of all employees terminated (except with cause, by voluntarily departure or by normal retirement), laid off or subjected to a reduction of more than 50% in hours or work during the two full calendar months and the partial month preceding this representation and warranty.

(e) Unions. No Seller has any collective bargaining agreements with any of its employees. There is no labor union organizing or election activity pending or, to the Knowledge of Sellers, threatened with respect to any Seller.

#### **4.18 Sellers' Benefit Plans.**

Each Seller has maintained and funded all of its Employee Benefit Plans (collectively, the "Sellers' Benefit Plans") in accordance with their terms and all applicable laws. No Seller nor any Member of the Controlled Group maintains or contributes to, or has ever maintained or contributed to, any Defined Benefit Plan or Multiemployer Plan. Nothing contained in any of the Sellers' Benefit Plans will obligate Purchaser to provide any benefits to employees, former employees or beneficiaries of employees or former employees, or to make any contributions to any plans from and after the Closing. There are no pending or, to Sellers' Knowledge, threatened, claims by or on behalf of any Seller Benefit Plan by any employee or former employee or beneficiary covered under any Seller Benefit Plan.

#### **4.19 FCC Authorizations; Governmental Approvals.**

(a) Schedule 1.1(a) contains an accurate, correct and complete list and summary description of all television broadcast licenses, construction permits, special temporary authorizations and other authorizations issued to any Seller by the FCC for the operation of the Stations, including any other Governmental Approvals issued to any Seller by the FCC authorizing any activity ancillary or incidental to the ownership or operation of the Stations and all antenna structure registrations required by the FCC (collectively, the "FCC Authorizations"). Each such FCC Authorization is valid and in full force and effect, and there is not pending or, to the Knowledge of Sellers, threatened any Proceeding which could result in the nonrenewal, suspension, termination, revocation, cancellation, limitation or impairment of any such FCC Authorization. No violations have been recorded in respect of any FCC Authorization, and Sellers know of no meritorious basis therefor. No fines or penalties are due and payable in respect of any FCC Authorization or any violation thereof.

(b) Sellers have made available to Purchaser accurate and complete copies of all of the FCC Authorizations including all renewals thereof and all amendments thereto. Subject only to the receipt of the FCC Consent, all FCC Authorizations are freely assignable to Purchaser.

(c) Schedule 4.19(c) discloses all Governmental Approvals (other than the FCC Authorizations) necessary to permit the Sellers to operate the Stations as the Stations are now being operated or otherwise in connection with Sellers' ownership and use of its properties or assets (including the Purchased Assets) or Sellers' operation of their businesses (including the Business). Sellers have made all Material filings with, and given all Material notifications to, all Government Authorities as required by all applicable Legal Requirements.

#### **4.20 Compliance with Laws.**

(a) Each Seller is, and at all times has been, in all material respects in compliance, with each Legal Requirement, including the Communications Act, that is applicable to such Seller or any of such Seller's properties, assets (including the Purchased Assets), operations or businesses (including the Business), and no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute, or result directly or indirectly in, a default under, a breach or violation of, or a failure to comply with, any

material Legal Requirement. No Seller has received any notice from any third party regarding any actual, alleged or potential violation of any material Legal Requirement.

(b) The Stations, their physical facilities, electrical and mechanical systems, and transmitting and studio equipment are operated in all material respects in accordance with the specifications of the FCC Authorizations and in accordance with the Communications Act. The antenna structures owned or used by any Seller are in compliance in all material respects with the Communications Act and the requirements of the Federal Aviation Administration. The locations of the Stations' main studios comply with the Communications Act. All reports and other filings required by the FCC with respect to the FCC Licenses and the Stations, including, without limitation, material required to be placed in the Stations' local public inspection files or other records, have been timely filed. All FCC regulatory fees assessed with respect to the FCC Authorizations have been timely paid.

(c) To the Knowledge of Sellers, no Governmental Authority has proposed or is considering any Legal Requirement that may affect any Seller, any Seller's properties, assets (including the Purchased Assets), operations or businesses (including the Business), or any Seller's rights thereto, except to the extent that any such Legal Requirement, if adopted or otherwise put into effect, individually or in the aggregate, will not have a Material Adverse Effect on Sellers. There is no FCC order, judgment, decree, notice of apparent liability or order of forfeiture outstanding, and no action, suit, notice of apparent liability, order of forfeiture, investigation or other Proceeding pending or, to Sellers' Knowledge, threatened, by or before the FCC against any Seller or affecting the FCC Authorizations, except FCC rulemaking proceedings generally affecting the television broadcast industry. No Seller has any Knowledge of any reason to believe that the FCC Authorizations will not be renewed in the ordinary course.

