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**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**ELCOM OF SOUTH DAKOTA, INC.**

**AND**

**SOUTH DAKOTA TELEVISION, L.L.C.**

Dated as of December 10, 2003

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT, dated as of December 10, 2003, is entered into by and between ELCOM OF SOUTH DAKOTA, INC., a Delaware corporation ("Seller"); and SOUTH DAKOTA TELEVISION, L.L.C., a Delaware limited liability company ("Buyer").

### WITNESSETH:

WHEREAS, Seller owns and operates television station KSFY-TV, Sioux Falls, South Dakota and satellite television stations KPRY-TV, Pierre, South Dakota and KABY-TV, Aberdeen, South Dakota (collectively, the "Stations") pursuant to licenses issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Seller desires to sell, transfer, convey and assign to Buyer, and Buyer desires to purchase and acquire from Seller, substantially all of the assets used or held for use in the operation of any or all of the Stations on the terms and subject to the conditions set forth herein;

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

### ARTICLE I DEFINITIONS

**SECTION 1.1. Definitions.** When used in this Agreement, the following terms shall have the meanings specified below:

"ABC" shall mean, as the context shall require, American Broadcasting Companies, Inc. and/or the ABC Television Network.

"Accounts Payable" shall mean all current film obligations, accounts payable and accrued expenses of the Stations incurred in the ordinary course of business, it being acknowledged and agreed that that Accounts Payable shall not include any indebtedness for borrowed money, current debt, interest payable, taxes payable, intercompany payables, other current liabilities or Trade Payables.

"Accounts Receivable" shall mean all accounts receivable, billed and unbilled, with respect to any or all of the Stations, including all rights to receive payments under any notes, bonds and other evidences of indebtedness and all other rights to receive payments with respect to the conduct of the business of any or all of the Stations by Seller, including, without limitation, the sale of any advertising broadcast by any or all of the Stations, prior to such time. Accounts Receivable shall also be deemed to include any and all collections, payments or proceeds of, from or in respect of such accounts receivable.

"Additional Community Television Documents" shall mean the following documents, instruments and agreements delivered by Seller to Buyer after the date hereof: (i) tax returns of Community Television for the taxable years ending December 31, 2000, December 31, 2001 and December 31, 2002; (ii) Community Television's current lease with KELO-TV/Midcontinent; and (iii) additional corporate minutes and the stock book of Community Television.



"Adjustment Amount" shall have the meaning set forth in Section 2.4(b)(iii).

"Adjustment List" shall have the meaning set forth in Section 2.4(b)(iii).

"Affiliate" shall mean, with respect to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person.

"Affiliated Group" shall mean any affiliated group within the meaning of Code § 1504(a) or any similar group defined under a similar provision of state, local, or foreign law.

"Affiliation Agreements" shall mean, collectively, the Primary Television Affiliation Agreement, dated as of October 19, 1995, by and between ABC and Seller in respect of Television Station KSFY-TV, the Satellite Television Affiliation Agreement, dated as of October 19, 1995, by and between ABC and Seller in respect of Television Station KPRY-TV, and the Satellite Television Affiliation Agreement, dated as of October 19, 1995, by and between ABC and Seller in respect of Television Station KABY-TV, together with, in the case of each such agreement, all related agreements, addendums and supplements, as each of the same shall have been amended, modified and/or supplemented from time to time, including, without limitation, the side letter amendment, dated as of June 30, 1999, by and between ABC and Seller's ultimate parent corporation the Guarantor (such amendment is commonly referred to or known as "N/AP I") and the side letter agreement, dated as of October 2, 2002, by and between ABC and the Guarantor (such amendment is commonly referred to or known as "N/AP II").

"Agreement" shall mean this Asset Purchase Agreement, together with the Schedules and the Exhibits attached hereto, as the same shall be amended and/or supplemented from time to time in accordance with the terms hereof.

"Allocation Schedule" shall have the meaning set forth in Section 2.8.

"Arbitrator" shall have the meaning set forth in Section 2.4(b)(iv).

"Assignment and Assumption of Contracts" shall mean the instrument in the form of Exhibit A by which Seller and/or the Guarantor assigns all of its or their right, title and interest in and to the Assumed Contracts to Buyer and Buyer assumes the then remaining rights and obligations of Seller and/or the Guarantor under such Assumed Contracts.

"Assignment and Assumption of Leases" shall mean the instrument in the form of Exhibit B, by which Seller assigns all of its right, title and interest in and to the Assumed Leases to Buyer and Buyer assumes the then remaining rights and obligations of Seller under the Assumed Leases.

"Assignment of Licenses" shall mean an instrument in the form of Exhibit C by which Seller will transfer and assign the Licenses to Buyer (or a wholly-owned subsidiary of Buyer).

"Assumed Contracts" shall mean those Contracts being assigned to, and assumed by, Buyer pursuant to the Assignment and Assumption of Contracts and listed on Schedule 1.1.

"Assumed Leases" shall mean those Leases being assigned to, and assumed by, Buyer pursuant to the Assignment and Assumption of Leases and listed on Schedule 1.2.

"Assumed Liabilities" shall mean the Accounts Payable and the obligations of Seller under the Assumed Contracts and the Assumed Leases arising from and accruing with respect to the operation of any or all of the Stations on and after the Closing Date.

"Assumption Agreement" shall mean the instrument in the form of Exhibit D by which the Assumed Liabilities are to be assumed and accepted by Buyer.

"Auditors" shall have the meaning set forth in Section 6.15.

"Bill of Sale and Assignment" shall mean the instrument in the form of Exhibit E, by which Seller and the Guarantor, as applicable, will assign, transfer and convey to Buyer all of its right, title and interest in and to the Purchased Assets.

"Buyer" shall have the meaning set forth in the first paragraph of this Agreement.

"Buyer Indemnitee" shall have the meaning set forth in Section 10.1.

"Buyer's Information" shall have the meaning set forth in Section 11.3(b).

"Buyer's Officer's Certificate" shall mean the certificate of Buyer in the form of Exhibit F.

"Buyer's Opinion of Counsel" shall mean the opinion of Wyrick Robbins Yates & Ponton LLP in substantially the form of Exhibit G.

"Buyer's Performance Certificate" shall mean the certificate of Buyer in the form of Exhibit H.

"Cash" shall mean all moneys of Seller, whether in the form of cash, cash equivalents, marketable securities, short-term investments or deposits in bank or other financial institution accounts of any kind.

"Closing" shall mean the conference to be held at 10:00 A.M. on the Closing Date at the offices of Wyrick Robbins Yates & Ponton LLP, or at such other time and place as may be designated by counsel to Buyer or as the parties may mutually agree to in writing, at which the transactions contemplated by this Agreement shall be consummated.

"Closing Date" shall mean: (i) the date designated by Buyer for the Closing upon at least five (5) business days prior written notice from Buyer to Seller, which notice shall be delivered by Buyer to Seller no later than five (5) business days following the date that the FCC Consents have become Final Orders; or (ii) such other date as Buyer and Seller may agree upon in writing. The Closing shall be deemed effective as of 12:01 A.M., Central Time, on the Closing Date.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Communications Act" shall mean the Communications Act of 1934, as amended.

"Community Television" shall mean Community Television Services, Inc., a South Dakota corporation.

"Community Television Stock" shall mean all of Seller's capital stock or other equity interest in Community Television.

"Consent-Pending Contracts" shall have the meaning set forth in Section 6.5(a).

"Contracts" shall mean those agreements (other than the Leases) under which Seller conducts the businesses of any or all of the Stations (including contracts as to which the Guarantor is the contracting party on behalf of any or all of the Stations), whether written or oral, including, without limitation, those agreements that are listed in Schedule 1.3.

"Control" (including, with correlative meanings, the terms "Controlled by", "Controlling" and "under common Control with") shall mean the possession, directly or indirectly, through one or more intermediaries or otherwise, of any one or more of the following: (i) in the case of a corporation, more than fifty percent (50%) of the outstanding voting securities thereof; (ii) in the case of a partnership, limited partnership, limited liability company or joint venture, the right to more than fifty percent (50%) of the distributions therefrom (including liquidating distributions); (iii) in the case of a trust or estate, more than fifty percent (50%) of the beneficial interest therein; (iv) in the case of any Entity, more than fifty percent (50%) of the economic or beneficial interest therein; or (v) in the case of any Entity, the power or authority, through ownership of voting securities, by contract or otherwise, to direct or cause the direction of the management, activities or policies of the Entity.

"Copyrights" shall mean all copyrights (whether under common law or otherwise) owned by and all copyright applications filed on behalf of Seller or the Guarantor, as applicable, related to any or all of the Stations, including, without limitation, those listed on Schedule 1.4.

"Customer Lists" shall mean all lists, documents, written information and computer tapes, software and programs and other computer readable media in Seller's or the Guarantor's possession or control concerning past, present and potential purchasers of services from any or all of the Stations.

"DMA" shall mean the Stations' "Designated Market Area", as such term is defined or used by Nielsen Media Research.

"Entity" shall mean any Person other than an individual.

"Environmental Liabilities" shall mean any and all liabilities arising in connection with or in any way relating to Seller, any or all of the Stations, the Real Property or any property now or previously owned, leased or operated by any or all of the Stations or Seller in connection with any or all of the Stations (as currently or previously conducted), the assets of any or all of the Stations or any activities or operations occurring or conducted at the Real Property (including offsite disposal), whether accrued, contingent, absolute, determined, determinable or otherwise, which (i) arise under or relate to any Environmental Law and (ii) relate to actions occurring or conditions existing on or prior to the Closing Date (including any matter disclosed or required to be disclosed in Schedule 4.24).

"Environmental Laws" shall mean any and all federal, state and local laws, rules and regulations, including statutes, regulations, ordinances, codes and rules, as amended, relating to the discharge or removal of air pollutants, water pollutants or process waste water or hazardous or toxic substances including, without limitation, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Occupational Safety and Health Act of 1970, each as amended, regulations of the Environmental Protection Agency, regulations of the Occupational Safety and Health Administration and regulations of any state department of natural resources or state environmental protection agency now in effect.

"Environmental Non-Compliance" shall have the meaning set forth in Section 6.12(c).

"Equipment" shall mean all machinery, equipment, furniture, fixtures, furnishings, toolings, parts, blank films and tapes and other items of tangible personal property owned by Seller, being assigned, transferred and conveyed to Buyer hereunder and listed on Schedule 1.5.

"Estimated Adjustment Amount" shall have the meaning set forth in Section 2.4(b)(ii).

"Estimated Adjustment Schedule" shall have the meaning set forth in Section 2.4(b)(ii).

"Event of Loss" shall mean any loss, taking, condemnation, damage or destruction of or to any of the Purchased Assets or any or all of the Stations.

"Exhibit" or "Exhibits" shall mean those exhibits referred to in this Agreement which have been bound in a separate volume and executed by or on behalf of the parties and delivered by parties hereto concurrently with the execution of this Agreement, which exhibits are hereby incorporated herein and made a part of this Agreement.

"FCC" shall have the meaning set forth in the recitals.

"FCC Applications" shall mean, collectively, the FCC long form applications and any and all other necessary FCC applications, instruments, certificates and documents filed or required to be filed by Buyer and/or Seller with the FCC with respect to the assignment of Licenses from Seller to Buyer (or to a wholly-owned subsidiary of Buyer).

"FCC Consents" shall mean, collectively, the action(s) taken by the FCC granting its consents to the assignment of the Licenses from Seller to Buyer (or to a wholly owned subsidiary of Buyer) pursuant to the FCC Applications.

"Final Orders" shall mean the FCC Consents are no longer subject to review or reconsideration by any court or administrative body, and no review or reconsideration is pending.

"Financing Lease" shall mean any Lease that is properly characterized as a capitalized lease obligation in accordance with GAAP.

"Financial Statements" shall mean the annual financial statements of Seller and the Stations described in Section 4.12(a).

"GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Public Company Accounting Oversight Board and statements and pronouncements of the Financial Accounting Standards Board or such other Entity as may be approved by a significant segment of the accounting profession, as in effect from time to time, applied on a basis consistent with (a) the application of the same in prior fiscal periods, and (b) that employed by independent certified public accountants in preparing and auditing the Financial Statements.

"Good Non-Trade Payables" shall mean Non-Trade Payables that are less than one hundred twenty (120) days old and that have a reasonable likelihood of being paid.

"Guarantor" shall mean Raycom Media, Inc., a Delaware corporation and ultimate parent of Seller, the guarantor under the Indemnity Guaranty, a party to the Non-Competition Agreement and a party under certain Contracts on behalf of any or all of the Stations.

"Guarantor's Officer's Certificate" shall mean the certificate of Guarantor in the form of Exhibit I.

"Guarantor's Performance Certificate" shall mean the certificate of Guarantor in the form of Exhibit J.

"Hazardous Material" shall mean any substance or waste containing any hazardous substance, pollutant or contaminant, as those terms are defined, in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq., and any other substance similarly defined or identified in any applicable Environmental Laws, including, without limitation, toxic materials or harmful physical agents, as defined in the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651 et seq., the Toxic Substances Control Act and the Hazardous Materials Transportation Act. This definition also includes, but is not limited to, asbestos, asbestos-containing materials, petroleum and petroleum-based products, polychlorinated biphenyls (PCBs), infectious wastes, radioactive materials and wastes and toxic mold or molds expected to lead to allergic reactions, at such levels as would pose a threat to human health.

"Indemnitee" shall have the meaning set forth in Section 10.3.

"Indemnitor" shall have the meaning set forth in Section 10.3.

"Indemnity Guaranty" shall mean the Indemnity Guaranty Agreement by the Guarantor in favor of Buyer in the form of Exhibit K.

"Intangible Property" shall mean, collectively: (i) the Copyrights; (ii) the Trademarks; (iii) the Trade Secrets; and (iv) all of the rights of Seller or the Guarantor in and to the call letters "KSFY-TV," "KSFY," "KABY-TV," "KABY," "KPRY-TV" and "KPRY" as used in connection with television broadcasting and all goodwill associated therewith and with the Stations.

"Intercompany Transaction" shall have the meaning set forth in Reg. §1.1502-13.

"Interim Financial Statements" shall mean the unaudited financial statements of the Stations described in Section 4.12(b).

"Internet Web Sites" means all Internet domain names and associated uniform resource locators of any or all of the Stations, and all rights that any or all of the Stations, Seller or the Guarantor has or have in the HTML content relating to any or all of the Stations located and publicly accessible from those domain names, including, without limitation, all web pages, CGI scripts, Java and HTML code, software or other materials required to make such sites accessible, viewable and navigable by third Persons, and the "visitor" email data base and click stream data and information for such sites.

"IRS" shall mean the Internal Revenue Service.

"Knowledge of Seller", or any phrase of similar import, shall mean the actual knowledge of any of the directors and officers of Seller, including Paul McTear, Jeff Rosser, and Christopher Dautel, and Jack Hansen, Kelly Manning, Marilyn Brink, or Eugene Schultz (or their respective replacements).

"Knowledge of Buyer" or any phrase of similar import shall mean the actual knowledge of any of the officers of Buyer, including Robert Gluck.

"Leases" shall mean all leases or subleases of real and personal property to which Seller is a party and listed in Schedule 1.6.

"Licenses" shall mean, collectively, (i) the licenses, permits, authorizations and construction permits, including any temporary waiver or special temporary authorization, issued by the FCC related to the operation of any or all of the Stations and all auxiliary facilities licensed by the FCC for operation in connection with any or all of the Stations, and all extensions, additions and renewals thereto or thereof and any applications therefor, and (ii) the licenses, permits, authorizations or certificates that are necessary to construct, own, operate or promote any or all of the Stations granted by administrative law courts or any state, county, city, town, village or other local government authority, and all extensions, additions and renewals thereto and any applications therefor, all as listed in Schedule 1.7.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, easement, servitude, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement with respect to any assets or property under the Uniform Commercial Codes of the States of Delaware and South Dakota, as applicable, or comparable, applicable law of any other jurisdiction.

"Limited Audited Financial Statements" shall have the meaning set forth in Section 6.15.

"Losses" shall mean, collectively, losses, damages, diminution in value, amounts paid in settlement, costs, expenses, liabilities, obligations and claims of any kind (including any claim, action, suit, arbitration, inquiry, proceeding or investigation brought by any governmental or regulatory authority or agency or Person), including, without limitation, costs of investigating and defending, court costs and attorneys' fees and expenses.

"Material Adverse Effect" shall mean a material adverse effect on (i) the condition (financial or otherwise), business, assets, or results of operations of Seller or the Stations taken as whole, or (ii) the ability of Seller or the Guarantor, as applicable, to perform its obligations, covenants and agreements under this Agreement, the Indemnity Guaranty, the Non-Competition Agreement or any other agreement, instrument, document or certificate entered into, or required to be executed and delivered, pursuant hereto or thereto.

"Miscellaneous Assets" shall mean all tangible and intangible assets used or held for use by Seller or the Guarantor in, or otherwise useful for, the operation of any or all of the Stations and not otherwise specifically referred to in this Agreement, including, without limitation, any warranties related to any of the Purchased Assets.

"Most Recent Balance Sheet" shall have the meaning set forth in Section 4.12(b).

"Most Recent Fiscal Month End" shall have the meaning set forth in Section 4.12(b).

"Motor Vehicles" shall mean all motor vehicles or trailers owned or leased by Seller related to the operation of any or all of the Stations, which are listed on Schedule 1.8.

"Motor Vehicle Title Certificates" shall mean the official evidences of title to the Motor Vehicles owned by Seller immediately prior to the Closing.

"N/AP II" shall have the meaning set forth in the definition of Affiliation Agreement.

"Negative Trade Amount" shall have the meaning set forth in Section 2.4(b)(i).

"Negative Non-Trade Amount" shall have the meaning set forth in Section 2.4(b)(i).

"Non-Competition Agreement" shall mean the Non-Competition Agreement in the form of Exhibit L by Seller and the Guarantor in favor of Buyer.

"Non-Foreign Affidavit" shall mean an affidavit of Seller stating under penalty of perjury Seller's United States taxpayer identification number and that Seller is not a foreign person within the meaning of Section 1445(b)(2) of the Code.

"Non-Trade Receivables" shall have the meaning set forth in Section 2.4(a).

"Permitted Encumbrances" shall mean: (i) Liens imposed by any governmental authority for taxes not yet due (including Liens for *ad valorem* property taxes and assessments that are not yet due and payable) and/or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of Seller in accordance with GAAP; (ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other statutory or non-consensual Liens arising in the ordinary course of business and securing amounts not yet due and payable or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of Seller in accordance with GAAP; (iii) pledges or deposits in connection with worker's compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of any or all of the following: bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) easements, rights-of-way, restrictions and other similar encumbrances on real property in connection with public utilities and streets or roads, and encroachments (whether or not in connection with public utilities and streets or roads) that do not secure any monetary amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business thereon; and (vi) any zoning or similar law or right reserved to or vested in any governmental office or agency that is not violated in any material respect by any existing improvement and that does not prohibit the use of the Real Property as currently used by Seller or any of the Stations.

"Person" shall mean any natural person, general or limited partnership, corporation, firm, limited liability company or partnership, association, trust, or other legal entity, including a government or political subdivision or an agency or instrumentality thereof.

"Program Rights" shall mean all rights presently existing or obtained prior to the Closing, in accordance with the terms and conditions of this Agreement, by Seller or the Guarantor, as applicable, to broadcast television programs, including, without limitation, series, films or shows as part of any Station's programming and for which Seller or any or all of the Stations are or will be obligated to compensate the vendor of such Program Rights, including all film and program barter agreements, sports rights agreements, news rights or service agreements and syndication agreements.

"Purchase Price" shall mean the sum (as adjusted pursuant to Section 2.4) of (i) Sixteen Million One Hundred Thousand Dollars (\$16,100,000), and (ii) the amount of the unpaid, remaining network compensation payments payable by ABC to Buyer after the Closing Date (net of any payments required to be paid by Buyer (as assignee under the Affiliation Agreements)) to ABC, including the payments required under Section 2.B.1.a of N/AP II to the extent that the same are not deducted from

network compensation payments made by ABC to Buyer (as assignee under the Affiliation Agreements) under the KSFY-TV Affiliation Agreement until 3:00 AM, New York time, on January 2, 2005.

