

---

**ASSET PURCHASE AGREEMENT**  
**AMONG**  
**ABG ARKANSAS, LLC,**  
**MALVERN ENTERTAINMENT CORP.**  
**AND**  
**THE STOCKHOLDER THEREOF**

**Dated as of**  
**February 14, 2003**

## TABLE OF CONTENTS

	Page
ARTICLE I      SALE AND PURCHASE .....	1
1.1      Station Assets	1
1.2      Excluded Assets	3
1.3      Liabilities	3
1.4      Purchase Price	4
1.5      Allocation	5
1.6      Adjustments	5
1.7      Closing	7
1.8      Stockholder Undertaking	7
1.9      Certain Contracts	7
1.10     Right of Endorsement	8
1.11     Funded Indebtedness	8
1.12     Local Marketing Agreement	8
ARTICLE II      REPRESENTATIONS AND WARRANTIES OF SELLER AND THE STOCKHOLDER .....	9
2.1      Organization	9
2.2      Authority	9
2.3      No Conflicts	9
2.4      No Undisclosed Liabilities	10
2.5      Taxes	10
2.6      Station Assets	11
2.7      FCC Authorizations	11
2.8      Real Property	12
2.9      Personal Property	13
2.10     Contracts	13
2.11     Intangible Property	13
2.12     Employees	13
2.13     Compliance with Law	14
2.14     Insurance	14
2.15     Finder	15
2.16     Litigation	15

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
2.17 UCC Financing Statements	15
2.18 Disclosure	15
ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER.....	15
3.1 Organization	15
3.2 Authority	16
3.3 No Conflicts	16
3.4 Qualification	16
ARTICLE IV COVENANTS OF SELLER AND THE STOCKHOLDER.....	16
4.1 Operation of the Business	16
4.2 Access	17
4.3 Consents	18
4.4 Estoppel Certificates	18
4.5 Employee Matters	18
4.6 Exclusivity	19
4.7 Tax Covenant	19
4.8 Relationships with Vendors and Customers	19
4.9 Upgrades	19
4.10 Antenna Lease	20
ARTICLE V COVENANTS OF BUYER AND SELLER .....	20
5.1 Representations and Warranties	21
5.2 Notice of Proceedings	21
5.3 Confidentiality	21
5.4 Notice of Prospective Breach	21
5.5 FCC Application	21
ARTICLE VI CONDITIONS TO THE OBLIGATIONS OF SELLER .....	22
6.1 Representations, Warranties and Covenants	22
6.2 Proceedings	22
6.3 FCC Consent	22
6.4 Deliveries	22
ARTICLE VII CONDITIONS TO THE OBLIGATIONS OF BUYER .....	23
7.1 Representations, Warranties and Covenants	23

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
7.2 Proceedings	23
7.3 Construction Permit and License; FCC Consent	23
7.4 Deliveries	23
7.5 Absence of Material Adverse Change	23
7.6 Release of Liens	24
7.7 KLZE Downgrade	24
<b>ARTICLE VIII ITEMS TO BE DELIVERED AT THE CLOSING .....</b>	<b>24</b>
8.1 Deliveries by Seller and the Stockholder	24
8.2 Deliveries by Buyer	25
<b>ARTICLE IX SURVIVAL; INDEMNIFICATION .....</b>	<b>25</b>
9.1 Survival	25
9.2 Indemnification	25
9.3 Deficiencies	26
9.4 Procedures	26
9.5 Payment	28
9.6 Limitations	29
<b>ARTICLE X TERMINATION .....</b>	<b>29</b>
10.1 Termination	29
10.2 Specific Performance; Remedies	29
10.3 Risk of Loss	30
<b>ARTICLE XI MISCELLANEOUS .....</b>	<b>30</b>
11.1 Expenses	30
11.2 Further Assurances	31
11.3 Public Announcements	31
11.4 Successors and Assigns	32
11.5 Amendments; Waivers	32
11.6 Notices	32
11.7 Captions	33
11.8 Governing Law	34
11.9 Right of Set Off	34
11.10 Entire Agreement	34

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
11.11 Counterparts and Facsimile Execution	34
11.12 Knowledge of The Stockholder Attributable to Seller	34
11.13 Severability	35
11.14 Waiver of Jury Trial	35
11.15 Incorporation of Exhibits and Schedules	35
11.16 Independence of Covenants and Representations and Warranties	35
11.17 Rules of Construction	36

**ASSET PURCHASE  
AGREEMENT** (this "Agreement") dated as of  
February 14, 2003, among **MALVERN  
ENTERTAINMENT CORP.** ("Seller"), **Scott A.  
Gray** (the "Stockholder") and **ABG ARKANSAS,  
LLC** ("Buyer").