#### **4.21 Proceedings and Orders.**

(a) There is no Proceeding pending or, to the Knowledge of Sellers, threatened against or affecting any Seller, any of such Seller's properties, assets (including the Purchased Assets), operations or businesses (including the Business), or such Seller's rights relating thereto. To Sellers' Knowledge, no event has occurred, and no condition or circumstance exists, that might directly or indirectly give rise to or serve as a basis for the commencement of any such Proceeding. Sellers have delivered to Purchaser true, accurate and complete copies of all pleadings, correspondence and other documents relating to any such Proceeding. No insurance company has asserted in writing that any such Proceeding is not covered by the applicable policy related thereto.

(b) No Seller, none of their members, managers officers, agents or employees, nor any of each Seller's properties, assets (including the Purchased Assets), operations or businesses (including the Business), nor such Seller's rights relating to any of the foregoing, is subject to any Order or any proposed Order, except to the extent that any such proposed Order, if issued or otherwise put into effect, individually or in the aggregate, will not have a Material Adverse Effect on Sellers.

#### **4.22 Environmental Matters.**

(a) Each Seller is in compliance in all material respects with all applicable Environmental and Safety Laws that relate to the Stations, the Leased Real Property, the Business or the operation of the Business, including, but not limited to, possession of all, and compliance with any, permits or other authorizations of any Governmental Authority required under applicable Environmental and Safety Laws or the terms and conditions thereof, except where noncompliance with Environmental and Safety Laws or failure to possess or comply with permits or other governmental authorizations is not reasonably likely to have a Material Adverse Effect;

(b) No Seller has received any communication or notice, whether from a Governmental Authority or any other Person, alleging any violation of or noncompliance with any Environmental and Safety Law by any Sellers or for which it is responsible, and which relate to the Leased Real Property, the Business or the operation of the Business;

(c) There is no pending or, to the Knowledge of Sellers, no threatened claim, action, investigation or notice against or involving Sellers relating to the Leased Real Property, the Business or the operation of the Business by any Person or Entity alleging Liability under or a violation of any Environmental and Safety Law or Liability or for investigatory, cleanup or governmental response costs, or natural resources or property Damages, or personal injuries, attorneys' fees or penalties relating to the presence or release into the environment of any Materials of Environmental Concern at any location (an "Environmental Claim"); and

(d) To the Knowledge of Sellers, there are no past or present facts or circumstances that are reasonably likely to form the basis of any Environmental Claim.

#### **4.23 Taxes.**

(a) No claim has ever been made by any Governmental Authority in a jurisdiction where such Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. Schedule 4.23 lists Tax Returns filed by each Seller for taxable periods since 1999 and certain reports used to support these and other Tax Returns filed by Sellers. Sellers have delivered or made available to Purchaser correct and complete copies of all Tax Returns and other reports listed on Schedule 4.23.

(b) Each Seller has prepared and timely filed or caused to be timely filed, or will have prepared and timely filed or caused to be timely filed before the Closing Date, all Tax Returns required to be filed through the Closing Date, and such Tax Returns are and will be true, correct and complete in all respects. All Taxes owed by any Seller for periods covered by such Tax Returns (regardless of whether such Taxes are shown on such Tax Returns), and all claims, demands, assessments, judgments, costs and expenses connected therewith, have been paid in full or will have been paid in full on a timely basis before the Closing Date. Except as disclosed on Schedule 4.23, no Seller is a party to any action or Proceeding, nor to the Knowledge of Sellers, is any such action or Proceeding contemplated or threatened against any Seller for the assessment or collection of any Taxes, and no written deficiency notices or reports have been received by any Seller in respect of any Taxes. There are no outstanding agreements or waivers

extending the statutory period of limitation applicable to any Tax Return of any Seller. Each Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. No Seller has Liability for unpaid Taxes accruing after the Interim Balance Sheet Date, except for Taxes incurred in the ordinary course of business. There are no liens for Taxes on the properties other than liens for Taxes not yet due and payable.

(c) No Seller is obligated under any agreement, contract or arrangement that may result in the payment of any amount that would not be deductible by reason of Section 280G (if a Seller were treated as a corporation for federal income tax purposes) or Section 404 of the Code.

(d) No Seller is a party to or bound by any tax indemnity agreement, tax sharing agreement or similar contract. Except with respect to its own status, no Seller is a party to any joint venture, partnership, or other arrangement or contract which could be treated as a partnership or "disregarded entity" for federal income tax purposes.