"Purchased Assets" shall mean the rights, title and interests of Seller or the Guarantor, as applicable, legal and equitable, in and to all of the following assets and properties: (i) the Customer Lists; (ii) the Records; (iii) the Real Property; (iv) the Assumed Contracts; (v) the Assumed Leases; (vi) the Licenses; (vii) the Equipment; (viii) the Intangible Property; (ix) the Accounts Receivable; (x) the Trade Receivables; (xi) the Miscellaneous Assets; (xii) the Motor Vehicles; (xiii) the Software; (xiv) the Internet Web Sites; and (xv) the Community Television Stock; provided, however, that the Purchased Assets shall exclude the Retained Assets.

"Real Property" shall mean Seller's fee simple or leasehold interest or contractual interest, as applicable, in the real property being transferred to Buyer hereunder, as more particularly described in Schedule 1.9, and all buildings, improvements and fixtures thereon, together with all strips and gores, rights of way, easements, servitudes, tenements, hereditaments, privileges and appurtenances pertaining or belonging thereto, including any right, title and interest of Seller in and to any street adjoining any portion of the Real Property.

"Records" shall mean files, documents and records in whatever form, including schematics, technical information, engineering data, programming information, correspondence, books of account, employment records, customer files, lists, plats, architectural plans, drawings, and specifications, purchase and sales records, correspondence, advertising records, creative materials, advertising and promotional materials, FCC logs, files and records, studies, reports, files and literature, and other printed or written materials of any or all of the Stations, Seller or the Guarantor (with respect to any or all of the Stations).

"Reported Environmental Non-Compliance" shall have the meaning set forth in Section 6.12(c).

"Retained Assets" shall mean, collectively, the following assets and properties of Seller: (i) Cash; (ii) the books and records pertaining to the incorporation, formation, authority or qualification of Seller; (iii) Seller's Tax Returns; (iv) records and documents in respect of any of the Retained Assets, employee pension and other benefit plans of Seller; (v) all Contracts other than the Assumed Contracts; and (vi) all Leases other than the Assumed Leases.

"Retained Liabilities" shall mean all liabilities and obligations of Seller or the Guarantor (or any predecessor of either such party) of every kind and nature, whether presently in existence or arising hereafter, other than the Assumed Liabilities. Without limiting the generality of the foregoing and notwithstanding any provision to the contrary in this Agreement, Retained Liabilities shall include, without limitation: (i) all liabilities and obligations for past due amounts under any or all of the Stations' Program Rights agreements; (ii) any liability or obligation relating to or arising out of any employee plan or arrangement maintained by or on behalf of Seller for the benefit of its employees or to which Seller is obligated to contribute, including any and all liabilities for claims incurred or that otherwise arise prior to Closing under any such employee benefit plan, employee welfare benefit plan, or other benefit plans, regardless of whether such claim is filed (x) by a Transferred Employee or (y) after the Closing; (iii) any liability or obligation of Seller or the Guarantor under or with respect to any Contract or permit required by the terms thereof to be performed, satisfied or discharged on or prior to the Closing; (iv) any liability or obligation of Seller for borrowed money, including interest, fees and penalties; (v) any liability or obligation relating to or arising out of any of the Retained Assets; (vi) any Environmental Liabilities; (vii) any liability or obligation relating to vacation, bonuses and other employee-related benefits earned or accrued prior to the Closing; (viii) any liability or obligation for Taxes; (ix) any liabilities or obligations with respect to intercompany payables; (x) any liabilities or obligations with respect to Financing Leases of



any or all of the Stations, Seller or the Guarantor; and (xi) any liabilities or obligations under the employee retention agreements listed on Schedule 4.23.

"Retransmission Agreements" shall have the meaning set forth in Section 4.17(c).

"Schedules" shall mean those schedules referred to in this Agreement which have been bound in a separate volume and delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement, which schedules are hereby incorporated herein and made a part of this Agreement.

"Seller" shall have the meaning set forth in the first paragraph of this Agreement. Notwithstanding any other provision contained in this Agreement, the term "Seller" shall be deemed to include any or all of the Stations where the context shall so require.

"Seller Indemnitee" shall have the meaning set forth in Section 10.2.

"Seller's Information" shall have the meaning set forth in Section 11.3.

"Seller's Officer's Certificate" shall mean the certificate of Seller in the form of Exhibit M.

"Seller's Opinions of Counsel" shall mean the legal opinions of Thomas B. Henson, Esq., counsel to Seller, and Covington & Burling, communications law counsel to Seller, in substantially the forms of Exhibits N-1 and N-2.

"Seller's Performance Certificate" shall mean the certificate of Buyer in the form of Exhibit Q.

"Software" shall mean all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith, owned, used or licensed by Seller or any or all of the Stations.

"Station Employees" has the meaning set forth in Section 4.22.

"Stations" shall have the meaning set forth in the recitals.

"Tax" shall mean any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under former Section 59A of the Code or any similar or analogous type of tax), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, Real Property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not. Any variation of, or terms of similar import to, "Tax" (*e.g.*, "Taxable" or "Taxing") shall refer to or mean with respect to Taxes.

"Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Termination Date" shall mean July 31, 2004.

"Title Commitments" shall have the meaning set forth in Section 6.12(a).

"Title Insurer" shall have the meaning set forth in Section 6.12(a).

"Trade Payables" shall have the meaning set forth in Section 2.4(a).

"Trade Receivables" shall have the meaning set forth in Section 2.4(a).

"Trade Secrets" shall mean all proprietary information of Seller relating to any or all of the Stations.

"Trademarks" shall mean all of those trade names, trademarks, service marks, slogans, logos, jingles, trademark and service mark registrations and trademark and service mark applications owned (whether under common law or otherwise), licensed by or leased by Seller or the Guarantor, as applicable, being transferred to Buyer hereunder and listed on Schedule 1.12.

"Tradeout Agreement" shall mean any contract, agreement or commitment of Seller or the Guarantor, as applicable, oral or written, pursuant to which Seller or the Guarantor has sold or traded commercial air time of any Station in consideration for any property or services in lieu of or in addition to cash, excluding film and program barter agreements, and including, without limitation, those agreements identified as Tradeout Agreements on Schedule 1.3.

"Transferred Employees" shall have the meaning set forth in Section 6.13(a).

"Transfer Taxes" has the meaning set forth in Section 2.7.

"Warranty Deed(s)" shall mean the warranty deeds (or other instruments which are the equivalent of warranty deeds) pursuant to which Seller shall convey to Buyer each parcel of the Real Property owned by Seller and being transferred to Buyer hereunder.

**SECTION 1.2. Accounting Terms.** Except as otherwise expressly provided in this Agreement, all accounting and financial terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

## **ARTICLE II PURCHASE AND SALE**

**SECTION 2.1. Purchase and Sale.** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, Seller or the Guarantor, as applicable, shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase from Seller or the Guarantor, as applicable, all of the Purchased Assets for the consideration specified in Section 2.2.

**SECTION 2.2. Payments at Closing.** At the Closing on the Closing Date, in consideration for good and marketable title to the Purchased Assets, Buyer shall pay to Seller the Purchase Price (as adjusted by the Estimated Adjustment Amount pursuant to Section 2.4). As additional consideration for the Purchased Assets, Buyer shall assume the Assumed Liabilities pursuant to the Assumption Agreement.

**SECTION 2.3. Closing Date Deliveries.** At the Closing on the Closing Date:

(a) Seller shall deliver, or shall cause to be delivered, and the Guarantor shall deliver, or shall cause to be delivered, as applicable, to Buyer properly executed and dated as of the Closing Date

by Seller and the Guarantor, as applicable: (i) the Bill of Sale and Assignment; (ii) the Assignment and Assumption of Contracts; (iii) the Assignment and Assumption of Leases; (iv) the Assignment of Licenses; (v) the Assumption Agreement; (vi) Seller's Officer's Certificate; (vii) Seller's Opinions of Counsel; (viii) Seller's Performance Certificate; (ix) Guarantor's Officer's Certificate; (x) Guarantor's Performance Certificate; (xi) the Indemnity Guaranty; (xii) the Motor Vehicle Title Certificates; (xiii) the Warranty Deeds; (xiv) lease estoppel certificates in substance reasonably satisfactory to Buyer and its lender in respect of Leases of Real Property included within the Assumed Leases; (xv) certificates of good standing or existence (or other comparable certificate) for Seller from the States of Delaware and South Dakota and for Community Television from the State of South Dakota; (xvi) the Non-Foreign Affidavits; (xvii) the Non-Competition Agreement; (xviii) stock certificates, stock powers and any documents reasonably requested by Buyer to evidence the transfer of the stock of Community Television; and (xix) any document or instrument reasonably requested by Buyer to compel Seller's Internet Service Provider to transfer Seller's and any or all of the Stations' domain names, in full compliance with InterNIC's technical transfer protocols and procedures in effect at the time of transfer; and (xix) such other documents as Buyer shall reasonably request to consummate the transactions contemplated by this Agreement, all of which shall be reasonably satisfactory to Buyer as to form and substance; and

(b) In addition to the payments and assumptions described in Section 2.2, Buyer shall deliver, or shall cause to be delivered, to Seller, properly executed and dated as of the Closing Date, as applicable: (i) the Bill of Sale and Assignment; (ii) the Assignment and Assumption of Contracts; (iii) the Assignment and Assumption of Leases; (iv) the Assignment of Licenses; (v) the Assumption Agreement; (vi) Buyer's Officer's Certificate; (vii) Buyer's Opinion of Counsel; (viii) Buyer's Performance Certificate; (ix) the Indemnity Guaranty; (x) the Non-Competition Agreement; (xi) certificates of good standing (or other comparable certificates) for Buyer from the States of Delaware and South Dakota; and (xii) such other documents as Seller shall reasonably request to consummate the transactions contemplated by this Agreement, all of which shall be reasonably satisfactory to Seller as to form and substance.

#### **SECTION 2.4. Adjustments, Pre-Closing Receivables and Payables.**

(a) General. The following terms, provisions and procedures hereinafter set forth in this Section 2.4 shall apply with respect to: (i) the accounts receivable of the Stations arising from any and all Tradeout Agreements as of the Closing Date (the "Trade Receivables"); (ii) the Accounts Receivable of the Stations as of the Closing Date other than the Trade Receivables (the "Non-Trade Receivables"); (iii) the accounts payable or other liabilities of the Stations pursuant to the Tradeout Agreements as of the Closing Date (the "Trade Payables"); and (iv) the Accounts Payable as of the Closing Date.

(b) Negative Adjustments.

(i) The Purchase Price shall be decreased by (A) the amount, if any, by which the aggregate amount of the Trade Payables exceeds by more than Ten Thousand Dollars (\$10,000) the aggregate amount of the Trade Receivables (the "Negative Trade Amount"), and (B) the amount, if any, by which the aggregate amount of the Accounts Payable on the Closing Date exceeds the aggregate amount of Good Non-Trade Receivables (the "Negative Non-Trade Amount"). The Trade Payables shall be valued according to the Stations' prevailing rates as of the date of such Tradeout Agreement. For avoidance of doubt, the parties acknowledge and agree that if the aggregate amount of Good Non-Trade Receivables equals or exceeds the aggregate amount of Accounts Payable on the Closing Date, there shall be no decrease in the amount of the Purchase Price in respect thereof.

(ii) Seller shall deliver to Buyer at least two (2) business days prior to the Closing Date a schedule (the "Estimated Adjustment Schedule") containing its reasonable good faith estimate of the Trade Receivables, the Trade Payables, Good Non-Trade Receivables and the Accounts

Payable, and the resulting Negative Trade Amount and Negative Non-Trade Amount (the "Estimated Adjustment Amount"), including all calculations in respect thereof. The Purchase Price payable at Closing shall be decreased by the Estimated Adjustment Amount.

(iii) Within sixty (60) days following the Closing Date (or such earlier or later date as agreed to by Buyer and Seller), Buyer shall prepare and deliver to Seller an itemized list (the "Adjustment List") of its determination of any required adjustments or changes to the Estimated Adjustment Schedule together with a brief explanation thereof. Such list shall show the net amount of the increase or decrease, as applicable, to the Purchase Price (the "Adjustment Amount"). If the Adjustment Amount is a decrease to the Purchase Price, Seller shall promptly pay such amount to Buyer; if the Adjustment Amount is an increase to the Purchase Price, Buyer shall promptly pay, or cause to be paid, such amount to Seller. Except as provided otherwise in Section 2.4(b)(iv), payment of the Adjustment Amount shall be made not later than fifteen (15) business days following the delivery of the Adjustment List.

(iv) Not later than ten (10) business days following the delivery of the Adjustment List, Seller may furnish Buyer with written notification of any dispute concerning any items shown thereon or omitted therefrom together with a detailed explanation in support of Seller's position in respect thereof. Buyer and Seller shall consult to resolve any such dispute for a period of ten (10) business days following the notification thereof. In the event of any such dispute, that portion of the Adjustment Amount that is not in dispute shall be paid to the party entitled to receive the same on the day for payment provided herein. If such ten (10) business day consultation period expires and the dispute has not been resolved, the matter shall be referred to KPMG or to a nationally recognized certified public accounting firm mutually agreed upon by Buyer and Seller (the "Arbitrator"), which shall resolve the dispute and shall render its decision (together with a brief explanation of the basis therefor) to Buyer and Seller not later than twenty (20) business days following submission of the dispute to it. The disputed portion of the Adjustment Amount shall be paid by the party required to pay the same within five (5) business days after the delivery of a copy of such decision to Buyer and Seller. The fees and expenses of the Arbitrator shall be shared equally by Seller, on the one hand, and Buyer, on the other hand.

(v) The Adjustment List (to the extent not disputed within the specified period by Seller), any mutually agreed written settlement of any such dispute concerning the Adjustment List and any determination of disputed items by the Arbitrator shall be final, conclusive and binding on the parties hereto absent fraud.

(c) Proration. For purposes of determining the Stations' receivables, payables, the Negative Trade Amount, Negative Non-Trade Amount, the Estimated Adjustment Amount, the Adjustment Amount and other items under this Section 2.4, the parties hereto shall pro rate the revenues, expenses, and liabilities attributable to the Stations, including the power and utilities, *ad valorem* property taxes (upon the basis of the most recent assessment available), rents, income and sales taxes, and similar accrued, prepaid and deferred items, in accordance with the principle that the Seller will be allocated revenues earned or accrued, and expenses, costs and liabilities incurred or allocable, with respect to the business and operation of the Stations prior to the Closing Date, and Buyer will be allocated revenues earned or accrued, and expenses, costs and liabilities incurred or allocable, with respect to the business and operation of the Stations on, from and after the Closing Date.

**SECTION 2.5. Non-Assumption of Liabilities.** Buyer does not and shall not assume or become obligated to pay any debt, obligation or liability of any kind or nature of Seller, the Guarantor or any or all of the Stations, whether or not incurred or accrued in connection with the operation of any or all of the Stations, except for the Assumed Liabilities.

**SECTION 2.6. Accounts Receivable and Accounts Payable.** At least two (2) business days prior to the Closing Date, Seller shall deliver or cause to be delivered to Buyer detailed schedules of the Stations' Accounts Receivable, Accounts Payable, Trade Receivables and Trade Payables as of the then most recent dates practicable showing the name, amount and age of each account receivable and account payable, as applicable. Notwithstanding any provision of this Agreement, Buyer shall not have any liability or obligation to pay Seller any amount collected on or from the Accounts Receivable or Trade Receivables, it being acknowledged and agreed that Accounts Receivable and the Trade Receivables are part of the Purchased Assets.

**SECTION 2.7. Transfer and Other Taxes.** All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees, including penalties and interest, if any, incurred in connection with this Agreement and the transactions contemplated herein ("Transfer Taxes") shall be divided equally between Buyer and Seller. The party that has the primary responsibility under applicable law for the payment of any particular Transfer Tax shall prepare and file the relevant Tax Return and notify the other party in writing of the Transfer Taxes shown on such Tax Return, provided that such other party shall have the right to reasonably review and approve any such Tax Return prior to the filing of same (such approval to not be unreasonably withheld or delayed). The other party shall pay the first party an amount equal to one-half of such Transfer Taxes in immediately available funds no later than the date that is the later of (i) five Business Days after the date of such notice or (ii) two Business Days prior to the due date for such Transfer Taxes. The first party shall promptly remit the Transfer Taxes to the proper tax office for payment.

**SECTION 2.8. Allocation of Purchase Price.** Seller, the Guarantor and Buyer shall cooperate in the preparation of a joint schedule (the "Allocation Schedule") allocating the Purchase Price (including for purposes of this Section 2.8, any other consideration paid by Buyer and the Assumed Liabilities) among the Purchased Assets. Seller, the Guarantor and Buyer each agree to file IRS Form 8594 and all federal, state and local tax returns in accordance with the Allocation Schedule. Seller, the Guarantor and Buyer each agree to provide the other promptly with any other information required to complete the Allocation Schedule. If, however, Seller, the Guarantor and Buyer are unable to complete such schedule within sixty (60) days following the Closing Date, or such later date as agreed to by Buyer and Seller, Buyer, the Guarantor and Seller shall file IRS Form 8594 and any federal, state and local tax returns, allocating the Purchase Price among the Purchased Assets in the manner each believes is appropriate, provided that such allocation is reasonable and in accordance with Code §1060 and the regulations thereunder.

**SECTION 2.9. Risk of Loss.** The risk of loss prior to the consummation of the Closing shall be upon Seller, and the risk of loss on or after consummation of the Closing shall be upon Buyer.

### **ARTICLE III GOVERNMENTAL APPROVALS AND CONTROL OF STATIONS**

**SECTION 3.1. FCC Consent.** It is specifically understood and agreed by Buyer and Seller that the Closing shall be in all respects subject to the prior receipt of all FCC Consents. Buyer and Seller shall prepare, execute and file with the FCC as soon as practicable, but in no event later than five (5) business days after the execution of this Agreement, the FCC Applications requesting the FCC Consents. After the aforesaid applications and documents have been submitted for filing with the FCC, Buyer and Seller shall prosecute such applications with all reasonable diligence and take all steps reasonably necessary to obtain the FCC Consents, including, without limitation, the filing of all appropriate or necessary supplemental filings and amendments. Buyer and Seller each shall oppose (and take all steps and actions reasonably necessary to 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. Each party hereto shall provide the other party hereto with any pleading, order or other document served on or received by it relating to the FCC Applications and all proceedings relating thereto. No party hereto shall take any action not contemplated by

this Agreement that such party knows or should know would adversely affect obtaining the FCC Consents or adversely affect the FCC Consents becoming Final Orders. Seller and Buyer shall equally pay all FCC filing or transfer fees relating to the transactions contemplated hereby, irrespective of whether the transactions contemplated by this Agreement are consummated or this Agreement is terminated and irrespective of whether any such fees are assessed prior or subsequent to the Closing. If the Closing shall not have occurred for any reason within the original effective period of the FCC Consents and this Agreement shall not have been terminated by Buyer or Seller pursuant to Section 12.1, the parties hereto shall jointly request an extension (or extensions, as necessary) of the effective period of the FCC Consents. No extension of the FCC Consents shall limit the right of any party to exercise its rights under Section 12.1.

**SECTION 3.2. Control Prior to Closing.** Between the date hereof and the Closing Date, Seller shall maintain ultimate control over the Stations and the Stations' facilities, including control over the programming, marketing, employees and policies of the Stations.

**SECTION 3.3. Other Government Approvals.** Promptly following the execution of this Agreement, the parties hereto shall proceed to prepare and file with all appropriate governmental authorities any other requests for approvals or waivers, if any, that are required from other governmental authorities in connection with the Closing, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approvals or waivers and all proceedings necessary to secure such approvals and waivers; provided that, notwithstanding anything to the contrary contained in this Agreement, neither Buyer nor any of its Affiliates shall be required to sell or otherwise dispose of, hold, separate (through the establishment of a trust or otherwise), divest itself of, or limit the ownership or operations of all or any portion of its businesses, assets or operations. Buyer and Seller shall each pay one-half (½) of all fees required to be paid in connection with the approvals and waivers under this Section 3.3 that relate to the transactions contemplated hereby, irrespective of whether the transactions contemplated by this Agreement are consummated.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller (and the Guarantor with respect to representations and warranties applicable to the Guarantor) represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date of this Agreement and will be true and correct as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article IV).

**SECTION 4.1. Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to conduct business in the State of South Dakota or any other jurisdiction where the failure to be so qualified would have or could reasonably be expected to have a Material Adverse Effect. Seller has the corporate power to own, lease, and operate its properties and to carry on its business as such business is now conducted.

### **SECTION 4.2. Subsidiaries; Stock Ownership.**

(a) Except for Seller's stock in Community Television as described in Section 4.2(b), Seller does not own capital stock or other ownership or equity interests in any corporation, partnership, limited liability company or other entity. There are no outstanding contractual obligations of Seller to acquire any outstanding shares of capital stock or other ownership or equity interests of any corporation, partnership, limited liability company or other entity. Except as described in Section 4.2(b), Seller has no direct or indirect investment or equity participation (either debt or equity), or commitments to make any

such investment or participation, in any corporation, joint venture, general or limited partnership, limited liability company, business enterprise or other Person.

(b) Community Television is a corporation duly organized, validly existing and in good standing under the laws of the State of South Dakota and is duly qualified to conduct business in the State of South Dakota or any other jurisdiction where the failure to be so qualified would have or could reasonably be expected to have a Material Adverse Effect. Community Television has the corporate power to own, lease, and operate its properties and to carry on its business as such business is now conducted. Schedule 4.2(b) sets forth and describes for Community Television (i) all of its capital stock, the names of the holders thereof, and number, percentage and type of shares, units or other divisions of such capital stock, (ii) the number of shares of capital stock held in treasury, if applicable, (iii) its employees, managers, directors and officers, and (iv) true and complete copies of all of its charter, bylaws, stockholders' agreements or other governing and organizational documents and instruments (as amended to date). The Additional Community Television Documents delivered to Buyer after the date hereof shall be true and complete copies thereof. All of the issued and outstanding capital stock of Community Television has been duly authorized and is validly issued, fully paid, and non-assessable. Seller holds of record and beneficially owns fifty percent (50%) of the issued and outstanding capital stock of Community Television, free and clear of any restrictions on transfer, Taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. Except as set forth in Schedule 4.2(b), there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require Seller or Community Television to sell, transfer, or otherwise dispose of any of the capital stock of Community Television or that could require Community Television to issue, sell, or otherwise cause to become outstanding any of its own capital stock (other than this Agreement). There are no outstanding stock appreciation, phantom stock, profit participation, or similar rights with respect to Community Television. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of Community Television. The minute books (containing the records of meetings of the stockholders, members, partners, managers, directors, the management, and any committees of thereof, as applicable), the stock certificate books, and the stock record books of Community Television are correct and complete. None of Community Television and its stockholders is in default under or in violation of any provision of Community Television's charter, bylaws, stockholders agreement or other governing or organizational documents. Neither Seller nor Community Television controls, directly or indirectly, or has any direct or indirect equity participation in any corporation, partnership, limited liability company, trust, or other business association or Entity that is not a Subsidiary of Seller. Neither Seller nor Community Television owns or has any right to acquire, directly or indirectly, any outstanding capital stock in or of any other Person.

#### **SECTION 4.3. Authorization; Enforceability.**

(a) The execution, delivery and performance by Seller of this Agreement, the Non-Competition Agreement and all of the other agreements, documents and instruments required hereby and thereby and the consummation by Seller of the transactions contemplated hereby and thereby (including the sale, transfer, assignment and delivery of the Purchased Assets by Seller to Buyer hereunder) are within the corporate power of Seller and have been duly authorized by all necessary action on behalf of Seller. This Agreement, the Non-Competition Agreement and the other agreements, documents and instruments required hereby and thereby are and constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

(b) The execution, delivery and performance of this Agreement, the Bill of Sale and Assignment, the Assumption Agreement, the Assignment and Assumption of Contracts, the Indemnity Guaranty and the Non-Competition Agreement are within the corporate power of the Guarantor and have

been duly authorized by all necessary corporate action on behalf of the Guarantor. This Agreement, the Assignment and Assumption of Contracts, and the Indemnity Guaranty and the Non-Competition Agreement are and constitute the valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms.

**SECTION 4.4. Absence of Conflicting Agreements, Etc.** None of the execution, delivery or performance by Seller of this Agreement, the Non-Competition Agreement and the agreements, instruments, documents or certificates required of Seller hereunder or thereunder, or this Agreement, the Bill of Sale and Assignment, the Assumption Agreement, the Indemnity Guaranty or the Non-Competition Agreement by the Guarantor, nor the consummation of the transactions contemplated hereby and thereby by Seller, or, with respect to this Agreement, the Indemnity Guaranty or the Non-Competition Agreement by the Guarantor, does or would, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under the certificate of incorporation, organization or formation, by-laws, limited liability company agreement or other governing instruments of Seller, the Guarantor or Community Television, any agreement or contract to which Seller, the Guarantor or Community Television is a party or by which it is bound, or any federal, state or local law, statute, ordinance, rule or regulation applicable to Seller, the Guarantor or Community Television, or any court or administrative order or process to which Seller, the Guarantor or Community Television is subject or by which it is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority; or

(c) except as set forth in Schedule 4.4(c), require the consent of any Person under any Contract or Lease to which Seller, the Guarantor or Community Television is a party;

(d) result in the creation of any Lien upon any of the Purchased Assets; or

(e) except as set forth in Schedule 4.4(e), terminate, amend or modify, or give any party the right to terminate, amend, modify, abandon or refuse to perform any contract, lease, agreement, arrangement, commitment or plan to which Seller, the Guarantor, Community Television or any Station is a party.

**SECTION 4.5. Purchased Assets.** Except for the Retained Assets, the Purchased Assets include all of the assets, properties and rights of every type and description, real, personal and mixed, tangible and intangible, that are used or held for use in, or useful for, the conduct of the business of owning and operating any or all of the Stations in the manner in which such business has been and is now conducted. All inventories of supplies, tubes and spare parts necessary or appropriate for the operation of the Stations are at levels at least equal to usual and customary levels.

**SECTION 4.6. Title to Purchased Assets; Liens and Encumbrances.** Seller owns good and marketable title in or has valid leasehold interests in and to all of the Purchased Assets free and clear of any and all Liens, except for Permitted Encumbrances. Schedule 4.6 lists each city or town, county and state where any of the Purchased Assets are located.

**SECTION 4.7. Equipment.** Each material item of Equipment is in good operating condition and repair, ordinary wear and tear excepted, and is not in need of imminent repair or replacement and those material items of Equipment constituting transmitting and studio equipment are operating in accordance with their intended use. All material operating systems and the Software are (i) operating satisfactorily for the task to which they are being applied, and in accordance with all vendor warranties and vendor-supplied



user documentation, (ii) reasonably capable of handling existing and currently contemplated work volumes and (iii) not in imminent need of repair or replacement. Except for equipment that is part of the Retained Assets, the Equipment includes all items of tangible personal property used or held for use by Seller in connection with owning and operating the Stations. The list of Equipment on Schedule 1.3 is a true and correct list of all items of tangible personal property having a book value in excess of One Thousand Dollars (\$1,000) and that are necessary for or used or useful in the operation of any or all of the Stations in the manner in which they have been and are now operated.

#### **SECTION 4.8. Contracts.**

(a) The Contracts listed in Schedule 1.3 constitute all of the Contracts relating to properties, undertakings, obligations or commitments to or for third Persons in the operations and conduct of any or all of the Stations other than: (i) each Contract (other than Tradeout Agreements) for the sale of time on any or all of the Stations at usual and customary rates that involve the purchase of less than Ten Thousand Dollars (\$10,000) in advertising time; (ii) other Contracts that are immediately cancelable by Seller or its successors or assigns without breach, fee, payment or penalty; or (iii) Contracts made in the ordinary course of business that individually involve average annual payments or receipts by any or all of the Stations of less than Ten Thousand Dollars (\$10,000). Seller has previously delivered to Buyer prior to the date of this Agreement true and complete copies of all written Contracts listed or required to be listed on Schedule 1.3, including all amendments, addendums, modifications and supplements thereto, and any assignments thereof, and has previously described to Buyer the material provisions of all material oral Contracts or oral Contracts listed or required to be listed on Schedule 1.3.

(b) Seller or the Guarantor, as applicable, has performed in all material respects each term, covenant, condition and agreement of each of the Contracts that are required to be performed by it at or before the date hereof, and no material breach or default on the part of Seller or the Guarantor, as applicable, and, to the Knowledge of Seller, on the part of any other party thereto exists under any of the Contracts. No event has occurred under any of the Contracts that would constitute a material default or event of default thereunder on the part of Seller or the Guarantor, as applicable, or, to the Knowledge of Seller, any other party thereto but for the requirement that notice be given or time elapse or both.

(c) Each of the Contracts is in full force and effect, constitutes the legal and binding obligation of Seller or the Guarantor, as applicable, and each other party thereto enforceable against Seller or the Guarantor, as applicable, and each other party thereto in accordance with its terms.

(d) Seller or the Guarantor, as applicable, is current on all obligations and liabilities, including, without limitation, payment obligations, under all of the Contracts and Leases, including, without limitation, those related to Program Rights.

(e) Without limiting the generality of the representations and warranties contained in this Section 4.8: (i) each of the Affiliation Agreements is legal, valid, binding, enforceable and in full force and effect; (ii) none of Seller, the Guarantor, and, to the Knowledge of Seller, ABC is in breach or default of any of the Affiliation Agreements; (iii) no event has occurred which with notice or lapse of time should constitute a breach or default on the part of Seller or the Guarantor, as applicable, or, to the Knowledge of Seller, on the part of ABC, or permit termination, modification, or acceleration, of any of the Affiliation Agreements; and (iv) neither Seller nor the Guarantor has received any notice or other information, whether oral or written, from ABC or otherwise that any of the Affiliation Agreements could be terminated prior to its current expiration date, not renewed upon its expiration date or modified in a manner adverse to Seller, the Guarantor or any or all of the Stations. The letter agreement referred to in the definition of Affiliation Agreements and adopting N/AP II was adopted by the necessary percentage of required non-owned ABC

affiliate television stations, has not been terminated by ABC and is legal, valid, binding, enforceable and in full force and effect.

#### **SECTION 4.9. Intangible Property.**

(a) Seller possesses all right, title and interest in and to, or has a valid and enforceable license to use, in each case free and clear of any and all Liens, all of the Intangible Property and rights in and to all call letters necessary for the operation of any or all of the Stations as presently conducted.

(b) All patented, registered, applied for or unregistered Intangible Property owned and/or used by Seller, the Guarantor or any or all of the Stations, and all licenses or similar agreements or arrangements for Intangible Property to which such Seller is a party, either as licensee or licensor, are listed in either Schedule 1.4 or Schedule 1.12.

(c) All owned Intangible Property necessary for or used in the operation of any or all of the Stations, has been duly applied for or registered in, filed in or issued by, as applicable, the appropriate governmental authority where such registration, filing or issuance is necessary for the operation of any or all of the Stations, and all such filings, registrations and issuances are valid and in good standing.

(d) There are no claims, demands or proceedings instituted, pending or, to the Knowledge of Seller, threatened by any third Person pertaining to or challenging Seller's or the Guarantor's rights, title and interests in and to, or right to use any of the Intangible Property, or that any Intangible Property or any services provided, process used or products used or sold by Seller or the Guarantor, as applicable, do or may conflict with, or infringe or otherwise violate the rights of third Persons.

(e) Each item of Intangible Property listed on the Schedules described in Section 4.9(b) is owned by the Person listed on such Schedules, free and clear of all Liens. There is no trademark, trade name, patent, copyright or other proprietary property owned by a third Party that Seller or the Guarantor is using in conducting the business of any or all of the Stations without a valid license to do so.

(f) Seller and the Guarantor have not, in any material respect, infringed, misappropriated or otherwise violated any Intangible Property of any third Person, nor will any infringement, misappropriation or violation occur as a result of the continued operation of any or all of the Stations as currently operated.

(g) No facts currently exist that would render any of the Intangible Property invalid or unenforceable, and no claim by any third Person contesting the validity, enforceability, use or ownership of any of the Intangible Property has been made, is currently outstanding or is, to the Knowledge of Seller, threatened.

(h) Except as provided in Schedule 1.8(g), there are no royalty or indemnity agreements between Seller and any third Person or between the Guarantor and any third Person relating to any of the Intangible Property.

(i) The Intangible Property constitutes all Copyrights and Trademarks and rights in and to call letters used in the operation of any or all of the Stations.

(j) All Copyrights and Trademarks are described, listed or set forth in Schedules 1.4 and 1.12, respectively. All Copyrights and Trademarks are transferable to Buyer without the consent of any third Person, and none of such Copyrights and Trademarks has been licensed to any third Person.

#### **SECTION 4.10. Real Property.**

(a) Seller has good and marketable fee simple title in and to, or a valid leasehold, license or easement interest in (pursuant to written instruments previously delivered to Buyer), each parcel of the Real Property, free and clear of all Liens other than Permitted Encumbrances, and such Real Property includes all real property used in and necessary for the operation of any or all of the Stations. Schedule 1.9 correctly and completely identifies each parcel of Real Property that is owned, leased or subject to license or easement.

(b) At the Closing, all right, title and interest of Seller in, to and under the Leases and the Real Property will be transferred to Buyer free and clear of all Liens other than Permitted Encumbrances.

(c) There is no pending condemnation or similar proceeding affecting or involving any of the Real Property or any portion thereof, and, to the Knowledge of Seller, no such action is presently contemplated or threatened.

(d) Except as set forth in Schedule 4.10(d), there are no parties in possession of any portion of the Real Property other than Seller, whether as lessees, tenants at will, trespassers or otherwise.

(e) To the Knowledge of Seller, there are no material structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the buildings located on the Real Property, ordinary wear and tear excepted, and the roofs of the buildings located on the Real Property are free from leaks and in good condition.

(f) Seller has not received any notice from any insurance company of any defects or inadequacies in the Real Property or any part thereof that would adversely affect the insurability of any of the Real Property or the premiums for the insurance thereof. Seller has also not received any written notice from any title insurance company which has issued Seller a policy with respect to any portion of the Real Property or by any underwriters (or other body exercising similar functions) requesting the performance of any repairs, alterations, or other work with which compliance has not been made.

(g) No restrictive covenant of record or zoning, building or other federal, state or municipal law, ordinance, regulation or restriction is violated in any material respect by Seller's interest in or maintenance, operation or use of the Real Property or any portion thereof.

(h) There is no law, ordinance, order, or regulation, including, without limitation, the Americans with Disabilities Act of 1990, as amended, that requires any material expenditure to remediate, remove, modify, or improve any of the Real Property or any portion thereof in order to bring it into compliance therewith.

(i) There is no pending or, to the Knowledge of Seller, threatened governmental proceeding that would materially impair or curtail access to and from any of the Real Property.

(j) All necessary licenses, permits and authorizations required by any governmental authority with respect to the Real Property have been obtained, have been validly issued and are in full force and effect.

(k) There are presently in existence dedicated public access roads, telephone lines, electrical lines, and water lines to or on, or valid easements appurtenant to, the Real Property that are sufficient to service adequately the current operations of each building as well as the fixtures located on the

Real Property. All towers, guy anchors, buildings and other improvements are wholly within the lot limits of the Real Property and do not encroach on any adjoining premises. There are no encroachments upon any of the parcels of Real Property or adjoining parcels by buildings, structures or improvements that could reasonably prevent, interfere with or adversely affect the use and enjoyment of each such parcel of Real Property as it is currently used.

(l) Other than this Agreement and the Permitted Encumbrances, Seller has not entered into any agreement, oral or written, with respect to the Real Property, and neither Seller nor any of the Real Property (or any portion thereof) is subject to any claim, demand, suit, Lien (other than Permitted Encumbrances) (whether filed or not), proceeding or litigation of any kind that is pending or, to the Knowledge of Seller, threatened which would affect or limit Buyer's use and enjoyment of any of the Real Property (or any portion thereof).

(m) Except for the Permitted Encumbrances, there are no Taxes, Liens, Tax claims, bills or assessments of any kind arising from Seller's operation of any or all of the Stations that are due and payable that are unpaid as of the Closing Date.

(n) All amounts owing to any architect, contractor, subcontractor or materialmen for labor or materials performed, rendered or supplied to or in connection with the Real Property have been fully paid prior to the Closing Date.

#### **SECTION 4.11. Leases.**

(a) The Leases described on Schedule 1.6 constitute all of the lease agreements between Seller and third Persons affecting or involving the Real Property, Seller's personal property or otherwise relating to the operation of any or all of the Stations or the Purchased Assets. Seller has furnished or caused to be furnished true and complete copies of each of the Leases to Buyer, including any and all amendments, addendums, supplements or modifications thereto and any assignments thereof.

(b) Seller has performed in all material respects each term, covenant, agreement and condition of each of the Leases that are required to be performed by it at or before the date hereof, and no material breach or default on the part of Seller and, to the Knowledge of Seller, on the part of any other party thereto exists under any Lease. No event has occurred under any of the Leases that would constitute an event of default on the part of Seller and, to the Knowledge of Seller, on the part of any other party thereto but for the requirement that notice be given or time elapse or both.

(c) Each of the Leases is in full force and effect, unimpaired by any acts or omissions of Seller and, to Knowledge of Seller, each other party thereto and constitutes the legal and binding obligations of Seller and each other party thereto enforceable against Seller and each such other party thereto in accordance with its terms.

(d) There are no leasing commissions or similar payments due, arising out of, resulting from or with respect to any Lease that is owed by Seller.

(e) Except as set forth in Schedule 4.11(e), all rights, title and interests in and to each of the Leases are fully assignable by Seller to Buyer without the consent, waiver or approval of any Person, and Seller has not assigned, subleased, transferred, conveyed, mortgaged, or deeded in trust any interest in any of the Leases.

(f) To the Knowledge of Seller, the respective owners of the facilities or premises, as applicable, leased or subleased by Seller have good and marketable title to the applicable parcels of real property and the buildings and improvements located thereon, free and clear of all Liens.

(g) Seller has not subordinated its interest under any of the Leases to any third Person, mortgagee or otherwise. Each of Seller's Financing Leases is listed in Schedule 1.6.

(h) Community Television has good and marketable fee simple title in and to all real estate that it purportedly owns (including, without limitation, the Real Property that is the subject of Seller's Lease with Community Television), free and clear of all Liens other than Permitted Encumbrances.

#### **SECTION 4.12. Financial Statements and Interim Financial Statements.**

(a) Attached as Schedule 4.12(a) are true and complete copies of the unaudited consolidated balance sheets of Seller and the Stations as of December 31, 2000, December 31, 2001, and December 31, 2002, and the related statements of income for the fiscal years then ended, including in each case any and all notes thereto (collectively the "Financial Statements"). The Financial Statements (i) have been prepared in accordance with GAAP, (ii) present fairly in all material respects the financial condition of Seller and the Stations as of the respective dates indicated and the results of its operations and changes in cash flows for the respective periods then ended, (iii) are true, correct and complete in all material respects, and (iv) are consistent with the books and records of Seller and the Stations, which books and records are true, correct and complete in all material respects.

(b) Attached as Schedule 4.12(b) are true and complete copies of the unaudited consolidated balance sheets (the "Most Recent Balance Sheet") of Seller and the Stations as of October 31, 2003 (the "Most Recent Fiscal Month End"), and the related statements of income for the ten-month period from January 1, 2003 through October 31, 2003 (collectively, the "Interim Financial Statements"). The Interim Financial Statements (i) have been prepared in accordance with GAAP (provided that the Interim Financial Statements do not contain footnotes required under GAAP), (ii) present fairly the financial condition of Seller and the Stations as at the date indicated and the results of its operations and changes in financial position for the period then ended, (iii) are true, correct and complete in all material respects, and (iv) are consistent with the books and records of Seller and the Stations, which books and records are true, correct and complete in all material respects.