(e) Sellers have treated themselves as owners of each of the Purchased Assets for Tax purposes. None of the Purchased Assets is the subject of a "safe-harbor lease" within the provisions of former Section 168(f)(8) of the Code, as in effect prior to amendment by the Tax Equity and Fiscal Responsibility Act of 1982. None of the Purchased Assets directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the Code. None of the Purchased Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(f) Each Seller is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

(g) Each Seller is and, at all times since its formation, has been properly classified as a "disregarded entity" for all federal and state income Tax purposes, and no elections have been made with respect to such Seller under United States Treasury Regulation Section 1.7701-3.

#### **4.24 Brokers.**

No Seller nor any of their Affiliates has entered into any Contract or arrangement entitling any agent, broker, investment banker, financial advisor or other firm or Person to any brokers' or finders' fee or any other commission or similar fee in connection with the transactions contemplated by this Agreement, except for Kalil & Co., Tucson, Arizona, the fees and expenses of which shall be paid by Sellers.

#### **4.25 Solvency.**

No Seller is entering into the Transaction with the intent to hinder, delay or defraud any Person to which it is, or may become, indebted. The Purchase Price is not less than the reasonably equivalent value of the Purchased Assets less the Assumed Liabilities. Sellers' assets, at a fair valuation, exceed its liabilities, and each Seller is able, and will continue to be

able after the Closing of the Transaction, to meet its debts as they mature and will not become insolvent as a result of the Transaction.

#### **4.26 Must-Carry Elections.**

Sellers have elected must-carry status of KHRR on cable systems operating in the Tucson DMA which provide service to at least ninety percent (90%) of the cabled homes in such DMA.

#### **4.27 Full Disclosure.**

(a) Neither this Agreement nor any of the other Transaction Agreements, (i) contains or will contain as of the Closing Date any untrue statement of fact or (ii) omits or will omit to state any material fact necessary to make any of the representations, warranties or other statements or information contained herein or therein (in light of the circumstances under which they were made) not misleading.

(b) To the Knowledge of Sellers as of the date of this Agreement, there is no fact that may have a Material Adverse Effect on Sellers.

(c) All of the information set forth in the Sellers Disclosure Schedule, and to Seller's Knowledge all other information regarding any Seller or such Seller's properties, assets (including the Purchased Assets), operations, businesses (including the Business), Liabilities, financial performance, net income and prospects that has been furnished to Purchaser or any of its Representatives by or on behalf of any Seller or any Seller's Representatives, is accurate, correct and complete in all material respects.

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

Except as specifically set forth on Schedule 5 (the "Purchaser Disclosure Schedule") attached to this Agreement (the parts of which are numbered to correspond to the applicable Section numbers of this Agreement), Purchaser hereby represents and warrants as of the date hereof to Sellers as follows:

#### **5.1 Organization; Good Standing; Qualification.**

Purchaser (a) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware (b) is duly qualified to conduct business and is in good standing under the laws of Arizona; and (c) has full power and authority required to own, lease and operate the Purchased Assets and to carry on the Business as now being conducted, except where the failure to have such power and authority would not have a Material Adverse Effect.

#### **5.2 Charter Documents.**

Purchaser is not in violation of any of the provisions of any of its Organizational Documents and to the Knowledge of Purchaser, no condition or circumstance exists that likely would (with or without notice or lapse of time) constitute or result directly or indirectly in such a violation.

### **5.3 Authority; Binding Nature of Agreements.**

Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and all other Transaction Agreements to which it is a party and to carry out the provisions of this Agreement and the other Transaction Agreements. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Agreements have been approved by all requisite action on the part of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser. Each of this Agreement and the other Transaction Agreements constitutes, or upon execution and delivery, will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors' rights generally and by general principles of equity.

### **5.4 No Conflicts; Required Consents.**

The execution, delivery and performance of this Agreement or any other Transaction Agreement by Purchaser do not and will not (with or without notice or lapse of time):

(a) conflict with, violate or result in any breach of (i) any of the provisions of Purchaser's Certificate of Incorporation or bylaws; (ii) any resolutions adopted by Purchaser's stockholders, or its board of directors or committees thereof; (iii) any of the terms or requirements of any Governmental Approval held by Purchaser or any of its employees or that otherwise relates to Purchaser's business; or (iv) any provision of a Contract to which Purchaser is a party;

(b) give any Governmental Authority (other than the FCC) or other Person the right to (i) approve or challenge the Transaction; (ii) exercise any remedy or obtain any relief under any Legal Requirement or any Order to which Purchaser or any of its assets is subject; (iii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate or adversely modify any Contract to which Purchaser is a party; or (iv) revoke, suspend or modify any Governmental Approval;

(c) require Purchaser to obtain any Consent or make or deliver any filing or notice to a Governmental Authority (other than the FCC); or

(d) cause any Seller or Purchaser to become subject to, or to become liable for the payment of, any Tax (other than Transfer Taxes), or cause any of the Purchased Assets to be reassessed or revalued by any Tax Authority or other Governmental Authority.