**SECTION 4.13. Absence of Certain Events.** Except as set forth in Schedule 4.13, since December 31, 2002, (i) Seller has conducted the Stations' businesses in the ordinary course consistent with past practice and (ii) there has not been:

(a) any change, event, occurrence, development, circumstance or fact that, individually or the aggregate, has had or could reasonably be expected to have a Material Adverse Effect;

(b) any contract, agreement, transaction, or commitment entered into by Seller or binding on Seller or any of its assets and properties, except in the ordinary course of business consistent with past practices;

(c) any breach or default on the part of Seller under any indebtedness of Seller, or any event that with the lapse of time or the giving of notice, or both, would constitute such a default;

(d) any amendment or termination of any of the Contracts, Leases, Licenses or other license to which Seller is a party, except in the ordinary course of business consistent with past practices;

(e) any incurrence, assumption or guarantee by Seller of any indebtedness for borrowed money other than in the ordinary course of business consistent with past practices;

(f) any making of any loan, advance or capital contributions to or investment in any Person other than loans, advances, capital contributions or investments made in the ordinary course of business consistent with past practices;

(g) any increase in compensation paid, payable or to become payable by Seller to any of its employees, or any material change in personnel policies or benefits outside of the ordinary course of business consistent with past practices;

(h) any Lien imposed upon any of the Purchased Assets;

(i) any damage, destruction or loss, whether or not covered by insurance, with respect to the property and assets of any Station having a replacement cost of more than \$5,000 for any single loss or \$10,000 for all such losses, or waiver by Seller of any extraordinary rights;

(j) any instituted or settled legal proceeding (including litigation or arbitration) by Seller;

(k) any material labor dispute, or any activity or proceeding by a labor union or representative thereof to organize any employees of any or all of the Stations, or any commitment to or liability to any labor organization that represents, or proposes to represent, employees of any or all of the Stations, or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to any employees of any or all of the Stations;

(l) any (A) establishment of any bonus, insurance, employment, severance, deferred or incentive compensation, pension, retirement, profit sharing, stock option (including any grant of any stock options, stock appreciation rights, performance awards or restricted stock awards), stock purchase or other employee benefit plan (or any amendment to any such existing agreement), (B) grant of any severance or termination pay to any officer or employee of Seller or any Station, or (C) increase or change to the rate or nature of the compensation (including wages, salaries and bonuses) that is paid or payable or to become payable to any Person employed by Seller or any Station, except (x) in each case, as may be required by applicable law or existing contracts or applicable collective bargaining agreements that have previously been disclosed to Buyer and (y) in the ordinary course of business consistent with past practices;

(m) any lowering of the advertising rates of any or all of the Stations in a manner not consistent with Seller's past practices or reflective of current market conditions;

(n) any notice from any sponsor or any customer as to the sponsor's or customer's intention not to conduct business with any or all of the Stations, the result of which loss or losses of business, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect;

(o) any material change in any Station's usage or pattern of usage of Program Rights, any material change in the broadcast hours or in the percentages of types of programming broadcast by any Station or any other material change in the programming policies of any Station;

(p) any sale, assignment, lease or other transfer or disposition of any of the assets or properties of Seller or any of the Stations, except in the ordinary course of business or in connection with

the acquisition of similar property or assets or retirements of assets in the ordinary course of business consistent with past practices;

(q) any adverse change in cable carriage or channel position on which any Station is carried on any cable system;

(r) any write down of the value of, or write off as uncollectible, any Purchased Asset or accounts receivable of Seller, except in the ordinary course of business consistent with past practices, none of which individually or in the aggregate is material;

(s) any notification to Seller or any Station that a Station may not be entitled to "must carry rights" under the Cable Act or the Satellite Home Viewer Improvement Act of 1999 either because the Station fails to meet the requisite signal strength for such status or the Station would be considered a distant signal under the cable compulsory copyright license, 17 U.S.C. § 111;

(t) a period of twenty-four (24) consecutive hours or more during which any Station was off the air for any reason or a period of forty-eight (48) hours or more, whether or not consecutive, during which any Station operated at substantially reduced power;

(u) any setting aside or payment, directly or indirectly, of any cash or non-cash dividend or other cash or non-cash distribution in respect of any of the securities of Seller, or any direct or indirect redemption, purchase or other acquisition of any securities of Seller or agreement to do so;

(v) any material change in any or all of the Stations' accounting principles or accounting practices;

(w) any material transaction by Seller with respect to any or all of the Stations, except in the ordinary course of business conducted as of the date of the transaction; or

(x) any agreement or commitment to do anything set forth in this Section 4.13.

**SECTION 4.14. No Undisclosed Liabilities.** Seller has no debt, liability or obligation of any kind, whether accrued, absolute, contingent, inchoate or otherwise, except for: (a) liabilities set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto); and (b) liabilities that have arisen after the Most Recent Fiscal Month End in the ordinary course of business consistent with past practices (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law). Seller has not, by written instrument or otherwise, guaranteed the payment or collection, or pledged any of its assets or properties to secure payment, of any indebtedness of any Person.

#### **SECTION 4.15. No Litigation or Labor Disputes; Compliance with Laws.**

(a) Except for FCC rulemaking proceedings generally affecting the television broadcasting industry, there is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or other proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, to the Knowledge of Seller, threatened against Seller, any Station or any of the Purchased Assets, or with respect to the transactions contemplated herein. There is no investigation by any commission, agency or other administrative or regulatory body or authority pending or, to the Knowledge of Seller, threatened that is specifically concerned with the operations, businesses or affairs of any of Seller, any or all of the Stations and the Purchased Assets.

(b) There is no material labor dispute or material grievance, and no strike, request for union representation, claim for unfair labor practices or other collective bargaining disputes, pending or, to the Knowledge of Seller, threatened against Seller relating to or affecting the business or operations of any or all of the Stations.

(c) Seller has carried on and conducted the businesses and affairs of any or all of the Stations in compliance in all material respects with all applicable treaties, laws, statutes, ordinances, rules, policies and regulations, and all applicable court or administrative orders or processes, including, without limitation, those of the FCC, Occupational Safety and Health Administration, Equal Employment Opportunity Commission, and National Labor Relations Board. Seller complies in all material respects with all applicable statutes, rules and regulations pertaining to equal employment opportunity.

#### **SECTION 4.16. Taxes.**

(a) All Tax Returns required to be filed by or on behalf of Seller have been filed with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed on or prior to the date hereof. All such Tax Returns and reports are correct and complete in all material respects. Seller has delivered to Buyer correct and complete copies of all state Tax Returns filed by, and all examination reports, and statements of deficiencies assessed against, or agreed to by, Seller, since January 1, 2000. All Taxes owed by Seller, whether or not shown on any Tax Return, have been fully paid. No claim has ever been made by any authority in a jurisdiction where Seller does not file Tax Returns or reports that Seller is or may be subject to taxation by such jurisdiction. Seller has not requested, and is not the beneficiary of, any extension of time within which to file any Tax Returns or reports. There are no Liens on any of the assets of Seller that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) Except as set forth in Schedule 4.16(b), no issues, claims or disputes have been asserted, claimed or raised by the Internal Revenue Service or any other taxing authority in connection with an audit or examination of any of the returns and reports referred to in Section 4.16(a). Since January 1, 2000, none of Seller's Tax Returns has been audited or examined. None of Seller's Tax Returns is currently subject to audit or examination. Seller has not waived any statute of limitation with respect to Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(c) Except as reflected on the Interim Financial Statements, there are, and as of the Closing Date will be, no Tax deficiencies, liabilities (including penalties and interest) or Liens of any kind assessed against or relating to Seller or the Purchased Assets with respect to any taxable period ending on or before the Closing Date for all Tax Returns required to be filed on or before the Closing Date. The unpaid Taxes of Seller (i) did not, as of the Most Recent Fiscal Month End, exceed the reserve, if any, for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto, if any) and (ii) do not exceed that reserve, if any, as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of Seller in filing its Tax Returns.

(d) Seller has withheld and paid all Taxes required to have been withheld and paid to any appropriate taxing authority in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third Person, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(e) Seller has not filed any consent under Code §341(f) concerning collapsible corporations. Seller has not made any payments, is not obligated to make any payments, and is not party to any agreement that under certain circumstances could obligate Seller to make any payments that will not be



deductible under Code Section 280G. Seller is not and has never been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii). Seller has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662. Seller is not party to any Tax allocation or sharing agreement. Except as set forth in Schedule 4.16(e), Seller (i) is not and since January 1, 2000 has not been a member of an Affiliated Group filing a consolidated federal income Tax Return, and (ii) has no liability for the Taxes of any Person (other than Seller) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(f) Seller will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) a change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date, (ii) any "closing agreement," as described in Code § 7121 (or any corresponding provision of state, local or foreign income Tax law), (iii) any Intercompany Transaction (or any corresponding or similar provision or administrative rule of federal, state, local or foreign income Tax law), (iv) any installment sale or open transaction made on or prior to the Closing Date or (v) as a result of any prepaid amount received on or prior to the Closing Date.

(g) Seller has not distributed stock of another Person, and has not had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code § 355 or § 361.

#### **SECTION 4.17. FCC Licenses; Cable and Satellite Matters.**

(a) Seller holds the Licenses listed on Schedule 1.7. The Licenses constitute all of the licenses, permits and authorizations from the FCC and any other governmental authority that are necessary or required for and/or used in the business and operations of any or all of the Stations. The Licenses are valid and in full force and effect through the dates set forth on Schedule 1.7. The Stations have been operated by Seller in all material respects in accordance with the terms of the Licenses, the Communications Act, and the rules, regulations and published policies of the FCC or other applicable governmental authority and any other applicable law. Except as set forth on Schedule 4.17, no application, action or proceeding is pending for the renewal or modification of any of the Licenses, and, except for actions or proceedings affecting television broadcast stations generally, no application, complaint, action or proceeding is pending or, to the Knowledge of Seller, threatened that could result in the (i) revocation, modification, non-renewal or suspension of any of the Licenses, (ii) issuance of a cease and desist order, (iii) imposition of any administrative or judicial sanction with respect to any of the Stations, or (iv) denial of an application for renewal. Each of the Stations has been assigned a digital allotment and the Licenses include all digital television authorizations and permits issued at any time by the FCC to Seller relating to such Station. Except as set forth on Schedule 4.17, each of the Stations, including both their respective analog and digital facilities, is operating at full power and not pursuant to any special temporary authority or other waiver. All FCC actions with respect to the Stations' respective analog and digital Licenses are final and not subject to any request for stay, petition for rehearing, reconsideration or review or appeal (and the time for filing any such request, petition or appeal or for review by the FCC on its own motion has expired).

(b) Assuming receipt of the FCC Consents, Seller is and will be qualified under the Communications Act and the FCC's rules, regulations and policies to assign the Licenses to Buyer. Seller has no reason to believe that any necessary FCC Applications are reasonably likely to be challenged or are reasonably likely not to be granted by the FCC in the ordinary course due to any fact or circumstance relating to Seller's operation of any or all of the Stations or any of its Affiliates.

(c) Schedule 1.3 includes a true and complete list of all agreements with operators of cable television systems and satellite carriers, if any, to which any or all of the Stations have granted to such operators the right to retransmit any or all of the Stations' signals (collectively, the "Retransmission Agreements") and a list of all must carry elections made by any or all of the Stations. Except with respect to cable television systems that are parties to the Retransmission Agreements, each Station has made a valid and timely election of must carry with respect to each cable system located within each Station's DMA as such term is defined in Section 76.55(e)(2) of the FCC's rules and regulations, with respect to the period commencing January 1, 2003. Except as set forth on Schedule 1.3, no Station has made any agreements for satellite carriage or for carriage of the signal of the Stations with any other multi-channel video programming provider (either must carry or retransmission consent), and no Station has received any notice of an attempt to provide local-in-local service from any satellite carrier. No satellite carrier has denied any Station's request for satellite carriage. No cable system has notified Seller or any or all of the Stations in writing of any signal quality deficiency or copyright indemnity or other prerequisite to cable carriage of any or all of the Stations' signals, and no cable system has declined or threatened to decline such carriage or failed to respond to a request for carriage or sought any form of relief from carriage at the FCC.

(d) Schedule 4.17(d) contains a list, including channel positions, of all cable television systems with at least 2,500 subscribers in the Sioux Falls DMA (the "Sioux Falls DMA") on which each Station's signal is presently carried and a list of the cable systems with at least 2,500 subscribers that, to the Knowledge of Seller, carry any Station, including the Station's channel position, where known, on such cable systems outside the Sioux Falls DMA.

**SECTION 4.18. Compliance with FCC Requirements.** The Stations, their physical facilities, electrical and mechanical systems and transmitting and studio equipment are being and have been operated in all material respects in accordance with the applicable Licenses, and the Stations are in compliance in all material respects with all requirements, policies, rules and regulations of the FCC and the Federal Aviation Administration. To the Knowledge of Seller, all antenna support structures used in the operation of any Station have been registered with the FCC and the Federal Aviation Administration, if registration is required, and comply with all other requirements of the FCC and the Federal Aviation Administration. Without limiting the generality of the foregoing, each of the Stations has complied in all material respects with the FCC's rules, regulations, and published policies concerning the amount of educational and informational children's television programming aired as well as the commercial limits during children's programming and the record keeping obligations related thereto. Seller has timely and properly paid all FCC regulatory fees for the Stations. Seller has timely and properly filed with the FCC all material reports, forms and statements required by the FCC to be filed by Seller relating to any of the Stations. All other material obligations required by the FCC with respect to any or all of the Stations, including, without limitation, all issues/programs lists and all other material required to be placed in the Stations' public inspection files, have been properly and timely prepared and/or filed and are true and complete in all material respects.

**SECTION 4.19. Insurance.** Seller has in full force and effect the liability and casualty insurance, errors and omissions insurance, workers compensation and employee fidelity insurance insuring the business, properties, assets, employees and officers and/or directors of the Stations and Seller as listed and described in Schedule 4.19, and such insurance is usual, customary and reasonable for businesses similar to those of the Stations. Complete and correct copies of each such insurance policy (or certificate of insurance, if such insurance policy is unavailable) listed or required to be listed in Schedule 4.19 have been delivered to Buyer. Seller has been covered during the past three (3) years by insurance similar in scope and amount to such current insurance, and all such insurance is disclosed in Schedule 4.19. Seller is not in default with respect to such insurance policies, and Seller has not failed to give any notice or present any claim under any policies in due and timely fashion.

**SECTION 4.20. Brokers.** Neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated herein or therein was induced or procured through any Person acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity.

**SECTION 4.21. Powers of Attorney.** There are no Persons holding a power of attorney on behalf of Seller.

**SECTION 4.22. Employees.** Schedule 4.22 sets forth a true and complete list of all individuals employed by each Station (collectively, the "Station Employees"), including the name, date of hire, current rate of compensation, employment status (i.e., active, disabled, on authorized leave and reason therefor), department, title, whether covered by a collective bargaining agreement and whether full-time, part-time or per-diem and describing the material terms of any other compensation and benefit arrangements for each employee in existence or presently contemplated by Seller, including, without limitation, any stock option plans or grants, stock appreciation, phantom stock, profit participation, incentive compensation or similar rights, arrangements or plans. Except as set forth in Schedule 4.22, all of the Station Employees are employed at will, and Seller is not bound by any employment agreement or collective bargaining agreement, and, there exists no organizational effort presently being made or, to the Knowledge of Seller, threatened by or on behalf of any labor union with respect to the Station Employees. Seller is in compliance in all material respects with all currently applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. There is no unfair labor practice complaint pending or, to the Knowledge of Seller, threatened against Seller before the National Labor Relations Board. No strike or other material labor dispute involving Seller is pending or, to the Knowledge of Seller, threatened, nor has Seller experienced any strike, material grievance, claim of unfair labor practice or other collective bargaining dispute within the past three (3) years. To the Knowledge of Seller, there is no activity involving any Station Employee seeking to certify a collective bargaining unit or engaging in any other organizational activity.

**SECTION 4.23. Employee Benefit Plans.** Schedule 4.23 lists each "employee pension benefit plan," as such term is defined in Section 3(2) of ERISA and "employee welfare benefit plan," as such term is defined in Section 3(1) of ERISA, whether written or oral that Seller maintains or as to which Seller contributes or has an obligation to contribute. Seller has previously furnished to Buyer true and complete copies of the any plans listed on Schedule 4.23 (and, if applicable, related trust agreements) and all amendments thereto and written interpretations thereof together with the three most recent annual reports (Form 5500 including, if applicable, Schedule B thereto) and the most recent actuarial valuation report prepared, if any, in connection with any such plans. All employee benefit plans maintained by Seller or to which Seller is obligated to contribute comply in form and operation in all material respects with ERISA, the Code, and other applicable law. All contributions and payments accrued under each employee plan of Seller determined in accordance with prior funding and accrual practices, as adjusted to include proportional accruals for the period ending on the Closing Date, will be discharged and paid by Seller on or prior to the Closing Date. As to each employee benefit for which an annual report, including schedules, or comparable report is required to be filed under ERISA or the Code, no liabilities, with respect to such plan, existed on the dates of such annual report except as disclosed therein and, except as disclosed in Schedule 4.23, no material adverse change has occurred with respect to the financial data covered by such annual report since the date thereof. Except as set forth in Schedule 4.23, the execution of this Agreement and performance of the transactions contemplated hereby will not in and of themselves constitute a triggering event under any employee benefit plan that will result in any payment (whether of severance pay or otherwise) becoming due from Seller. Each employee benefit plan that is an employee pension benefit plan has received a determination letter stating that it is tax-qualified under Section 401(a) of the Code, and no

event has occurred that could result in a disqualification of such plan. Seller has never maintained a pension plan subject to Section 412 of the Code or Title IV of ERISA nor has Seller ever maintained, contributed to or been required to contribute to any employee benefit plan that is a "multiemployer plan" (as defined in Section 3(37)(A) or (D) of ERISA) as amended by the Multiemployer Pension Plan Amendments Acts of 1980. Neither Seller nor any plan fiduciary, has engaged in any "prohibited transaction," as defined in Section 406 of ERISA, the Code, or in Section 4975 of the Code with respect to any employee benefit plan of Seller. No complete or partial termination has occurred within the five (5) years preceding the date hereof with respect to any employee benefit plan. Seller has no current or projected liability in respect of post-employment or post-retirement health or medical or life insurance benefits for retired, former or current employees of Seller, except as required to avoid excise tax under Section 4980B of the Code. No condition exists that would prevent either Seller from amending or terminating any employee plan providing health or medical benefits in respect of any active employee of the Station. There is no contract, plan or arrangement (written or otherwise) covering any employee or former employee of any Station that, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to the terms of Section 280G of the Code. Except as set forth on Schedule 4.23, (i) no employee or former employee of any Station will become entitled to any bonus, retirement, severance, job security or similar benefit or enhanced such benefit (including acceleration of vesting or exercise of an incentive award) as a result of the transactions contemplated hereby, and (ii) Seller does not have in place any stay bonus plan or arrangement or other employee retention agreement or arrangement.

#### **SECTION 4.24. Environmental Compliance.**

(a) Seller has complied in all material respects with all Environmental Laws. Seller is not a party to any litigation or administrative proceeding, and, to the Knowledge of Seller, no such litigation or proceeding is threatened against Seller which: (i) asserts or alleges that Seller violated in any material respect any Environmental Laws; (ii) asserts or alleges that Seller is required to clean up, remove or take remedial or other response action due to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials on, under or at the Real Property; or (iii) asserts or alleges that Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal or remedial or other response action that arises out of or is related to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials by Seller at any of the Real Property. Seller, its Affiliates and, to the Knowledge of Seller, their predecessors has not caused or permitted Hazardous Materials to be stored, deposited, treated, recycled or disposed of on, under or at any Real Property owned, leased, used or occupied by Seller, which Hazardous Materials, if known to be present, would require cleanup, removal or some other remedial action under any Environmental Laws.

(b) There are not now, nor, to the Knowledge of Seller, have there previously been, tanks or other facilities on, under, or at the Real Property that contain any Hazardous Materials which, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under Environmental Laws. The Real Property is free of the presence of toxic molds or molds expected to lead to allergic reactions, at such levels as would pose a threat to human health. To the Knowledge of Seller, there are no conditions existing currently that would subject Seller to material damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or that require or are likely to require material cleanup, removal, remedial action or other response pursuant to Environmental Laws by Seller;

(c) Seller is not subject, as a result of its interest in the Real Property or otherwise, to any judgment, order or citation related to or arising out of any Environmental Laws and has not been named or listed as a potentially responsible party by any governmental body or agency in a matter related

to or arising out of any Environmental Laws. The operation of the Stations does not exceed the permissible levels of exposure to RF radiation specified in the FCC's current rules, regulations and policies.

(d) There has been no environmental investigation, study, audit, test, review or other analysis conducted of which Seller has Knowledge in relation to any Station or any property or facility now or previously owned, leased or operated by the Station or Seller that has not been previously delivered to Buyer.

**SECTION 4.25. Computer Software and Hardware.** All Software owned or licensed by Seller or used or held for use in the operation of any of the Stations is described on Schedule 4.25, which sets forth the source of Seller's entitlement to use the Software, a description of the Software and its function with respect to any or all of the Stations, and identifies any licenses and contracts for the development and/or conveyance of any rights with respect to the Software, including any sublicenses granted by Seller. Except as set forth in Schedule 4.25, there are no continuing license payment obligations in respect of the Software.

**SECTION 4.26. Accounts Receivable.** All of the Accounts Receivable and Seller's accounts receivable are or will be reflected properly on Seller's respective books and records, arose or will arise in the ordinary course of Seller's business and, to Seller's Knowledge, are or will not be subject to any setoffs or counterclaims.

**SECTION 4.27. Certain Business Relationships.** None of the stockholders and Affiliates of Seller (i) has been involved in any business arrangement or relationship with Seller or any Station within the past twelve (12) months, or (ii) owns any asset, tangible or intangible, that is used or useful in the business of any Station or Seller.

**SECTION 4.28. Disclosure.** To the Knowledge of Seller, the representations and warranties contained in this Article IV do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained in this Article IV not misleading.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date of this Agreement and as of the Closing Date.

**SECTION 5.1. Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and will be, as of the Closing Date, duly qualified to conduct business in the State of South Dakota. Buyer has the limited liability company power to own, lease, and operate its respective properties and to carry on its business as such business is now conducted.

**SECTION 5.2. Authorization; Enforceability.** The execution, delivery and performance of this Agreement, the Indemnity Guaranty and all of the other agreements, documents and instruments required under this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby and thereby (including the sale, transfer, assignment and delivery of the Purchased Assets by Seller to Buyer hereunder) are within the limited liability company power of Buyer and have been duly authorized by all necessary action on behalf of Buyer. This Agreement, the Indemnity Guaranty and the other agreements, documents and instruments required hereby and thereby are and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

**SECTION 5.3. Absence of Conflicting Agreements.** None of the execution, delivery or performance of this Agreement, the Indemnity Guaranty and all of the other agreements, documents and instruments required under this Agreement or such other agreements by Buyer nor the consummation of transactions contemplated by this Agreement or by such other agreements, does or would, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under, the certificate of formation or limited liability company agreement of Buyer, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer is bound or, to the Knowledge of Buyer, any federal, state or local law, statute, ordinance, rule or regulation, or any court or administrative order or process to which Buyer is subject or by which it is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority; or

(c) except as set forth in Schedule 5.3, require the consent of any Person under any material agreement, arrangement or commitment of any nature to which Buyer is a party.

**SECTION 5.4. Brokers.** Except for fees and expenses owed to KPMG (whose fees and expenses will be paid by Buyer), neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated hereby or thereby was induced or procured through any Person acting on behalf of or representing Buyer as broker, finder, investment banker, financial advisor or in any similar capacity.

**SECTION 5.5. Absence of Litigation.** There is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, to the Knowledge of Buyer, threatened to which Buyer is a party and that could materially and adversely affect Buyer's ability to purchase the Purchased Assets under this Agreement or any other agreement required pursuant hereto or thereto.

**SECTION 5.6. FCC Qualifications.** To the best of Buyer's knowledge, Buyer is legally, technically and financially qualified under the Communications Act to acquire the Licenses and own and operate the Stations.

## **ARTICLE VI COVENANTS AND PRE-CLOSING MATTERS**

**SECTION 6.1. Pre-Closing Access.** From the date hereof until the Closing Date, upon reasonable notice, Seller shall (i) give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access during normal business hours to the offices, properties, books and records of the Stations, (ii) promptly furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to any or all of the Stations as such Persons may from time to time reasonably request and (iii) instruct the employees, counsel and financial advisors of Seller to reasonably cooperate with Buyer in its investigation of the Stations; provided, however, that any investigation and access pursuant to this Section 6.1 shall be conducted in such manner as not to unreasonably interfere with the operations of the Stations. Without limiting the generality of the foregoing, (i) such access shall allow Buyer's agents, surveyors and engineers to have access to the Real Property to conduct any and all investigations, tests, studies and to make such reports as Buyer deems reasonably necessary and prudent, including those set forth in Section 6.12 and (ii) Seller shall use its commercially reasonable efforts to obtain and deliver the Additional Community Television Documents to Buyer as soon as possible after the date hereof. No investigation by Buyer or other information received by

Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller hereunder.

**SECTION 6.2. Notice of Certain Events.** From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Section 12.1, Seller and the Guarantor, as applicable, shall give Buyer prompt written notice (together with all relevant documentation in respect thereof) of the occurrence of any of the following:

- (a) any Event of Loss;
- (b) the commencement of any proceeding or litigation at law or in equity or before the FCC or any other commission, agency or administrative or regulatory body or authority that directly involves any of the Licenses, other than proceedings or litigation of general applicability to the television broadcasting industry;
- (c) any labor grievance, material controversy, strike, or material dispute affecting the business or operation of any or all of the Stations;
- (d) any violation by Seller or any Station of any federal, state or local law, statute, ordinance, rule or regulation;
- (e) any notice of breach, default, claimed default or termination of any material Contract or Lease;
- (f) any other materially adverse developments with respect to the Purchased Assets or the business or operations of any or all of the Stations, including, without limitation: (i) any Material Adverse Effect; (ii) the cessation of broadcasting by any or all of the Stations or a reduction in the visual effective radiated power of any Station to less than eighty percent (80%) of its authorized power, if either condition endures for more than twenty-four (24) consecutive hours, and (iii) any written or oral notice from ABC in respect of the Affiliation Agreements that could or has resulted in a Material Adverse Effect; or (iv) any written or oral notice in respect of any or all of the Stations' national sales representation agreement that could or has resulted in a Material Adverse Effect;
- (g) any change in, or any of the information contained in, the representations and warranties of Seller or the Guarantor made in or pursuant to this Agreement or of any event or circumstance that, if it had occurred on or prior to the Closing Date, would cause any of such representations or warranties not to be true and correct at and as of the Closing Date or at any time prior to the consummation of the Closing;
- (h) any notice or advice from any governmental agency or authority or any other source with respect to a discharge of a Hazardous Material or presence of a Hazardous Material;
- (i) any notice or other communication from any governmental agency in connection with the transactions contemplated by this Agreement;
- (j) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; and
- (i) any other material event or occurrence outside the ordinary course of business of any or all of the Stations consistent with past practices.

**SECTION 6.3. Operations Pending Closing.** From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Section 12.1, Seller and the Guarantor, as applicable, shall:

(a) operate the business of Seller and the Stations in the usual and ordinary course of business consistent with past practices and use commercially reasonable efforts to preserve substantially intact the relationships of any or all of the Stations with their material customers, employees, suppliers, licensors, licensees, distributors and others with whom any or all of the Stations deal;

(b) operate the Stations in compliance in all material respects with applicable law, including, without limitation, the Communications Act and FCC requirements, written policies, rules and regulations and not cause or permit, or agree or commit to cause or permit, by act or failure to act on the part of Seller, any of the Licenses to expire or to be revoked, suspended or adversely modified, or take or fail to take, any action that would be reasonably likely to cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation or adverse modification of any of the Licenses; and make all filings and take such action as is necessary to make the representations and warranties contained in Section 4.17 true and correct through and as of the Closing Date;

(c) maintain the Equipment in good operating condition, ordinary wear and tear excepted, and replace with a substantially equivalent asset of substantially equivalent quality or utility any of the Equipment that shall not be working or shall be lost, stolen or destroyed and that would have been replaced in the ordinary course of business consistent with past practices;

(d) not purchase, sell, lease, mortgage, pledge or otherwise acquire or dispose of any of the Purchased Assets, except in the usual and ordinary course of business consistent with past practices where the proceeds thereof are used to replace such Purchased Assets;

(e) not make any material change in any method of accounting or accounting practice utilized in the preparation of the Financial Statements and Interim Financial Statements, except for any such change required by reason of a concurrent change in GAAP;

(f) (i) not increase or otherwise change the rate or nature of, or prepay, the compensation (including wages, salaries and bonuses) that is paid or payable to any Person employed by any or all of the Stations, except pursuant to existing compensation and fringe benefit plans, practices and arrangements that have been furnished (in the case of such plans) or disclosed (in the case of such practices and arrangements) to Buyer prior to the date of this Agreement; (ii) not enter into, renew or allow the renewal of or entering into, any employment or consulting agreement or other contract or arrangement with respect to the performance of personal services for any or all of the Stations without Buyer's prior written consent; (iii) not increase or otherwise change the rate or nature of severance or other termination benefits that are paid or payable to any Person employed by any or all of the Stations; and (iv) not agree or commit to do any of the foregoing;

(g) except with Buyer's prior written consent, (i) not enter into, or become obligated under, any agreement, contract or commitment on behalf of any or all of the Stations, or (ii) not change, amend, terminate or otherwise modify or agree or commit to change, amend, terminate or otherwise modify any Contract except for those Contracts that terminate or expire prior to the Closing Date by their own terms;

(f) maintain in full force and effect policies of liability, casualty and other insurance of the same type, character and coverage as the policies currently carried by Seller or any or all of the Stations and described on Schedule 4.19;



(g) not enter into any Tradeout Agreements or any barter Program Rights agreements relating to any or all of the Stations without the prior written consent of Buyer;

(h) take all commercially reasonable action to protect the present service areas of the Stations from increased electrical interference from other stations, existing or proposed, including, without limitation, that to which any or all of the Stations have a right to object pursuant to the terms of the Licenses; exercise commercially reasonable efforts to maintain carriage, if any, of the Stations' signals on all cable systems located within the Stations' DMA, as applicable, and as to which the Stations' signals are currently being carried; and use commercially reasonable efforts to oppose all applications, proposals or proceedings, if any, that could adversely affect each such Station and its service area;

(i) not adopt, or commit to adopt, or modify, or commit to modify, any pension, profit sharing, deferred compensation or similar plan, program or trust on behalf of personnel of any or all of the Stations, other than any such plan, program or trust currently maintained by Seller;

(j) promptly notify Buyer of any attempted or actual collective bargaining organizing activity with respect to any employees of any Station, and not enter into any collective bargaining agreement applicable to any employees of any Station;

(k) not alter, amend or modify in any material respect any Contract, Lease, License or any other Purchased Assets without Buyer's prior written consent;

(l) not take or agree to take any action inconsistent with the consummation of the Closing as contemplated by this Agreement or not take or cause to be taken any action which would cause any of the representations and warranties made by Seller in this Agreement not to be true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date;

(m) promptly provide Buyer with copies of all material correspondence with cable systems and satellite carriers, if any, concerning must carry status, retransmission consent and other material matters arising under the Cable Act or the Satellite Home Viewer Improvement Act of 1999, and keep Buyer reasonably advised of the status of all negotiations with cable systems or satellite carriers, if any, concerning such matters;

(n) not consent to the secondary transmission and/or receipt of network signals to any distributor of satellite to home video signals or consumer/recipient of such signals for private home viewing except outside the Grade B service areas of the Stations or to unserved households as that term is defined in the Satellite Home Viewer Act of 1988, 17 U.S.C. § 119;

(o) consult with Buyer regarding the Stations' cable carriage or satellite (if any) must-carry elections and entering into retransmission consent agreements or arrangements, make all such elections and agreements in a timely manner and not enter into any retransmission consent agreements without the prior written consent of Buyer, except for renewal of existing retransmission consent agreements upon similar terms and conditions;

(p) pay all and be current on all of the Station's accounts payable, accrued expenses and current liabilities prior to the respective due dates thereof (without extension or grace period);

(q) not discount, provide incentives or take any action that causes, is intended to cause, or is reasonably likely to cause any account debtor of any or all of the Stations to pay its accounts receivable other than in the ordinary course of business consistent with past practices; and

(r) not write down the value of, or write-off as uncollectible, any Purchased Asset or accounts receivable of Seller, except in the ordinary course of business consistent with past practices

(s) not otherwise engage in any practice, take any action, or enter into any transaction of the sort prohibited in Section 6.3 or fail to engage in any practice, take any action or enter into any transaction required in this Section 6.3.

**SECTION 6.4. Financial and FCC Reports.** Promptly after the end of each month ending after the date hereof and continuing through the Closing Date (but in no event later than twenty (20) days thereafter), Seller shall furnish Buyer with (i) true and complete copies of Seller's monthly and quarterly unaudited financial statements and reports for the Stations prepared after the date of the Interim Financial Statements (including the balance sheet and statement of income for each such month and the fiscal year to the end of such month and the calendar quarter, as applicable), and (ii) such other monthly and other periodic reports and statements for the Stations as are prepared in the usual and ordinary course of business, including, if any, trade and barter reports, sales and pricing reports, accounts receivable reports and accounts payable reports. All of such financial statements shall comply with the requirements, representations, and warranties concerning financial statements set forth in Section 4.12, and Seller represents and warrants to Buyer that such financial statements shall so comply. In addition, from the date hereof through the Closing Date, Seller shall promptly furnish Buyer with true and complete copies of all reports, statements, and documents filed with the FCC with respect to the Stations.

#### **SECTION 6.5. Notices, Consents and Lease Estoppel Agreements.**

(a) From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Section 12.1, Seller and the Guarantor, as applicable, shall give any notices required to be given to third Persons (with copies thereof promptly delivered to Buyer and its counsel), and Seller and the Guarantor, as applicable, shall, at its or their sole expense, use its or their best efforts to obtain and deliver, to Buyer, at the earliest practicable date prior to the Closing Date but in no event less than five (5) days prior to the Closing Date (or such earlier date if required under the terms of the applicable Contract or Lease) (i) all consents and approvals from third Persons whose consent or approval is required or desirable (as determined by Buyer in good faith) in connection with Buyer's acquisition of the Purchased Assets under this Agreement, and Buyer's use, enjoyment or disposition of all or any part of the Purchased Assets pursuant to any Contract or Lease, and (ii) all lease estoppel agreements (or similar agreements) in a form reasonably acceptable to Buyer and Buyer's lenders. Prior to the delivery of such notices, Seller and the Guarantor, as applicable, shall give Buyer a reasonable period of time to review and comment on the form and substance of such notices. Seller and the Guarantor, as applicable, shall promptly advise Buyer of any difficulties experienced in obtaining any of the consents and the lease estoppel agreements and of any conditions proposed or requested for any of such consents or lease estoppel agreements. To the extent necessary or required, Buyer shall reasonably cooperate with Seller and the Guarantor, as applicable, in obtaining such consents and lease estoppel agreements; provided, however, that Buyer shall not be required to agree to any change in the terms of any Contract or Lease or to pay any fee or other consideration to a third party to obtain any consent or lease estoppel agreement. Buyer's cooperation shall include, without limitation, signing and delivering consent forms, in form and substance reasonably acceptable to Buyer, which may be provided by third parties to such Contracts and Leases. If Seller or the Guarantor, as applicable, is unable to obtain a necessary consent from a third party to a Contract or Lease that otherwise would be an Assumed Contract or an Assumed Lease by the Closing Date ("Consent-Pending Contract"), Seller or the Guarantor, as applicable, shall so advise Buyer, and Buyer

shall continue to receive the benefits of and perform on and after the Closing Date the Consent-Pending Contracts. Subject to the terms and conditions of this Section 6.5(a), such Consent-Pending Contracts will be treated as Assumed Contracts or Assumed Leases, as applicable for the purposes of this Agreement and, subject to the terms of this Section 6.5, Buyer will be responsible for and will timely perform the financial obligations under such Consent-Pending Contracts to the extent arising on and after the Closing Date. Buyer, on the one hand, and Seller and the Guarantor, on the other hand, shall cooperate with one another to provide to Buyer the benefits of such Consent-Pending Contract until the receipt of the necessary third-party consent. If within one hundred eighty (180) days after the Closing Date, any necessary third-party consent shall be received by Buyer, such Consent-Pending Contract shall be treated as assigned and transferred to Buyer effective as of the date of the third party's consent to the assignment and transfer thereof. If within one hundred eighty (180) days after the Closing Date any necessary third-party consent shall not be received by Buyer, at Buyer's option, such Consent-Pending Contract shall not be deemed transferred and shall be treated as a contract or lease that will not continue to be an Assumed Contract or a Assumed Lease assigned hereunder. At Buyer's option, such Contract or Lease shall be assigned to, and assumed by, Seller, the Guarantor, as applicable, or Seller's or the Guarantor's assignee, as applicable, and Seller or the Guarantor, as applicable, or Seller's or the Guarantor's assignee, as applicable, shall remain responsible for such Consent-Pending Contract. Anything contained in this Section 6.5 notwithstanding, this Section 6.5 is not intended to and does not impair Buyer's conditions to Closing set forth in Article VII.

(b) Without limiting the foregoing Section 6.5(a), within six (6) business days following the expiration of Buyer's right to terminate this Agreement in accordance with Section 12.1(i), (time being of the essence), Seller shall provide ABC with written notice of the execution and delivery of this Agreement, the filing of the FCC Applications, Buyer's name as the proposed assignee and requesting ABC's consent to the assignment of the Affiliation Agreements and the Licenses to Buyer. Anything in this Agreement to the contrary or otherwise notwithstanding, if Buyer shall not receive ABC's consent to the assignment of the Affiliation Agreements and the Licenses to Buyer as described in Section 7.6 within forty (40) days following the date of this Agreement, Buyer shall have the option, to be exercised in its sole discretion, to (i) terminate this Agreement without liability on the part of Buyer or Seller (unless, with respect to Seller, such failure to obtain the consent of ABC was occasioned by reason of the failure of Seller to perform its obligations hereunder or under the Affiliation Agreements or a default by Seller of its representations and warranties hereunder or thereunder), or (ii) enter into negotiations with Seller in respect of a restructuring of the terms for Buyer's acquisition of the Purchased Assets, such contemplated restructuring to include a current purchase by Buyer of substantially all of the assets of the Stations excepting the Affiliation Agreements and the Licenses, a time brokerage agreement between Buyer and Seller that would expire upon Buyer's purchase of the Licenses and an option for Buyer to purchase the Licenses upon the termination of the Affiliation Agreements. If Buyer shall exercise its option under clause (ii) of the foregoing sentence, the parties hereto shall negotiate the same in good faith substantially consistent with the structure set forth in the parties' letter of intent.

**SECTION 6.6. Cooperation.** From the date hereof until the earlier of the Closing or the termination of this Agreement pursuant to Section 12.1: (i) each of the parties hereto (including the Guarantor) shall take any additional action that is necessary, proper or advisable in connection with any notices to, filings with, and authorizations, consents and approvals of governments and governmental agencies that it is required to give, make, or obtain in order to effect the transactions contemplated under this Agreement and in connection with the transactions contemplated herein and the use, ownership or disposition of all or any portion of the Purchased Assets by Buyer; (ii) each of the parties hereto shall furnish to the other party hereto such necessary information and reasonable assistance as such other party may reasonably request in connection with its preparation of necessary filings or submissions to any governmental agency in connection with the transactions contemplated herein and the use, ownership or disposition of all or any portion of the Purchased Assets by Buyer; and (iii) Seller shall cooperate with Buyer to assist Buyer in obtaining any and all title insurance, title commitments, surveys, lien search and

judgment reports, environmental reports and engineering and inspection reports it deems necessary. Seller shall cooperate with, and take such additional action in favor of, Buyer with respect to the matters described in this Section 6.6 or otherwise.