### **5.5 Brokers.**

Neither Purchaser nor any of its Affiliates has entered into any Contract or arrangement entitling any agent, broker, investment banker, financial advisor or other firm or Person to any brokers' or finders' fee or any other commission or similar fee in connection with the transactions contemplated by this Agreement.

## **5.6 FCC Qualification.**

Purchaser is legally, technically, financially and otherwise qualified under the Communications Act to acquire the FCC Authorizations and to own and operate the Stations.

## **5.7 Absence of Litigation.**

There are no Proceedings pending against or, to Purchaser's Knowledge, threatened against Purchaser before any Governmental Authority that in any manner challenge or seeks to mirror prevent, enjoin, alter or delay materially the transactions contemplated by this Agreement.

## **5.8 Full Disclosure.**

None of the representations and warranties contained in this Article 5, when all such representations and warranties are read together in their entirety, (i) contains any untrue statement of fact or (ii) omits or will omit to state any fact necessary to make such representations and warranties (in light of the circumstances under which they were made) not misleading.

# **ARTICLE 6. PRE-CLOSING COVENANTS**

## **6.1 Sellers' Conduct of the Business Prior to Closing.**

Unless otherwise consented to by Purchaser (such consent not to be unreasonably withheld) and except as otherwise permitted under the Pre-Closing LMAs (if any), from the date of this Agreement until the Closing Date, Sellers shall, and shall cause their members, directors, officers or managers, as the case may be, and employees, to:

(a) Conduct the Business in the ordinary course of business and in material compliance with Legal Requirements (for purposes of this Section 6.1(a), "ordinary course of business" shall include, but not be limited to: (i) compliance with the material terms of the affiliation agreement for KHRR with Telemundo Network Group LLC ("Telemundo") dated as of April 1, 1999 as amended April 11, 2001; (ii) compliance with the material terms of the affiliation agreement for KDRX with Telemundo dated as of November 9, 1998 (collectively, the "Affiliation Agreements"); (iii) funding of the marketing/promotional plan developed for the Stations for the November 2002 "sweeps" period; (iv) use of Commercially Reasonable Efforts with the assistance of Purchaser to continue production and broadcast of news programs; and (v) ongoing promotional and community service activities);

(b) Pay all of its Liabilities and Taxes when due, subject to good faith disputes over such Liabilities or Taxes;

(c) Utilize the film rights and packages, if any, of the Stations and make all payments on film and programming rights and Contracts in the ordinary course of business and consistent with Sellers' past practice;



(d) Provide Purchaser with prompt notice of opportunities, if any, to acquire film and program packages for the Stations and consult with Purchaser regarding the acquisition of film and program rights and packages having a term of more than two (2) months;

(e) Take all appropriate, reasonable action in the ordinary course of business and in accordance with FCC guidelines to protect the service areas of the Stations from objectionable or unlawful interference from other stations;

(f) Maintain insurance coverage in amounts adequate to cover the reasonably anticipated risks of Sellers; use Commercially Reasonable Efforts, consistent with Sellers' past practice, to (i) preserve intact all rights of the Business to retain its employees; and (ii) maintain good relationships with employees, licensors, licensees, suppliers, contractors, distributors, customers, and others having business dealings with the Business;

(g) Use Commercially Reasonable Efforts to (i) continue the DTV Buildout in accordance with Schedule 4.16(a), and (ii) complete the KDRX Modifications in accordance with Schedule 4.16(b) prior to Closing; *provided, however*, that Purchaser may assist with the DTV Buildout and will reimburse Sellers for reasonable, documented expenses approved by Purchaser in advance and associated with the DTV Buildout as part of the Prorated Obligations in accordance with the DTV Buildout procedures set forth in Schedule 4.16(a); and

(h) Provide Purchaser with full access and information rights with respect to all of the Stations' facilities and operations provided such rights are exercised upon reasonable notice to Sellers and do not unreasonably interfere with operations of the business.