**SECTION 6.7. Conveyance Free and Clear of Liens.** At or prior to the Closing, Seller and the Guarantor, as applicable, shall obtain the release of all Liens on the Purchased Assets (except for Permitted Encumbrances) and shall duly file releases of all such Liens in each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed, and Seller and the Guarantor, as applicable, shall transfer and convey, to Buyer at Closing good and marketable title to all of the Purchased Assets, free and clear of any and all Liens (except for Permitted Encumbrances).

**SECTION 6.8. Financing Leases.** At or prior to the Closing, Seller shall obtain the release of all obligations and liabilities under any and all Financing Leases.

**SECTION 6.9. Public Announcement.** Seller shall publish and broadcast a public notice concerning the filing of the FCC Application in accordance with the requirements of Section 73.3580 of the FCC's Rules, and the parties here shall file with the FCC copies of this Agreement and any and all other required documentation in connection with FCC Applications. As to any other announcements or press releases, no party hereto (including the Guarantor) shall, and each party hereto shall direct and use reasonable efforts to cause its representatives and agents to not, directly or indirectly, issue any press release or make any public announcement, comment or statement with respect to, or otherwise divulge or disclose the existence of, this Agreement or the transactions contemplated hereby or thereby or the terms, conditions or other aspects of such transactions without prior approval of the other parties hereto (which shall not be unreasonably withheld or delayed), except as and to the extent that such party shall be obligated by law, rule or regulation, in which case the other party hereto shall be so advised and the parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued. Without limiting the generality of the foregoing, except as provided above, Seller and the Guarantor agree that, prior to the consummation of the Closing, Seller and the Guarantor shall not, and shall direct their representatives, agents and Affiliates to not, and shall use reasonable efforts to cause other persons and entities to not, make any public announcements, comments or statements, issue any press releases, or discuss with or disclose to any person or entity Buyer's operations or plans in respect of the Stations. The terms and provisions of this Section 6.9 shall survive any termination of this Agreement.

**SECTION 6.10. Best Efforts.** Without limiting the specific obligations of any party hereto under any agreement or covenant hereunder, each party (including the Guarantor) hereto shall use its reasonable best efforts to take all action and do all things reasonably necessary or desirable in order to consummate the transactions contemplated by this Agreement, including, without limitation, satisfaction, but not waiver, of the closing conditions set forth in Article VII and Article VIII; provided that, notwithstanding anything to the contrary contained in this Agreement, neither Buyer nor any of its Affiliates shall be required to sell or otherwise dispose of, hold separate (through the establishment of a trust or otherwise), divest itself of, or limit the ownership or operations of all or any portion of its or their businesses, assets or operations.

**SECTION 6.11. Exclusivity.** From the date of this Agreement until the earlier of the date of the Closing or the termination of this Agreement pursuant to Section 12.1, Seller and the Guarantor shall not, directly or indirectly, through its shareholders, officers, directors, employees, Affiliates, agents, representatives and advisors (including, without limitation, attorneys, accountants, consultants, bankers and financial advisors) or otherwise: (i) solicit, enter into or continue any discussion, negotiations or agreement with, or initiate or encourage the submission of any proposal or offer from any Person relating to (A) the acquisition of any equity or other ownership interest, or any substantial portion of the assets of Seller or any Station (it being acknowledged and agreed that the foregoing shall include, without limitation, any transaction structured as a merger, consolidation, business combination, share exchange or similar transaction), or (B) any

time brokerage agreement, local marketing agreement, joint sales agreement, outsourcing agreement, shared services agreement, programming or management agreement or any similar agreement or arrangement; or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person, to do or seek any of the foregoing (it being understood that this Agreement is excepted from clause (i) and (ii) of this Section 6.11). In addition, during such period, Seller and the Guarantor shall not enter into any agreement or understanding, whether oral or written that would or could reasonably be expected to prevent or interfere with the consummation of the transactions provided for in this Agreement. Seller shall promptly notify Buyer in writing if it becomes aware that any Person has made any proposal, offer, inquiry or contact with respect to the foregoing.

**SECTION 6.12. Title Insurance; Surveys; and Environmental Reports.** Prior to the Closing, Seller shall cooperate with Buyer so that Buyer may obtain, for the benefit of and at the cost of Buyer, the following:

(a) All documents reasonably required (including estoppel certificates, owner's affidavits, indemnities and gap undertakings) for final commitments ("Title Commitments") for an ALTA Owners Policy of Title Insurance, as the case may be, Form B-1970 (or if not reasonably attainable, 1992 Form), for each parcel of owned or material leased Real Property (determined by Buyer in the exercise of its reasonable discretion), issued by a title insurer designated by Buyer (the "Title Insurer"), in such amounts as Buyer reasonably determines to be the fair market value thereof, insuring Buyer's (or its designee's) interest in such parcel, subject only to the Permitted Encumbrances, and with such other endorsements and other terms and conditions as Buyer may reasonably request. Without limiting Seller's duty and obligation to cooperate with Buyer under this Section 6.12, Seller shall execute and deliver any title affidavit and lien waiver that shall be required by the Title Company. Buyer shall have a period of forty five (45) days after the last to be received of the surveys described in Section 6.12(b) and the Title Commitments, for examination of such title and the making of objections thereto (other than with respect to Permitted Encumbrances). Any and all such objections must be given to Seller in writing and must be accompanied with copies of the Title Commitment(s) and survey(s). If no objections are made within such 30-day period, then, notwithstanding any other provision to the contrary in this Agreement, any claims for, or rights to, indemnification with respect to matters reflected in the Title Commitments or surveys shall be deemed waived by Buyer and the other Buyer Indemnified Parties. If any objections to title are made (other than in respect of Permitted Encumbrances), Seller shall be allowed sixty (60) additional days to cure any such objections, and, if necessary, the Closing Date shall be extended by such 60-day period. In the event that within such additional sixty (60) day period, Seller shall notify Buyer in writing that Seller has elected not to cure any matter of title to which Buyer has objected, Buyer shall have the option of (i) terminating this Agreement, as set forth in Section 12.1(g) or (ii) closing as provided hereunder;

(b) Current surveys of each parcel of owned or material leased Real Property disclosing no survey defects or encroachments that materially interfere (determined by Buyer in the exercise of its reasonable discretion) with the current business and operation of any or all of the Stations, prepared by a licensed surveyor and conforming to 1999 ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, or such other standards as the Title Insurer or Buyer may require as a condition to the removal of any survey exceptions from the commitment for the title insurance policy described in Section 6.12(a), and certified to Buyer, Buyer's lenders and the Title Insurer, in a form sufficient to permit the issuance of the title policies described above in Section 6.12(a); and

(c) Environmental report or reports concerning the Real Property from a reputable environmental engineering firm retained by Buyer that shall not reflect any material violation of Environmental Laws or any other breach of Seller's environmental representations contained in Section 4.24 (collectively, "Environmental Non-Compliance"). Buyer shall have a period of forty-five (45) days

after receipt of all such environmental reports for examination of such reports and to provide Seller with notice of any such violation or breach revealed in such environmental reports ("Reported Environmental Non-Compliance"). Any notice of Reported Environmental Non-Compliance must be made in writing and described with reasonable particularity and must be accompanied with complete and correct copies of the environmental reports. If any notice of Reported Environmental Non-Compliance is made by Buyer, Seller shall be allowed sixty (60) additional days to cure any such Environmental Non-Compliance, and, if necessary, the Closing Date shall be extended by such 60-day period; provided, however, that if the Reported Environmental Non-Compliance or the estimated aggregate costs to clean-up, remove or otherwise remediate Hazardous Materials on or about the Real Property or otherwise cure any Reported Environmental Non-Compliance (i) would cause or has caused the failure of any condition precedent set forth in Article VII to be satisfied on or prior to the consummation of the Closing or (ii) has had or would be reasonably likely to have a Material Adverse Effect, then Buyer shall be entitled to terminate this Agreement as set forth in Section 12.1(g).

Buyer shall use commercially reasonable efforts to obtain the foregoing reports, commitments, and surveys and shall promptly notify Seller upon receipt of such items and of any issues or problems that arise in respect thereof.

### **SECTION 6.13. Station Employees.**

(a) Immediately prior to the Closing Date, Seller shall terminate the employment of all of the Station Employees, and none of Buyer or its assigns shall assume any obligation or liability to employ or continue the employment of any Station Employee after the Closing Date. Seller understands that Buyer may hire some or all of the Station Employees from and after the consummation of Closing; it being acknowledged and agreed by Buyer that any offers of employment to such employees shall be expressly conditioned upon the consummation of the Closing. Notwithstanding the foregoing, Buyer shall have no obligation to hire any of the Station Employees and shall have no liabilities of any kind in connection with any such employees arising from their employment by Seller. Buyer and its assigns shall be permitted to approach and interview Station Employees prior to, at or after the Closing, and Seller hereby acknowledges, agrees and consents to the same and to Buyer making arrangements or entering into agreements with such employees concerning becoming employees of Buyer or its assigns. Any Station Employee hired by Buyer shall enter into a new employment relationship with Buyer subject to terms and conditions established by Buyer, and Buyer shall have no responsibility for any payroll taxes, accrued vacation pay, fringe benefits or other prepaid or deferred obligations for any employee of Seller who enters into the employment of Buyer arising from any period before such employee enters into an employment relationship with Buyer. Any Station Employee who thereby becomes employed by Buyer or its assigns shall constitute a "Transferred Employee". Seller shall reasonably cooperate with Buyer and its assigns in connection with any offers to hire Station Employees, including, without limitation, affording Buyer reasonable opportunities to review employment records (other than medical and individual performance or evaluation records) to the extent not prohibited by applicable law, of the Station Employees, to discuss terms and conditions of employment with Buyer and to distribute to the any or all of the Station Employees forms and documents relating to employment with Buyer. Seller will not take any action, directly or indirectly, to prevent any Station Employee from becoming employed by Buyer or its assigns from and after the Closing Date. Except as prohibited by applicable law, after the Closing, Seller shall promptly deliver to Buyer originals or copies of all personnel files and records (including medical records, if any, but excluding benefit plan records) related to the Transferred Employees, and Seller shall have reasonable continuing access to such files and records thereafter.

(b) Seller agrees that it shall bear and pay all liabilities and obligations that may be due to Station Employees arising out of their employment with Seller, including, without limitation, liabilities and obligations related to employee benefit and welfare plans, medical and dental benefits,

disability benefits, life insurance benefits, workers compensation, vacation pay, severance pay, closing bonuses, sick leave pay, COBRA medical insurance coverage, unemployment compensation, deferred compensation and other benefits to Station Employees. Without limiting the generality of the foregoing, (i) Seller specifically acknowledges and agrees that it shall be responsible for compliance with the federal Worker Adjustment and Retraining Notification Act of 1988 (the "Warn Act"), if applicable, and (ii) Seller shall be solely responsible for: (x) claims for medical and dental benefits, disability benefits, life insurance benefits and workers compensation that are incurred prior to the Closing Date; and (y) claims related to COBRA medical insurance coverage attributable to "qualifying events" occurring prior to the Closing Date, in each case with respect to any Station Employees or Transferred Employees and their beneficiaries and dependents. Buyer shall be solely responsible for: (i) medical and dental benefits (if any), disability benefits (if any), life insurance benefits (if any) and workers compensation benefits for claims incurred from and after the Closing Date for Transferred Employees; and (ii) claims relating to "COBRA" coverage attributable to "qualifying events" occurring from and after the Closing Date, in each case only with respect to any Transferred Employees and their beneficiaries and dependents. For purposes of the foregoing, a medical/dental claim shall be considered incurred when the medical services are rendered or medical supplies are provided, and not when the condition arose. A life insurance or worker's compensation claim shall be considered incurred prior to a particular date if the injury or condition giving rise to the claim occurs prior to such date. A disability claim shall be deemed to be incurred when the employee is declared disabled under the terms of the applicable disability plan.

(c) Seller agrees that for a period commencing on and from the Closing Date and ending twelve (12) months thereafter, neither Seller nor any Affiliate of Seller shall hire, solicit or induce any Transferred Employee or other employee of Buyer to leave the employ of Buyer or its assigns or any Affiliate of Buyer or its assigns or otherwise attempt to retain or obtain the services of any Transferred Employee or other employee of Buyer. The parties acknowledge and agree that the restrictions contained in this Section 6.13(c) are a reasonable and necessary protection of the immediate interests of Buyer, and any violation of these restrictions would cause substantial injury to Buyer, and Buyer would not have entered into this Agreement without receiving the additional consideration offered by Seller binding itself to these restrictions. In the event of a breach or a threatened breach by Seller of these restrictions, Buyer shall be entitled to apply to any court of competent jurisdiction for an injunction restraining such Person from such breach or threatened breach (without the necessity of proving the inadequacy of money damages as a remedy); provided, however, that the right to apply for injunctive relief shall not be construed as prohibiting Buyer from pursuing any other available remedies for such breach or threatened breach.

**SECTION 6.14. Event of Loss.** Upon the occurrence of an Event of Loss prior to the Closing, Seller shall take all commercially reasonable steps to repair, replace and restore the damaged, destroyed or lost property to its former condition (subject to the indemnity deductible of One Hundred Twenty-Five Thousand Dollars (\$125,000) set forth in Section 10.5(b)). At Closing, Seller shall assign all of its rights under any insurance and all proceeds of insurance (excluding business interruption proceeds for periods prior to the Closing Date) covering the property damage, destruction or loss not so repaired, replaced or restored prior to Closing. If any Event of Loss shall materially affect the operations of any or all of the Stations or the Purchased Assets or otherwise has or would reasonably be expected to have an Material Adverse Effect and repair or replacement cannot be accomplished by the scheduled Closing Date but can be accomplished within sixty (60) days after that date, Seller shall provide written notice thereof to Buyer, and the Closing Date shall be postponed for that 60-day period (or such shorter period of time as is necessary to complete the same); provided, however, that if the repair or replacement cannot be accomplished within that sixty (60) day period, Seller shall promptly provide written notice thereof to Buyer and Buyer may elect by written notice to Seller within twenty (20) days after Buyer has received notice that any Event of Loss has occurred that cannot be restored within the foregoing sixty (60) day period:

(a) to postpone the Closing for a period not more than one hundred twenty (120) days beyond the scheduled Closing Date, until such time as the Purchased Assets that are the subject of the Event of Loss have been restored in all material respects to their condition immediately prior to the Event of Loss;

(b) to consummate the Closing on the scheduled Closing Date and accept all of the Purchased Assets that are the subject of such Event of Loss in their current condition, in which event all insurance proceeds covering the Event of Loss (less amounts paid to Seller for repairs or replacements of the property prior to the Closing and used for such repair or replacement) shall be assigned to Buyer to effect such repairs and restoration; or

(c) to terminate this Agreement without liability on the part of Seller (unless occasioned by reason of the failure of Seller to perform its obligations or a default of its representations and warranties hereunder) or Buyer.

If any damage to the Purchased Assets would require that any or all of the Stations be taken off the air or at a substantially reduce power for a period exceeding five (5) calendar days, Seller shall promptly notify Buyer in writing. In that event, Buyer may elect by written notice by Buyer to Seller given within ten (10) days after the date of such notice from Seller to (i) terminate this Agreement without liability on the part of Seller (unless occasioned by reason of the failure of Seller to perform its obligations or a default of its representations and warranties hereunder) or Buyer, (ii) postpone the Closing as provided in paragraph (a) above, or (iii) consummate the Closing as provided in paragraph (b) above. If the Closing Date is postponed beyond the originally scheduled Closing Date, the parties hereto shall file with the FCC all necessary requests and related documentation to extend the effective period of the FCC Consents.

**SECTION 6.15. Limited Audited Financial Statements.** Seller shall cooperate with Buyer and its Auditors (as defined below) in connection with the preparation promptly after the date hereof at Buyer's expense of financial statements ("Limited Audited Financial Statements") to be prepared in accordance with such limited audit procedures as Buyer may reasonably require (the "Limited Audit Procedures"), for the twelve-month period ended October 31, 2003 or such other period determined by Buyer, together with the report thereon (unqualified in any respect) consistent with such Limited Audit Procedures, of certified public accountants selected by Buyer (the "Auditors"), which report shall be addressed directly to Buyer. In the event that it becomes apparent that the Closing will not be effected before February 28, 2004, Buyer may request, and upon such request Seller shall cooperate with Buyer and the Auditors, at Buyer's cost, to update the Limited Audited Financial Statements and the report thereon to include the period(s) through the last day of the last calendar month ending not later than forty-five (45) days prior to the expected Closing Date.

## **ARTICLE VII CONDITIONS PRECEDENT OF BUYER**

The obligation of Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing.

**SECTION 7.1. Compliance with Agreements.** All of the covenants and obligations that each of Seller and the Guarantor is required to perform or comply with under this Agreement through, prior to or at the Closing shall have been duly performed and complied with in all material respects.

**SECTION 7.2. Representations and Warranties.** Each of the representations and warranties of Seller or the Guarantor contained in this Agreement or in any certificate, document or instrument delivered in connection herewith (i) that are qualified by materiality or Material Adverse Effect (or any variation



thereof) shall be true and correct and (ii) that are not qualified by materiality or Material Adverse Effect (or any variation thereof) shall be true and correct in all material respects, in each case at and as of the Closing Date as if made at and as of such date.

**SECTION 7.3. Deliveries at Closing.** Seller and the Guarantor, as applicable, shall have delivered, or caused to be delivered, to Buyer the documents, instruments, certificates and agreements, each properly executed and dated as of the Closing Date, required pursuant to Section 2.3(a).

**SECTION 7.4. Absence of Proceedings.** No claim, suit, action or other proceeding by a third Person shall be pending or threatened before or by any court, governmental agency, arbitrator or other entity against any of the parties to this Agreement challenging this Agreement or the transactions contemplated hereby or seeking to restrain, alter, prohibit or otherwise materially interfere with the Closing.

**SECTION 7.5. No Injunction.** No injunction, restraining order or decree of any nature of any court or governmental or regulatory authority shall exist against any of the parties hereto, or any of the principals, officers, directors, managers, partners, stockholders or members of any of them, that restrains, prevents or materially and adversely changes the transactions contemplated hereby.

**SECTION 7.6. Affiliation Agreements.** The Affiliation Agreements shall be in full force and effect, there shall be have been no amendments or changes to the Affiliation Agreements, no party to the Affiliation Agreements shall be in material default thereof and Buyer shall have received the written consent of ABC to the assignment of the Affiliation Agreements and the Licenses to Buyer as set forth in this Agreement without modification or change and on terms no less favorable in any respect than those currently contained in the Affiliation Agreements.

**SECTION 7.7. Lease Estoppel Agreements.** Buyer shall have obtained executed lease estoppel certificates and consents to the collateral assignment of Leases to Buyer's lenders from lessors under the Leases listed on Schedule 7.11 or that are otherwise reasonably designated as "material" by Buyer or required by Buyer's lenders, in form and substance reasonably satisfactory to Buyer and its lenders.

**SECTION 7.8. Fiber Optic Loop.** Seller shall have completed construction of the fiber optic loop connecting the Stations, all to the reasonable satisfaction of Buyer, and Seller shall have certified the same in Seller's Performance Certificate.

**SECTION 7.9. Governmental Consents.** The FCC Consents shall have been issued, shall have become effective, and shall, at Closing, be Final Orders, shall be in full force and effect and shall contain no provision adverse to Buyer, Buyer's Affiliates or the operation any or all of the Stations. All other authorizations, consents or approvals of any and all governmental regulatory authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect and any and all applicable waiting periods shall have expired.

**SECTION 7.10. Licenses.** Seller shall be the holder of all of the Licenses, all of such Licenses shall be in full force and effect, and there shall not have been any modification of any of such Licenses that has an adverse effect on any or all of the Stations or the conduct of Seller's business operations. The Stations shall be operating in compliance in all material respects with all FCC requirements, rules, regulations and written policies, and no proceeding shall be pending or, to the Knowledge of Seller, threatened, the effect of which would be to revoke, cancel, fail to renew, suspend or modify adversely any of the Licenses.

**SECTION 7.11. Third Party Consents and Waivers.** Buyer shall have obtained the written consent of all contracting parties (other than Seller) to the assignment of the Assumed Contracts and the Assumed Leases designated on Schedule 7.11 in form and substance reasonably satisfactory to Buyer and its lenders. In addition, Buyer shall have obtained the written consent of Midcontinent Broadcasting Co. ("Midcontinent"), the owner of one-half of the outstanding capital stock of Community Television, to the transfer of the Community Television Stock to Buyer as contemplated in this Agreement together with a waiver of Midcontinent's right of first refusal set forth in the by-laws of Community Television.

**SECTION 7.12. Certain Real Estate Matters.** Buyer shall have received the Title Commitments, surveys, environmental studies and reports, and other documents as set forth in Section 6.12.

**SECTION 7.13. Release of Liens.** All Liens (other than Permitted Encumbrances) on the Purchased Assets shall be released as provided in Section 6.7.

**SECTION 7.14. Accounts Payable.** None of the Accounts Payable or Trade Payables shall be past due (without giving effect to any extension or grace period).

**SECTION 7.15. Community Television Resignations and Appointments.** Paul H. McTear, Jr. and Rebecca S. Bryan shall have resigned as directors and officers of Community Television, and Robert Gluck and Sue Cho shall have been appointed directors and officers of Community Television (in the same respective positions).

If any of the conditions set forth in this Article VII have not been satisfied prior to or at the Closing, Buyer may (without waiving any other right or remedy under this Agreement) in its sole discretion waive any such condition (other than the condition set forth in Section 7.9 that the FCC Consents shall have been issued) and elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE VIII CONDITIONS PRECEDENT OF SELLER**

The obligation of Seller to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing.

**SECTION 8.1. Compliance with Agreement.** All of the covenants and obligations that Buyer is required to perform or comply with under this Agreement prior to or at the Closing shall have been duly performed and complied with in all material respects.

**SECTION 8.2. Representations and Warranties.** Each of the representations and warranties of Buyer contained in this Agreement or in any certificate, document or instrument delivered in connection herewith (i) that are qualified by materiality shall be true and correct and (ii) that are not qualified by materiality shall be true and correct in all material respects, in each case at and as of the Closing Date.

**SECTION 8.3. Deliveries at Closing.** Buyer shall have delivered, or caused to be delivered, to Seller the documents, each properly executed and dated as of the Closing Date, required pursuant to Section 2.3(b). Buyer shall also have made the payments described in Section 2.2.

**SECTION 8.4. Absence of Proceedings.** No claim, suit, action or other proceeding by a third Person shall be pending or threatened before or by any court, governmental agency, arbitrator or other entity against any of the parties to this Agreement challenging this Agreement or the transactions

contemplated hereby or seeking to restrain, alter, prohibit or otherwise materially interfere with the Closing.

**SECTION 8.5. Governmental Consents.** The FCC Consents shall have been issued. All other material authorizations, consents or approvals of any and all governmental regulatory authorities necessary in connection with the Closing shall have been obtained and be in full force and effect.

**SECTION 8.6. No Injunction.** No injunction, restraining order or decree of any nature of any court or governmental or regulatory authority shall exist against any of the parties hereto, or any of the principals, officers, directors, representatives, managers, partners or members of any of them, that restrains, prevents or materially and adversely changes the transactions contemplated hereby.

If any of the conditions set forth in this Article VIII have not been satisfied prior to or at the Closing, Seller may (without waiving any other right or remedy under this Agreement) in its sole discretion waive any such condition (other than the condition set forth in Section 8.5 that the FCC Consents shall have been issued) and elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE IX SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 9.1. Survival of Representations and Warranties.** All of the representations and warranties of the parties hereto contained in the Agreement shall survive the Closing (even if the party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect through and including the later of June 30, 2005 or the first anniversary of the Closing Date; provided, however, that (i) the representations and warranties contained in Section 4.1, 4.3, 4.20, 5.1, 5.2 and 5.4 shall survive the Closing (even if the party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) indefinitely without limitation as to time and (ii) the representations and warranties contained in Sections 4.6, 4.16, 4.22, 4.23 and 4.24 shall survive the Closing (even if the party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect for the applicable statute of limitations with respect thereto. Notwithstanding the preceding sentence, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentence, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time.

**SECTION 9.2. Survival of Covenants and Agreements.** The respective covenants and agreements of the parties contained in this Agreement to be performed following the Closing shall survive the Closing until performed or waived by the appropriate party hereto. Any claims as to a breach of a covenant or agreement under Article IX must be asserted in writing with reasonable particularity by the party making such claim.

## **ARTICLE X INDEMNIFICATION**

**SECTION 10.1. Indemnification of Buyer.** Subject to the terms, conditions and limitations set forth in Article IX and this Article X, Seller shall indemnify and hold harmless Buyer, its members, managers, representatives, officers, directors, employees, Affiliates, agents, representatives, successors and assigns (individually, a "Buyer Indemnitee" and collectively, "Buyer Indemnitees") from and against any and all Losses that any Buyer Indemnitee may at any time suffer or incur (including before or after the end of any applicable survival period), or become subject to, as a result of or in connection with:

(a) any breach of the representations and warranties made by Seller or the Guarantor in this Agreement or in any certificate, document or agreement delivered pursuant to this Agreement;

(b) any failure by Seller or the Guarantor to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking, or obligation to be performed, fulfilled, or complied with by Seller or the Guarantor under this Agreement or in any certificate, document or agreement delivered pursuant to this Agreement;

(c) any failure by Seller or the Guarantor to carry out, perform or otherwise fulfill any of the Retained Liabilities;

(d) the Retained Assets;

(e) the conduct or operation of any or all of the Stations or Seller prior to the consummation of the Closing except for the Assumed Liabilities;

(f) the employee retention agreements, stay bonus or stay put or other similar plans, arrangements or benefits described in Schedule 4.23; or

(g) any suit, action or other proceeding brought by any governmental authority or other Person arising out of, or in any way related to, any of the matters referred to in this Section 10.1.

**SECTION 10.2. Indemnification of Seller.** Subject to the terms, conditions and limitations set forth in Article IX and this Article X, Buyer shall indemnify and hold harmless Seller, its officers, directors, employees, Affiliates, agents, representatives, successors and assigns (individually a "Seller Indemnitee," and collectively the "Seller Indemnitees") from, against and in respect of any and all Losses that Seller Indemnitees may at any time (including before or after the end of any applicable survival period) suffer or incur, or become subject to, as a result of or in connection with:

(a) any breach of the representations and warranties made by Buyer in this Agreement or in any certificate, document or agreement delivered pursuant to this Agreement;

(b) any failure by Buyer to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking, or obligation to be performed, fulfilled, or complied with by Buyer under this Agreement or in any certificate, document or agreement delivered pursuant to this Agreement;

(c) any failure by Buyer to carry out, perform or otherwise fulfill any of the Assumed Liabilities;

(d) the fees and expenses of KPMG described in Section 5.4; or;

(e) any suit, action or other proceeding brought by any governmental authority or other Person arising out of, or in any way related to, any of the matters referred to in this Section 10.2.

**SECTION 10.3. Indemnification Procedures.** If any action, suit, proceeding, claim, liability, demand or assessment shall be asserted against any Seller Indemnitee or Buyer Indemnitee (for purposes of this section, each an "Indemnitee") in respect of which such Indemnitee proposes to demand indemnification, such Indemnitee shall notify the indemnifying party (either Buyer or Seller and, for purposes of this section, the "Indemnitor") thereof within a reasonable period of time after assertion thereof, and such notice shall include copies of all suit, service and claim documents, all other relevant documents in the possession of the Indemnitee, and an explanation of the Indemnitee's contentions and

defenses with as much specificity and particularity as the circumstances permit; provided, that the failure of the Indemnitee to give such notice shall not relieve the Indemnitor of its obligations under this Article VIII, except to the extent that the Indemnitor shall have been prejudiced thereby. Subject to rights of or duties to any insurer or other third Person having liability therefor, the Indemnitor shall have the right within thirty (30) days after receipt of such notice to assume the control of the defense, compromise or settlement of any such action, suit, proceeding, claim, liability, demand, or assessment, including, at its own expense, employment of counsel; provided further, however, that if the Indemnitor shall have exercised its right to assume such control, the Indemnitee may, in its sole discretion and expense, employ counsel to represent it (in addition to counsel employed by the Indemnitor) in any such matter, and in such event counsel selected by the Indemnitor shall be required to reasonably cooperate with such counsel of the Indemnitee in such defense, compromise or settlement for the purpose of informing and sharing information with such Indemnitee. Whether or not the Indemnitor elects to defend any such claim or demand, the Indemnitee shall have no obligation to do so. So long as the Indemnitor is defending diligently and in good faith any such claim or demand asserted by a third Person against the Indemnitee, the Indemnitee shall not settle or compromise such claim or demand. If the Indemnitor has assumed the defense of any such claim or demand, then it shall have the power and authority to settle or consent to the entry of judgment without the consent of the Indemnitee if the judgment or settlement results only in the payment by the Indemnitor of the full amount of money damages and includes a full and complete release of the Indemnitee from any and all liability thereunder; provided, that the Indemnitor shall have made arrangements for the payment of such damages in a manner reasonably satisfactory to the Indemnitee. In all other events, the Indemnitor shall not consent to the entry of judgment or enter into any settlement without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed. The Indemnitee shall make available to the Indemnitor or its agents all records and other materials in the Indemnitee's possession reasonably required by them for their use in contesting any third Party claim or demand.

**SECTION 10.4. Determination of Loss and Amount.** Notwithstanding any provision to the contrary or otherwise in this Agreement, for purposes of determining under this Article X whether any indemnifiable Loss has occurred or the amount of any such indemnifiable Loss, the respective representations, warranties, covenants, obligations and agreements of the parties set forth in this Agreement and any other agreement, instrument, certificate or affidavit delivered in connection with this Agreement will be considered and taken into account without regard to any materiality or Material Adverse Effect qualification or exception set forth herein or therein.

**SECTION 10.5. Certain Limitations of Liability.** Any provision to the contrary in this Agreement notwithstanding:

(a) The parties hereto shall make appropriate adjustments for tax consequences in determining Losses for the purposes of this Article X. All indemnification payments under this Article X shall be deemed adjustments to the purchase price payable pursuant to Section 2.2;

(b) Neither party shall have any obligation to indemnify the other party under Section 10.1(a) or Section 10.2(a), as applicable, unless and until Losses under such applicable section exceed an aggregate deductible of One Hundred Twenty-Five Thousand Dollars (\$125,000);

(c) The aggregate amount of Buyer Indemnitees' Losses required to be indemnified or paid by Seller under this Article X shall not exceed the sum of Five Million One Hundred Thousand Dollars (\$5,100,000) (after which point Seller shall have no liability or obligation to indemnify Buyer Indemnitees with respect to any further claims for indemnification); provided, however, that the foregoing limitation shall not apply to any claim or claims for indemnification with respect to (i) any failure by Seller to perform its obligations, covenants and agreements hereunder (including without limitation those arising

under or related to the Retained Liabilities), (ii) a breach of Seller's representations and warranties with respect to Taxes, or (iii) in the case of fraud or intentional misrepresentation; and

(d) No recovery under the indemnification provisions of this Agreement shall include any consequential or special damages except in the case of fraud or intentional misrepresentation on the part of the Indemnifying Party or except to the extent the relevant Loss constitutes a Loss payable to a third Person.

**SECTION 10.6. Specific Performance.** Each of the parties to this Agreement acknowledges and agrees that Buyer would be damaged irreparably in the event any of the provisions of Seller under this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties hereto agrees that Buyer shall be entitled to an injunction or injunctions to prevent breaches or defaults of the terms and provisions of this Agreement by Seller and to enforce specifically this Agreement and the terms and provisions hereof (*i.e.* the remedy of specific performance) in any competent court having jurisdiction over the parties, in addition to any other remedy to which it may be entitled, at law or in equity.

**SECTION 10.7. Survival.** This Article X shall survive termination of this Agreement without limitation.

## **ARTICLE XI FURTHER AGREEMENTS**

**SECTION 11.1. Further Assurances.** From time to time after the Closing Date, upon the reasonable request of any party hereto, the other party or parties hereto (including the Guarantor) shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and take such further action as the requesting party may reasonably request in order to fully effectuate the purposes, terms and conditions of this Agreement. Additionally, Seller agrees to provide Buyer such information and records relating to the pre-Closing operations of the Stations as may be reasonably requested by Buyer, including, without limitation, information and records relating to insurance coverage for the Stations.

**SECTION 11.2. Post-Closing Access to Information.** For a period of three (3) years after the Closing Date, each party shall afford promptly to the other party and its agents reasonable access to its books of account, financial and other records (including accountant's work papers), information, employees and auditors to the extent necessary or reasonably useful for the applicable party in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to any or all the Stations; provided that any such access by a party or its agents shall not unreasonably interfere with the conduct of the businesses or operations of the other party.

### **SECTION 11.3. Confidentiality.**

(a) Buyer agrees that, prior to Closing, Buyer and its Affiliates, respective agents and representatives shall only use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with Buyer's financing of the transaction, Buyer's investigation of the Stations and the Stations' assets in connection with this Agreement), and shall hold in strict confidence and not disclose (unless required under applicable laws or pursuant to a duly issued subpoena), (i) any data or information relating to Seller, its Affiliates, or any or all of the Stations obtained from Seller or any of its directors, officers, employees, agents or representatives in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of any or all of the Stations that, in either such case, is confidential in nature and not generally known to the public

(clauses (i) and (ii) together, "Seller's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Buyer shall return to Seller all data, information and any other written material obtained by Buyer from Seller in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Seller's Information to any third Person or using any of Seller's Information for its own benefit or that of any other Person other than in connection with filing any tax returns.

(b) Seller and the Guarantor agree that Seller, the Guarantor and their Affiliates, agents and representatives shall only use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with their investigation and review of Buyer in connection with this Agreement), and shall hold in strict confidence and not disclose (unless required under applicable laws or pursuant to a duly issued subpoena or in connection with obtaining any required third party consents or approvals or filing any tax returns), (i) any data or information, relating to Buyer or its Affiliates obtained from Buyer, or from any of its directors, officers, employees, agents or representatives, in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Station or Buyer that, in either such case, is confidential in nature and not generally known to the public (clauses (i) and (ii) together "Buyer's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Seller and the Guarantor shall return to Buyer all data, information and any other written material obtained by Seller or the Guarantor from Buyer in connection with this transaction and any copies, summaries or extracts, thereof and shall refrain from disclosing any of Buyer's Information to any third Person or using any of Buyer's Information for its own benefit or that of any other Person other than in connection with the filing of tax returns.

(c) Notwithstanding anything to the contrary set forth in this Agreement or in any other agreement required herein or therein, or any other express or implied agreement, arrangement or understanding, if any, the obligations of confidentiality contained herein and therein shall not apply to the tax structure or tax treatment of the transactions contemplated herein and therein and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the tax structure and tax treatment of such transactions and all materials of any kind (including opinions or other tax analyses) that are provided to each party relating to such tax structure and tax treatments. The preceding sentence is intended to cause such transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to the tax structure of such or any tax matter or tax idea related to the such transactions.

(d) Notwithstanding any other provision to the contrary herein, the provisions of this Section 11.3 shall survive the termination of this Agreement.

**SECTION 11.4. E-Mail.** Seller agrees to use commercially reasonable efforts to promptly deliver to Buyer, all electronic mail messages intended for Buyer but misdirected to Seller, if any, whether received by Seller prior or subsequent to the Closing. Seller further agrees to use commercially reasonable efforts to archive said electronic mail messages in such a manner as to facilitate Buyer's retrieval of said electronic mail messages.

## ARTICLE XII TERMINATION

**SECTION 12.1. Termination.** This Agreement may, by written notice given prior to the Closing, be terminated and the transactions contemplated under this Agreement may be abandoned at any time prior to the consummation of the Closing, as follows:

- (a) by mutual written consent of Seller and Buyer;
- (b) by either Buyer or Seller, if the transactions contemplated hereby are not consummated on or before: (i) the earlier of (A) the Termination Date, or (B) the denial or dismissal of any of the FCC Applications; or (ii) such later date as may be agreed upon in writing by the parties hereto, provided that such failure is not the result of the terminating party's breach or default of this Agreement;
- (c) by Buyer, if Buyer is not then in material breach or default of this Agreement and Seller shall breach or default in performance of any of its representations, warranties, covenants or obligations under this Agreement, and either: (i) such breach or default in performance shall not have been cured or waived within thirty (30) days after written notice thereof from Buyer to Seller; or (ii) Seller shall not have provided reasonable assurance that such breach or default in performance shall be cured on or before the Closing Date; but only if such breach or default in performance, singly or together with all other such breaches or defaults in performance, constitutes a failure of any condition contained in Section 7.1 or Section 7.2 as of the date of such termination;
- (d) by Seller, if Seller is not then in material breach or default of this Agreement, and Buyer shall breach or default in performance of any of its representations, warranties, covenants or obligations under this Agreement, and either: (i) such breach or default in performance shall not have been cured or waived within thirty (30) days after notice thereof from Seller to Buyer; or (ii) Buyer shall not have provided reasonable assurance that such breach or default in performance shall be cured on or before the Closing Date; but only if such breach or default in performance, singly or together with all other such breaches or defaults in performance, constitutes a failure of any condition contained in Section 8.1 or Section 8.2 as of the date of such termination;
- (e) by Buyer, if any of the conditions set forth in Article VII of this Agreement shall not have been fulfilled by the Closing Date in any material respect or if satisfaction of such a condition is or becomes impossible (unless the nonfulfillment results primarily from Buyer itself breaching any representation or warranty or failing to perform any covenant or agreement contained in this Agreement), and Buyer has not waived such condition on or prior to the Closing;
- (f) by Seller, if any of the conditions set forth in Article VIII of this Agreement shall not have been fulfilled by the Closing Date in any material respect (unless the nonfulfillment results primarily from Seller itself breaching any representation or warranty or failing to perform any covenant or agreement contained in this Agreement), and Seller has not waived such condition on or prior to the Closing;
- (g) by Buyer pursuant to Section 6.5(b), Section 6.12(a), Section 6.12(c), or Section 6.14;
- (h) by Buyer if any or all of the Stations shall have, for a period of seventy-two (72) consecutive hours or more, (i) ceased broadcasting on its authorized frequencies, or (ii) been broadcasting at a reduced power level, which cessation or reduction is reasonably likely to materially and adversely affect the operations or business of such Station; provided that Buyer must exercise this termination right



within fifteen (15) days after the date on which the Station has resumed uninterrupted broadcasting on its authorized frequencies or resumed broadcasts at full power, as the case may be; or

(i) by Buyer, within five (5) business days following Buyer's receipt of all of the Additional Community Television Documents, if Buyer shall not be reasonably satisfied with its due diligence review of such Additional Community Television Documents; or by Buyer if the Additional Community Television Documents shall not be delivered by Seller to Buyer within thirty (30) days after the date of this Agreement.

## **SECTION 12.2. Rights on Termination.**

(a) If this Agreement is terminated pursuant to Section 12.1(a), pursuant to Section 12.1(b), pursuant to Section 12.1(e) (and Seller is not in material breach or default of this Agreement), pursuant to Section 12.1(f) (and Buyer is not in material breach or default of this Agreement), pursuant to Section 12.1(g) (and Buyer is not in material breach or default of this Agreement), pursuant to Section 12.1(h) (and Buyer is not in material breach or default of this Agreement), or pursuant to Section 12.1(i) (and Seller is not in material breach or default of this Agreement), then, in any such event, all further obligations of the parties under or pursuant to this Agreement shall immediately terminate without further liability of any party hereto to the other party hereto, except as otherwise provided in this Agreement.

(b) If this Agreement is terminated (or terminable in the case of clause (i) below), pursuant to Section 12.1(c), by Buyer pursuant to Section 12.1(e) (and Seller is in material default or breach of this Agreement), pursuant to Section 12.1(g) (and Seller is in material default or breach under the this Agreement), pursuant to Section 12.1(h) (and Seller is in material default or breach under this Agreement), or pursuant to Section 12.1(i) (and Seller is in material breach or default of this Agreement), then (i) Buyer, in lieu of terminating this Agreement, shall be entitled to an injunction or injunctions to prevent breaches or defaults of the terms and provisions of this Agreement by Seller and to enforce specifically this Agreement (*i.e.*, the remedy of specific performance), or (ii) Seller shall not be relieved from any liability arising from or caused by its breach or default of a representation, warranty, covenant or agreement giving rise to such termination, and Buyer's right to pursue all legal remedies in respect thereof shall survive unimpaired, including Buyer's right to claim and be paid by Seller an amount equal to its Losses arising from, caused by or in any way related to Seller's breach or default.