## **6.2 Restrictions on Sellers' Conduct of the Business Prior to Closing.**

From the date of this Agreement until the Closing Date, except as otherwise permitted under the Pre-Closing LMAs, Seller shall, and each Seller shall cause its members, managers, officers, and employees, not to:

(a) Enter into, create, incur or assume (i) any borrowings under capital leases or (ii) any obligations which would have a Material Adverse Effect on Sellers or Purchaser's ability to conduct the Business in substantially the same manner and condition as currently conducted by Sellers;

(b) Acquire by merging or consolidating with, or by purchasing any equity securities or assets (which are material, individually or in the aggregate, to Sellers) of, or by any other manner, any business or any Entity;

(c) Sell, transfer, lease, license or otherwise encumber any of its material assets (including the Purchased Assets), except for the sale of inventory and disposition of surplus equipment and other surplus personal property no longer used in the Business in the ordinary course of business;

(d) Take any action not consistent with the past practice of the applicable Seller and not announced prior to the date of this Agreement with respect to the customers,

suppliers or distributors of Sellers, including providing promotions, coupons or discounts or make or agree to any price increases or decreases other than in the ordinary course of business;

(e) Enter into any Contracts or commitments with another Person that are to be assumed by Purchaser at the Closing, except for those entered into on commercially reasonable terms either arising in the ordinary course of business or which are specified on Schedule 4.16(a) and (b);

(f) Enter into any Contracts for the sale of advertising time that contemplate or require any commercial inventory make-goods after the Closing Date except as consistent with past practice of the applicable Seller;

(g) Violate any Legal Requirement applicable to Sellers;

(h) Breach in any material respect that could give cause for termination, terminate or amend any Assumed Contract or Governmental Approval;

(i) Fail to file any report or pay any FCC regulatory or filing fee pertaining to the Stations which is required to be filed with or paid to the FCC or operate the Stations in any material respect other than in accordance with the Communications Act and the FCC Authorizations;

(j) (i) Cause the FCC to institute any Proceedings for the cancellation, revocation, nonrenewal or modification (except as necessary for the DTV Buildout or the KDRX Modifications) of the FCC Authorizations or (ii) take or permit to be taken any other action within its control that results in material non-compliance with requirements of the Communications Act;

(k) Enter into, amend or extend any trade or barter Contracts with respect to the sale of advertising time, which create any obligations or liabilities of the Stations, except in the ordinary course of business or except for advertising time which Seller reasonably anticipates will have been expended prior to the Closing Date; *provided, however*, Sellers shall use Commercially Reasonable Efforts to bring the accounts for such Contracts into balance as of the Closing Date;

(l) Commence a Proceeding other than for (i) the routine collection of Receivables or (ii) injunctive relief on the grounds that any Seller has suffered immediate and irreparable harm not compensable in money Damages if such Seller has obtained the prior written Consent of Purchaser;

(m) Declare, authorize, pay or make any distributions to the members, directors, officers or managers, as the case may be except with respect to any proceeds from the sale of the Designated LPTVs or from an LMA;

(n) Purchase, lease, license or otherwise acquire any assets, except (i) for supplies acquired by any Seller in the ordinary course of business, (ii) as reasonably required for the sale or operation of the Designated LPTVs during the Designated LPTV Sale Period, or (iii) as contemplated for the DTV Buildout or for the KDRX Modifications;

(o) Without prior notice to Purchaser, write off as uncollectible, or establish any extraordinary reserve with respect to, any Receivable or other indebtedness in excess of \$25,000, individually or in the aggregate;

(p) Provide any credit, loan, advance, guaranty, endorsement, indemnity, warranty or mortgage to any Person, including any of the customers, members, directors, officers, managers, or employees of any Seller, other than those made in the ordinary course of business;

(q) Borrow from any Person by way of a loan, advance, guaranty, endorsement, indemnity, or warranty other than in connection with operation of the Business in the ordinary course, consistent with past practice of the applicable Seller, and as necessary in connection with the KDRX Modifications or the DTV Buildout;

(r) Discharge any Encumbrance, indebtedness or other Liability in excess of \$25,000, individually or in the aggregate, except for Liabilities reflected or reserved against in the Financial Statements and accounts payable in the ordinary course of business;

(s) Change its credit practices, accounting methods or practices or standards used to maintain its books, accounts or business records;

(t) Change the terms of its accounts or other payables or Accounts Receivable or take any action directly or indirectly to cause or encourage any acceleration or delay in the payment, collection or generation of its accounts or Accounts Receivable except as consistent with Sellers' past practice;

(u) Make any material change affecting the Business, including (i) changes in management organization or personnel arrangements with sales brokers, advertising agencies, market research projects, or advertising and promotion budgets; (ii) changes in discretionary costs, such as advertising, maintenance and repairs and training; (iii) any capital expenditures or deferrals of capital expenditures except as except as contemplated for the DTV Buildout or the KDRX Modifications; or (iv) other than in the ordinary course of business, change any of its business policies, including, advertising, investments, marketing, programming, pricing, purchasing, production, personnel, sales, returns, budget or product acquisition policies;

(v) Amend its Organizational Documents;

(w) Hire any new employee other than in the ordinary course of business, terminate any key employee of any Seller, increase the annual level of compensation of any existing employee other than as required by a Contract in effect on the date of this Agreement or in accordance with the prior salary review processes of the applicable Seller, establish or adopt any Employee Benefit Plan, or grant any bonuses, benefits or other forms of direct or indirect compensation to any employee, member, director, officer, manager or consultant other than as required by a Contract in effect on the date of this Agreement or in accordance with the prior compensation policies and practices of the applicable Seller;

(x) Make any severance payments to any employee, member, director, officer or manager except payments made pursuant to written Contracts outstanding as of the date of

this Agreement or pursuant to Seller's employee handbook (a true and correct and complete copy of which has been previously provided to Purchaser) and in the ordinary course of business;

(y) Make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any amendment to a Tax Return, enter into any closing Contract, settle any claim or assessment in respect of Taxes, or Consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(z) Fail to maintain the Purchased Assets in operating condition, reasonable wear and tear excepted and consistent with Sellers' past practice; or

(aa) Enter into any Contract or agree, in writing or otherwise, to take any of the actions described in this Section 6.2, or any action that would make any of its representations or warranties contained in this Agreement untrue or incorrect in any material respect or prevent it from performing or cause it not to perform its covenants hereunder.

### **6.3 No Solicitation.**

Except as necessary to obtain a purchaser for KPSW, KDRX, KQBN-LP or K43GV, until the earlier of (a) the Closing and (b) the termination of this Agreement pursuant to its terms, no Seller shall, and each Seller shall cause its Representatives not to, directly or indirectly, (i) initiate, solicit or encourage (including by way of furnishing information regarding the Business or the Purchased Assets or Assumed Liabilities) any inquiries, or make any statements to third parties which may reasonably be expected to lead to any proposal concerning the sale of Apogeo Tucson, Apogeo Phoenix, the Business or the Purchased Assets or Assumed Liabilities (whether by way of merger, or purchase of assets or otherwise) (a "Competing Transaction"); or (ii) hold any discussions or enter into any Contracts with, or provide any information or respond to, any third party concerning a proposed Competing Transaction or cooperate in any way with, agree to, assist or participate in, solicit, consider, entertain, facilitate or encourage any effort or attempt by any third party to do or seek any of the foregoing. If at any time prior to the earlier of (x) the Closing and (y) the termination of this Agreement pursuant to its terms, any Seller is approached in any manner by a third party concerning a Competing Transaction (a "Competing Party"), such Seller shall promptly inform Purchaser regarding such contact and furnish Purchaser with a copy of any inquiry or proposal, or, if not in writing, a description thereof, including the name of such Competing Party, and such Seller shall keep Purchaser informed of the status and details of any future notices, requests, correspondence or communications related thereto.

### **6.4 Certain Notifications.**

From the date of this Agreement until the Closing, each Seller and Purchaser shall promptly notify the other parties to this Agreement in writing regarding any:

(a) Material action taken by any Seller not in the ordinary course of business or circumstance or event that could reasonably be expected to have a Material Adverse Effect on the Business;

(b) Material action by the disclosing party or material fact, circumstance, event, (i) which, if known on the date of this Agreement, would have been required to be disclosed in or pursuant to this Agreement; or (ii) the existence, occurrence, or taking of which would result in any of the representations and warranties of such party contained in this Agreement or in any Transaction Agreement not being true and correct when made or at Closing;

(c) Breach of any covenant or obligation of such party hereunder;

(d) Circumstance or event which will result in, or could reasonably be expected to result in, the failure of such party to timely satisfy any of the closing conditions specified in Article 9 of this Agreement;

(e) Any actions, suits or Proceedings threatened against or affecting the Business or the assets or properties of the Stations, in any court, or before any arbitrator, or before or by any Governmental Authority;

(f) Termination or any threatened termination of any Assumed Contract or other right which is necessary for the ownership by Purchaser of any of the Purchased Assets or the operation by Purchaser following the Closing Date of any of the Business;

(g) Any notice or other communication from any third party alleging that the Consent of such third party is or may be required in connection with the transactions contemplated by this Agreement; and

(h) Any notice or other communication from the FCC or any other Governmental Authority relating to the FCC Authorizations or any approval or Consent being sought in connection with the transactions contemplated by this Agreement.

## **6.5 Risk of Loss.**

The risk of any loss, damage or impairment, confiscation or condemnation of the Purchased Assets or any part thereof from fire or any other casualty or cause shall be borne by Sellers at all times prior to Closing.