(c) If this Agreement is terminated by Seller pursuant to Section 12.1(d) or pursuant to Section 12.1(f) (and Buyer is in material default or default of this Agreement), then Seller shall be entitled to paid by Buyer, as its sole liquidated damages hereunder, the sum equal to five percent (5%) of the Purchase Price. The parties hereto acknowledge and agree that such liquidated damages are intended to limit the claims that Seller may have against Buyer in the circumstances described in this Section 12.2(c) and bear a reasonable relationship to the anticipated harm that would be caused by a breach or default of this Agreement. The parties hereto further acknowledge and agree that the amount of actual loss caused by a breach or default of this Agreement on the part of Buyer is incapable and difficult of precise estimation and that there would not be a convenient and adequate alternative to liquidated damages hereunder. The terms and provisions of this Section 12.2(c) shall survive termination of this Agreement.

## **ARTICLE XIII MISCELLANEOUS**

**SECTION 13.1. Entire Agreement; Amendment.** This Agreement, the Indemnity Guaranty, the Non-Competition Agreement and the agreements required to be delivered pursuant hereto or thereto or referred to herein or therein constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and

discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein or therein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

**SECTION 13.2. Expenses.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the parties hereto shall pay its own costs and expenses (including fees and expenses of its respective counsel, accountants, agents and other experts) incurred in connection with the negotiation and preparation of this Agreement, the Indemnity Guaranty, the Non-Competition Agreement and consummation of the transactions contemplated hereby and thereby.

**SECTION 13.3. Benefit; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and their respective proper successors and permitted assigns. No party to this Agreement may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other party, provided, however, that Buyer shall be permitted to (i) assign its rights under this Agreement to any Affiliate of Buyer, (ii) collaterally assign its rights (including granting a security interest herein) under this Agreement to its senior lender(s) without the consent of any other party, and (iii) after consummation of the Closing, assign its rights to any other Person. Notwithstanding the foregoing, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the parties hereto, and their respective successors and permitted assigns, any remedy, right, benefit or claim by reason of this Agreement, or any term, covenant or condition hereof, all of which shall be for the sole and exclusive benefit of the parties hereto.

**SECTION 13.4. Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (a) on the date of personal delivery to an officer of the other party as set forth below, or (b) if sent by facsimile machine to the number shown below, on the date of such confirmed facsimile transmission, or (c) when properly deposited for delivery by nationally-recognized commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, on the date set forth in the records of such delivery service or on the return receipt and addressed as follows, unless and until either of such parties notifies the other party in accordance with this Section of a change of address or change of facsimile number:

If to Buyer:                      South Dakota Television, L.L.C.  
   c/o The Wicks Group of Companies, L.L.C.  
   405 Park Avenue, Suite 702  
   New York, NY 10022  
   Attention: Matthew E. Gormly III  
   Telephone No.: (212) 407-2205  
   Facsimile No.: (212) 223-2109

With a copy to:

Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 3000  
Raleigh, North Carolina 27607  
Attention: Stephen C. Brissette, Esq.  
Telephone No.: (919) 781-4000  
Facsimile No.: (919) 781-4865

And to:

Dickstein Shapiro Morin & Oshinsky  
2101 L Street, N.W.  
Washington, DC 20037-152  
Attention: Lewis J. Paper, Esq.  
Telephone No.: (202) 828-2265  
Facsimile No.: (202) 887-0689

If to Seller or the  
the Guarantor:

Elcom of South Dakota, Inc.  
RSA Tower, South Tower  
201 Monroe Street  
Montgomery, Alabama 36104  
Attention: Paul McTear  
Telephone No.: (334) 206-1450  
Facsimile No.: (334)-223-5550

With a copy to:

Thomas B. Henson, Esq.  
6100 Fairview Road, Suite 650  
Charlotte, North Carolina 28210  
Telephone No: (704) 643-4148  
Facsimile No: (704) 643-4482

**SECTION 13.5. Counterparts; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**SECTION 13.6. Income Tax Position.** Neither Buyer nor Seller shall take a position for income tax purposes that is inconsistent with this Agreement.

**SECTION 13.7. Severability.** If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid, or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.

**SECTION 13.8. No Reliance.** Except as to permitted assigns and successors, no third Person is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement. Buyer and Seller assume no liability to any third Person because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**SECTION 13.9. Governing Law.** Except as otherwise expressly provided herein, this Agreement shall be governed by, and construed in accordance with, the law of the State of South Dakota without

reference to any choice or conflict of law principle, provision or rule, including all matters of construction, validity and performance.

**SECTION 13.10. Consent to Jurisdiction and Service of Process.** ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT, OR ANY OBLIGATIONS OR LIABILITIES HEREUNDER OR THEREUNDER, SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, PROVIDED THAT IF THE JUDICIAL PROCEEDING SHALL NOT SATISFY APPLICABLE FEDERAL JURISDICTION REQUIREMENTS, SUCH DISPUTE SHALL BE BROUGHT IN THE SOUTH DAKOTA SUPREME COURT OR OTHER COMPETENT SOUTH DAKOTA STATE COURT IN SIOUX FALLS, SOUTH DAKOTA. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY IRREVOCABLY: (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY NATIONALLY RECOGNIZED OVERNIGHT COURIER OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 13.4 ABOVE; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (V) AGREES THAT THE PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW BUT SHALL NOT HAVE ANY RIGHT TO BRING PROCEEDINGS AGAINST THE OTHER PARTY IN THE COURTS OF ANY OTHER JURISDICTION; AND (VI) AGREES THAT THE PROVISIONS OF THIS SECTION 13.10 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

**SECTION 13.11. Waiver of Jury Trial.** TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE RELATED AGREEMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE RELATIONSHIPS THAT ARE BEING ESTABLISHED PURSUANT TO THE RELATED AGREEMENTS. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 13.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER RELATED AGREEMENTS.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**SECTION 13.12. Construction.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being acknowledged and agreed that the agents of each party have participated in the preparation hereof. 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 required otherwise. The words "herein," "hereby," "hereunder" and other similar words shall refer to this Agreement. The word "including" shall mean including, without limitation. The use of the words "or," "either" and "any" shall not be exclusive. Where the context so requires or permits, the use of the singular form includes the plural, the use of the plural form includes the singular, and the reference to either gender includes either and both gender. Where the context so requires or permits, the conjunctive shall include the disjunctive and vice versa.

**SECTION 13.13. Saturdays, Sundays and Legal Holidays.** If the time period by which any acts or payments required hereunder must be performed or paid expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

**SECTION 13.14. Incorporation of Exhibits and Schedules.** All of the Exhibits and Schedules identified in this Agreement are incorporated by reference into this Agreement and made a part hereof.

**SECTION 13.15. Waiver.** Any of the conditions to Closing set forth in this Agreement may be waived at any time prior to or at the Closing hereunder by the party entitled to the benefit thereof; provided, that no waiver shall be effective unless in a writing executed by the party charged thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision or breach of this Agreement, whether or not similar, unless otherwise incorporated in the same or different document executed by the party to be charged thereby. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

\* \* \* \* \*

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE NEXT PAGE IS THE SIGNATURE PAGE]*

IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized officers or managers to have duly executed, as applicable, this Asset Purchase Agreement as of the day and year first above written.

BUYER:

**SOUTH DAKOTA TELEVISION, L.L.C.**

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

SELLER:

**ELCOM OF SOUTH DAKOTA, INC.**

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

GUARANTOR:

(With respect to only Sections 2.1, 2.3, 2.5, 2.8, 4.3(b), 4.4, 4.8, 4.9, 6.2, 6.3, 6.5, 6.6, 6.7, 6.9, 6.10, 6.11, 11.1, and 11.3 and Article XIII)

**RAYCOM MEDIA, INC.**

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

## **EXHIBIT L**

### **NON-COMPETITION AGREEMENT**

This NON-COMPETITION AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2004, by between and among ELCOM OF SOUTH DAKOTA, INC., a Delaware corporation ("Seller"), RAYCOM MEDIA, INC., a Delaware corporation and ultimate parent of Seller ("Raycom"; together with Seller, collectively, the "Companies," and each a "Company"), and SOUTH DAKOTA TELEVISION, L.L.C., a Delaware limited liability company ("Buyer"). Capitalized terms used herein that are not otherwise defined shall have the respective meanings ascribed to such terms in that certain Asset Purchase Agreement dated December \_\_\_\_, 2003 (the "Purchase Agreement"), by between and among the Companies and Buyer. Capitalized terms used herein shall have the meanings assigned to them in the Purchase Agreement, unless the context otherwise requires or unless otherwise defined herein.

#### **WITNESSETH:**

WHEREAS, simultaneously with the execution and delivery of this Agreement, and pursuant to the Purchase Agreement, Buyer is acquiring substantially all of the assets used or held for use in the operation of television station KSFY-TV, Sioux Falls, South Dakota and satellite television stations KPRY-TV, Pierre, South Dakota and KABY-TV, Aberdeen, South Dakota (collectively, the "Stations"); and

WHEREAS, pursuant to Section 2.3(a) of the Purchase Agreement, the Companies are required to execute and deliver this Agreement in favor of Buyer; and

WHEREAS, an express condition of Buyer closing under the Purchase Agreement is that the Companies enter into this Agreement; and

WHEREAS, the Companies have benefited and will materially benefit from the transactions contemplated by the Purchase Agreement and amounts paid or payable to them pursuant thereto; and

WHEREAS, the parties acknowledge that it would be detrimental to Buyer and Buyer's successors and assigns if the Companies were to engage in activity competitive to the broadcast television business to be conducted by Buyer or Buyer's successors and assigns subsequent to Buyer's acquisition of the Purchased Assets; and

WHEREAS, as an inducement to Buyer to close under the Purchase Agreement, the Companies have agreed to execute and deliver this Agreement to Buyer;

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto have agreed as follows:

1. **Non-Competition; Non-Solicitation.**

(a) Each of the Companies hereby covenants and agrees with Buyer, for itself and any and all of its Affiliates, officers, directors, representatives or other agents, that for a period of three (3) years next following the date of this Agreement, it will not, either directly or indirectly, for itself or on behalf of any other individual, partnership, firm, corporation or other entity:

(i) to the greatest extent permitted by applicable law, in any capacity whatsoever, whether as a proprietor, partner, investor, corporate stockholder, consultant, independent contractor, co-venturer, employer, agent, representative, or otherwise, own, be involved, directly or indirectly with or in, or have an interest in, any radio or television broadcasting station located or broadcasting within the Sioux Falls (Mitchell) "Designated Market Area" (as such term is defined and used by Nielsen Media Research) (the "Market"); or

(ii) to the greatest extent permitted by applicable law, in any capacity whatsoever, whether as lender, guarantor, accommodation party, financier, investor, or otherwise, assist or attempt to assist with respect to the providing of capital needs, borrowing needs, or credit needs of any person, persons or entities of every nature and description, who or which owns, has a Federal Communications Commission application pending or has an ownership interest in, any television broadcasting station (including, without limitation, any satellite television broadcasting station) located or broadcasting within the Market; or

(iii) to the greatest extent permitted by applicable law, directly or indirectly, through another individual or entity or otherwise, (A) induce or attempt to induce any employee or independent contractor of any or all of the Stations, Buyer or its Affiliates to leave the employ of such Station, Buyer or its Affiliates, or in any way interfere with the relationship between any or all of the Stations, Buyer or any Affiliate and any employee or independent contractor thereof, (B) hire any person who is an employee of the Buyer or any of the Stations as of the Closing Date under the Purchase Agreement or (C) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of any or all of the Stations, the Buyer or any Affiliate to cease doing business with such Station(s), the Buyer or such Affiliate, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and such Station(s), Buyer or any Affiliate (including, without limitation, making any negative statements, communications or other disparaging remarks or statements about the Buyer, any of the Stations any Affiliate thereof or and officer, director, employee, representative, agent, customer, supplier, licensee or business relation thereof).

(b) Each of the Companies covenants and agrees with Buyer that it and any and all of its Affiliates, officers, directors, employees, representatives or other agents, shall not use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with their investigation and review of Buyer in connection with the Purchase Agreement, provided that such company provide prior written notice to Buyer of such request), and shall hold in strict confidence and not disclose (unless required under applicable laws or pursuant to a duly issued subpoena or in connection with obtaining any required third party consents or approvals or filing any tax returns, provided that such company provide prior written notice to Buyer of such request), (i) any data or information, relating to Buyer or its Affiliates obtained from Buyer, or from any of its directors, officers, employees, agents or representatives, in connection with this Agreement or the Purchase Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of any Station or Buyer that, in either such case, is confidential in nature and not generally known to the public (clauses (i) and (ii) together "Buyer's Information"). If the transactions contemplated in the Purchase Agreement are not consummated for any reason, the Companies shall return to Buyer all data, information and any other written material obtained by them from Buyer in connection with this transaction and any copies, summaries or extracts, thereof and shall refrain from disclosing any of Buyer's Information to any third Person or using any of Buyer's Information for its own benefit or that of any other Person other than in connection with the filing of tax returns.

(c) Each of the Companies acknowledges that the foregoing provisions are reasonable as to time and geographic territory and limitations of activities, that it understands the same and intends to be fully bound with respect thereto, and that such limitations upon its activities for the



specified time and in the designated market areas do not prevent such Company from earning a reasonable livelihood. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted under the laws and public policies of each jurisdiction in which enforcement is sought. If any court determines that any of the foregoing provisions is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to reduce the duration or scope of such provision, as the case may be, and in its reduced form, such provision shall then be enforceable.

2. **Remedies and Damages for Breach.** Recognizing that a breach of the covenants contained in Section 1 above would cause Buyer immediate and irreparable injury and that damages at law would be inadequate to compensate Buyer for any such breach, each of the Companies consents to the granting of equitable relief by way of a restraining order or temporary or permanent injunction by any court of competent jurisdiction, upon submission of any required affidavits and other evidence sufficient to support any such relief requested by Buyer, to prohibit the breach or enforce the performance of the covenants contained in Section 1 hereof. The foregoing provision shall not, however, preclude Buyer from seeking monetary damages against any of the Companies on account of their breach of this Agreement or pursuing any other remedies at law or in equity which it may have for any such breach or threatened breach of this Agreement.

3. **Tax Allocation.** All parties covenant and agree that no part of the Purchase Price paid or payable pursuant to the Purchase Agreement will be allocated to this Agreement for tax purposes.

4. **Entire Agreement; Amendments.** This Agreement, the Purchase Agreement, and the agreements delivered pursuant hereto or thereto or referred to herein or therein constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein or therein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

5. **Headings.** The headings in this Agreement are for convenience of reference only and are not part of the substance of this Agreement.

6. **Severability.** If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid, or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.

7. **Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party as set forth below, or (ii) if sent by facsimile machine to the number shown below, on the date of such confirmed facsimile transmission, or (iii) when properly deposited for delivery by nationally-recognized commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, on the date set forth in the records of such delivery service or on the return receipt and addressed as follows, unless and until either of such parties notifies the other party in accordance with this subsection of a change of address or change of facsimile number:

If to Buyer: South Dakota Television, L.L.C.  
c/o The Wicks Group of Companies, L.L.C.  
405 Park Avenue, Suite 702  
New York, NY 10022  
Attention: Matthew E. Gormly III  
Telephone No.: (212) 407-2205  
Facsimile No.: (212) 223-2109

With a copy to:

Wyrick Robbins Yates & Ponton LLP  
4101 Lake Boone Trail, Suite 3000  
Raleigh, North Carolina 27607  
Attention: Stephen C. Brissette, Esq.  
Telephone No.: (919) 781-4000  
Facsimile No.: (919) 781-4865

If to either Company: Elcom of South Dakota, Inc.  
RSA Tower, South Tower  
201 Monroe Street  
Montgomery, Alabama 36104  
Attention: Paul McTear  
Telephone No.: (334) 206-1450  
Facsimile No.: (334)-223-5550

With a copy to:

Thomas B. Henson, Esq.  
6100 Fairview Road, Suite 650  
Charlotte, North Carolina 28210  
Telephone No: (704) 643-4148  
Facsimile No: (704) 643-4482

8. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer, Buyer's Affiliates, the Companies and their respective proper successors and permitted assigns. Buyer shall be permitted, without the prior written consent of either of the Companies to (i) assign its rights and interest under this Agreement to any Affiliate of Buyer, (ii) collaterally assign its rights (including granting a security interest herein) under this Agreement to its senior lender(s), and (iii) after consummation of the Closing, assign its rights to any other Person. The Companies may not assign this Agreement or assign or delegate any of their rights, interests, duties, obligations or liabilities under this Agreement.

9. **No Waiver of Rights.** Neither any delay in exercising, nor any failure on the part of Buyer to exercise any right, power or privilege under this Agreement, the Purchase Agreement or any of the other Transaction Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance among the parties hereto. Any waiver of any such right or remedy by Buyer under this Agreement must be in writing and signed by Buyer. No waiver in any particular instance shall constitute a waiver of any other instance, no matter how similar the circumstance. The rights and remedies herein provided are

cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on the Companies in any case shall entitle any of the Companies to any other or further notice or demand in the same, similar or any other circumstance.

10. **Governing Law.** Except as otherwise expressly provided herein, this Agreement shall be governed by, and construed in accordance with, the law of the State of South Dakota without reference to any choice or conflict of law principle, provision or rule, including all matters of construction, validity and performance.

11. **Consent to Jurisdiction and Service of Process.** TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, OR ANY OBLIGATIONS OR LIABILITIES HEREUNDER OR THEREUNDER, SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, PROVIDED THAT IF THE JUDICIAL PROCEEDING SHALL NOT SATISFY APPLICABLE FEDERAL JURISDICTION REQUIREMENTS, SUCH DISPUTE SHALL BE BROUGHT IN THE SOUTH DAKOTA SUPREME COURT OR OTHER COMPETENT SOUTH DAKOTA STATE COURT IN SIOUX FALLS, SOUTH DAKOTA. BY EXECUTING AND DELIVERING THIS AGREEMENT, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY IRREVOCABLY: (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY NATIONALLY RECOGNIZED OVERNIGHT COURIER OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 7 ABOVE; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (V) AGREES THAT THE PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW BUT SHALL NOT HAVE ANY RIGHT TO BRING PROCEEDINGS AGAINST THE OTHER PARTY IN THE COURTS OF ANY OTHER JURISDICTION; AND (VI) AGREES THAT THE PROVISIONS OF THIS SECTION 11 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

12. **Waiver of Jury Trial.** TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTION DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE RELATIONSHIPS THAT ARE BEING ESTABLISHED PURSUANT TO THE TRANSACTION DOCUMENTS. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel.

**THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 12 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS.** In the event of litigation, this Agreement may be filed as a written consent to a no-jury trial by the court.

13. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission shall be deemed an original for all intents and purposes.

14. **Costs and Expenses.** The Companies agree to pay on demand all costs and expenses incurred by or on behalf of Buyer (including, without limitation, reasonable attorneys' fees and expenses) in enforcing the obligations of the Companies under this Agreement.

15. **Construction.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being acknowledged and agreed that the agents of each party have participated in the preparation hereof. 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 required otherwise. The words "herein," "hereby," "hereunder" and other similar words shall refer to this Agreement. The word "including" shall mean including, without limitation. The use of the words "or," "either" and "any" shall not be exclusive. Where the context so requires or permits, the use of the singular form includes the plural, the use of the plural form includes the singular, and the reference to either gender includes either and both gender. Where the context so requires or permits, the conjunctive shall include the disjunctive and vice versa.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE NEXT PAGE IS THE SIGNATURE PAGE.]*

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Non-Competition Agreement as of the date first above written.

**COMPANIES:**

**ELCOM OF SOUTH DAKOTA, INC.**

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

**RAYCOM MEDIA, INC.**

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

**BUYER:**

**SOUTH DAKOTA TELEVISION, L.L.C.**

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