(a) If the Purchased Assets are damaged or destroyed by fire or other casualty or cause between the date hereof and the Closing Date and the repair cost, individually or in the aggregate (the "Repair Cost"), will exceed \$300,000, Purchaser shall have the option: (i) to require that the damages be repaired at least fifteen (15) days prior to Closing; provided that if such damage cannot be reasonably repaired within such period, the Closing shall be deferred until the date which is fifteen (15) days after the Purchased Assets are repaired, but subject always to Purchaser's and Sellers' rights under Section 10.1(f) to terminate this Agreement after a specified date, or (ii) to accept the Purchased Assets in their damaged or destroyed condition without a reduction in the Purchase Price (except the amount of any insurance deductible) but with Sellers assigning or delivering to Purchaser all of Sellers' rights to any insurance proceeds for such damage or destruction. Sellers shall promptly notify Purchaser in writing of any fire or other casualty occurring with respect to the Purchased Assets. Each Seller shall provide Purchaser and its agents and contractors with access to any damaged Purchased Assets

following any fire or other casualty so that Purchaser can obtain an estimate of the Repair Cost after Sellers notify Purchaser of the fire or other casualty.

(b) If any of the Purchased Assets are damaged or destroyed by fire or other casualty or cause between the date hereof and the Closing Date and the Repair Cost is equal to or less than \$300,000, Purchaser shall have the option: (i) to accept the Purchased Assets in their damaged or destroyed condition and reduce the Purchase Price by the Repair Cost; or (ii) to accept the Purchased Assets in their damaged or destroyed condition without a reduction in the Purchase Price but with Sellers assigning or delivering to Purchaser all of Sellers' rights to any insurance proceeds for such damage or destruction.

(c) If Purchaser elects to have Sellers repair such damage under Section 6.5(a)(i), all repairs shall be (i) completed in a good and workmanlike manner, using materials, labor and finishes resulting in the completed repairs being of the same or better quality than immediately prior to the damage; and (ii) subject to the reasonable approval of Purchaser.

(d) If any condemnation Proceedings are instituted, or notice of intent to condemn is given, with respect to any Real Property or portion thereof, Sellers shall promptly notify Purchaser thereof. If such condemnation applies to a substantial portion of such Real Property, so that the condemnation would render the balance of the Real Property not reasonably suitable for Purchaser's purposes, then Purchaser shall have the option: (i) to terminate this Agreement; (ii) to consummate the purchase and reduce the Purchase Price by an amount equal to the diminution in value of such Real Property; or (iii) to consummate the purchase without a reduction in the Purchase Price but with Sellers assigning or delivering to Purchaser the condemnation award. If such condemnation does not apply to a substantial portion of the Real Property, then Purchaser shall have the option: (i) to consummate the purchase and reduce the Purchase Price by an amount equal to the diminution in value of such Real Property; or (ii) to consummate the purchase without a reduction in the Purchase Price but with Sellers assigning or delivering to Purchaser the condemnation award. Prior to Closing, each Seller shall not agree to or accept any compromise or condemnation award without obtaining Purchaser's written Consent thereto.

## **6.6 Broadcast Transmission Interruption.**

Notwithstanding any provision of this Agreement to the contrary, Sellers shall promptly notify Purchaser if the Stations' normal broadcast transmission is interrupted, interfered with or in any way impaired and shall describe the measures being taken to correct such problem, *provided, however*, that, except as may be required for the DTV Buildout contemplated under Schedule 4.16(a) or the KDRX Modifications contemplated under Schedule 4.16(b), which schedules set forth maximum permissible broadcast transmission interruption periods in connection with such undertakings, (a) if any Station shall be off the air for more than twenty-four (24) consecutive hours, or (b) if more than four (4) such events occur within any sixty (60) day period, then Purchaser shall have the right to terminate this Agreement without further obligation to Sellers, for a period of thirty (30) Business Days after receiving notice from Sellers of such occurrences described in clauses (a) or (b), and the thirty (30) day cure provision set forth in Section 10.1(b) shall not apply. If the Purchaser chooses not to terminate this Agreement pursuant to this Section 6.6, the Closing shall be deferred until the later of (i) the date which is

five (5) days after the end of the termination period set forth above, or (ii) the date on which all other conditions to Closing have been satisfied, but subject always to Purchaser's and Sellers' rights under Section 10.1(f) to terminate this Agreement after a specified date

#### **6.7 Updating the Sellers Disclosure Schedule.**

If at Closing any event, condition, fact or circumstance that is required to be disclosed pursuant to Section 6.4 would require a change to the Sellers Disclosure Schedule if the Sellers Disclosure Schedule were dated as of the date of the Closing, then Sellers shall deliver to Purchaser an update to the Sellers Disclosure Schedule specifying such change and shall use Commercially Reasonable Efforts to remedy the same, as applicable, *provided, however*, that no such update shall be deemed to supplement or amend the Sellers Disclosure Schedule for the purpose of (a) determining the accuracy of any of the representations and warranties made by Sellers in this Agreement or (b) determining whether any of the conditions set forth in Article 9 have been satisfied.

#### **6.8 Access to Information.**

From the date of this Agreement until the Closing, Sellers shall (a) permit Purchaser and its Representatives to have free and complete access during regular business hours, and in a manner so as not to interfere with the normal business operations of Sellers, to all premises, properties, personnel, books, records (including Tax records for the Stations), Contracts, and documents of or pertaining to Sellers; (b) furnish Purchaser with all financial, operating and other data and information related to the Business (including copies thereof), as Purchaser may reasonably request; and (c) otherwise cooperate and assist, to the extent reasonably requested by Purchaser, with Purchaser's investigation of the Business, the Purchased Assets and the Assumed Liabilities.

#### **6.9 FCC Application.**

Within five (5) Business Days of the execution of this Agreement, Sellers and Purchaser shall jointly prepare and file with the FCC complete and accurate applications requesting the FCC Consent to the assignment of (a) the FCC Authorizations from Seller to Purchaser or its permitted assign as contemplated herein and (b) the KPSW Authorization from Purchaser to Seller or its permitted assign (collectively, the "FCC Application"). Sellers and Purchaser shall each pay one-half of all FCC filing fees in connection with the FCC Application. Each party shall notify the other party hereto in the event it becomes aware of any facts, actions, communications or occurrences that might directly or indirectly affect the parties' ability to obtain the FCC Consent. Sellers and Purchaser shall diligently take all necessary, desirable and appropriate actions, provide any additional information reasonably required or requested by the FCC and otherwise use their Best Efforts to obtain the FCC Consent. Sellers and Purchaser shall oppose any petitions to deny or other objections filed with respect to the FCC Application, *provided, however*, that no Seller nor Purchaser shall have any obligation to participate in any evidentiary hearing on the FCC Application or to pay a third party to obtain an FCC Consent.

#### **6.10 Consents.**

As promptly as possible after the date of this Agreement, Sellers shall use Best Efforts to obtain all Consents and make and deliver all filings and notices listed or required to be listed on Schedule 6.10, and Purchaser shall use its Best Efforts to obtain all Consents and make and deliver all filings and notices listed or required to be listed on Schedule 6.10. Purchaser shall not be required to (a) agree to any material changes in, or the imposition of any material condition to the transfer to Purchaser of, any Assumed Contract or Governmental Approval as a condition to obtaining any Consent except as required by the existing terms of the Assumed Contract; or (b) dispose of or make any changes to its business, expend any material funds or incur any other burden in order to comply with this Section 6.10.

#### **6.11 Possession and Control of the Stations.**

Notwithstanding any other provision of this Agreement, between the date of execution of this Agreement and the Closing Date, Sellers shall retain ultimate control over the management and operation of the Stations.

#### **6.12 Environmental Reports.**

Purchaser may in its discretion within forty-five (45) days after the date of this Agreement retain a consultant to conduct at its expense a Phase I environmental assessment of the Real Property, the Personal Property or the Leased Real Property and to prepare a report describing all activities and the results of such evaluation and presenting recommendations for any future work, if necessary (the "Environmental Reports"). Sellers shall provide reasonable access to all such property for purposes of evaluation and testing required for preparation of the Environmental Reports. Seller shall cooperate with Purchaser or Purchaser's Representatives in preparation of the Environmental Reports and Purchaser shall provide Sellers with a copy of such Environmental Reports within ten (10) days of their receipt by Purchaser. Sellers and Purchaser shall jointly agree on an appropriate cure for any violation or condition requiring remediation under any applicable Environmental and Safety Law and Sellers shall effect such cure to Purchaser's satisfaction prior to the Closing Date.

#### **6.13 Election to Contribute KPSW.**

Purchaser shall prior to October 15, 2002, notify the Sellers in writing whether it will pay cash or contribute KPSW pursuant to Section 2.1. In the event Purchaser elects to contribute KPSW, Purchaser will (i) within 5 days after Purchaser's election to contribute KPSW, prepare a list of assets in form and substance reasonably satisfactory to the Purchaser identifying the property related to the use of KPSW which will be transferred to Seller at the Closing, but which at a minimum shall include those assets set forth on Schedule 6.13(a) (the "KPSW Property") at Closing; and (ii) at Closing, shall provide Seller with the representations and warranties set forth on Schedule 6.13(b), if relevant, with respect to the KPSW Property to be transferred to Seller. In the event Purchaser's election to pay cash rather than contribute KPSW post-dates the filing of the FCC Application, Sellers and Purchaser shall jointly request the FCC to dismiss the FCC Application filed with respect to KPSW.