The Stockholder is the sole stockholder of Seller. Seller owns and operates radio broadcast station KCDI (FM) (the "Station") pursuant to certain licenses, permits and authorizations (the "FCC Authorizations") issued by the Federal Communications Commission (the "FCC"). Buyer is a wholly-owned subsidiary of Archway Broadcasting Group, LLC. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (defined below), subject to the terms and conditions of this Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in Annex I.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I**

**SALE AND PURCHASE**

**1.1 Station Assets.**

Subject to and in reliance upon the representations, warranties and agreements herein set forth, and subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined) all right, title and interest of Seller in all properties, assets, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, wherever located, including its business and goodwill (except for Excluded Assets as defined in Section 1.2) used or held for use in connection with the business or operation of the Station (collectively, the "Station Assets"). Without limiting the foregoing, the Station Assets shall include the following:

(a) FCC Authorizations. All of the FCC Authorizations now or hereafter issued or otherwise granted with respect to the Station, including without limitation all rights in and to the Station's call letters and any variations thereof, and all of those FCC Authorizations listed and described on Schedule 1.1(a) attached hereto, and all applications therefore, together with any renewals or extensions thereof and additions thereto.

(b) Tangible Personal Property. All interests of Seller as of the date of this Agreement in all equipment, electrical devices, antennas, cables, vehicles, furniture, fixtures, towers, office materials and supplies, hardware, tools, spare parts, and other tangible personal property of every kind and description, used or held for use in connection with the business of operation of the Station, as listed and described on Schedule 1.1(b) attached hereto, and any

additions and improvements thereto between the date of this Agreement and the Closing Date (collectively, the “Tangible Personal Property”).

(c) Station Contracts. Those contracts and agreements (including Real Property Leases) used in connection with the business or operation of the Station, which contracts or agreements are listed and described on Schedule 1.1(c) attached hereto (the “Station Contracts”).

(d) Programming and Copyrights. All interests of Seller as of the date of this Agreement in all programs and programming materials and elements of whatever form or nature used or held for use in the business or operation of the Station, whether recorded on tape or any other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights, or copyright applications or registrations used or held for use in the business or operation of the Station, together with all such programs, materials, elements and copyrights acquired by Seller in the business or operation of the Station between the date hereof and the Closing Date.

(e) Files and Records. All FCC logs and other records that relate to the operation of the Station, and all files and other records of Seller relating to the business or operation of the Station (other than duplicate copies of such files (“Duplicate Records”)), including without limitation all schematics, blueprints, engineering data, customer lists, reports, specifications, projections, statistics, promotional graphics, original art work, mats, plates, negatives and other advertising, marketing or related materials, and all other technical and financial information concerning the Station or the Station Assets.

(f) Claims. Any and all claims and rights against third parties if and to the extent that they relate to the Station Assets, including, without limitation, all rights under manufacturers’ and vendors’ warranties.

(g) Other Assets. All other assets of any nature whatsoever held by Seller for use in, or utilized by Seller with respect to the business or operations of the Station, other than the Excluded Assets.

The Station Assets shall be sold and conveyed to Buyer free and clear of all mortgages, liens, deeds of trust, security interests, pledges, restrictions, prior assignments, charges, claims, defects in title and encumbrances of any kind or type whatsoever (collectively, “Liens”) except: (i) liens for real estate taxes not yet due and payable for which Buyer receives a Purchase Price adjustment under Section 1.6; and (ii) the post-Closing obligations of Seller which Buyer will expressly assume under the Station Contracts (“Permitted Encumbrances”).

## **1.2 Excluded Assets.**

There shall be excluded from the Station Assets and retained by Seller to the extent in existence on the Closing Date, all cash, cash equivalents, deposits, reserves, prepaid expenses, all accounts receivable (including any notes receivable and other receivables) of Seller with respect to the Station that accrue prior to the Closing, publicly traded securities, insurance policies and any other contracts and agreements not included in the Station Contracts, pension, profit sharing and all other employee benefit plans, and any Duplicate Records (the “Excluded Assets”).

### **1.3 Liabilities.**

(a) Except for the post-Closing obligations under the Station Contracts (the “Assumed Obligations”), Buyer shall not assume or be liable for any obligation, liability or indebtedness arising from the pre-Closing operation of the Station or any other liability, obligation or indebtedness of Seller (the “Retained Liabilities”). The Retained Liabilities include, without limitation: (i) any liability or obligation of Seller arising out of or relating to any contract, lease agreement, or instrument (other than the Assumed Obligations); (ii) any liability or obligation of Seller arising out of or relating to any employee benefit plan or otherwise relating to employment (all employment obligations shall be brought current by Seller as of the Closing Date, including the payment of all accrued benefits (including vacation pay) and severance pay and all commissions and bonuses, whether or not such benefits or bonuses are due as of the Closing Date); (iii) any liability or obligation of Seller arising out of or relating to any litigation, proceeding or claim (whether or not such litigation, proceeding or claim is pending, threatened or asserted before, on or after the Closing Date); (iv) any other liabilities, obligations, debts or commitments of Seller whatsoever, whether accrued now or hereafter, whether fixed or contingent, whether known or unknown including without limitation any Taxes of Seller; (v) any claims asserted against the Station or any of the Station Assets relating to any event (whether act or omission) prior to the Closing Date; (vi) any liabilities, obligations, debts or commitments of Seller, the Stockholder or any Affiliate thereof (1) arising by reason of any breach or violation or alleged breach or violation of any law, order, rule or requirement of any government authority, (2) arising under any Environmental and Safety Requirements, or (3) arising by reason of any breach or violation or alleged breach or violation by Seller or the Stockholder of any agreement, contract, lease, license, commitment, instrument or Order (including, but not limited to, those judgments listed on Schedule 1.1(c)), in any such case to the extent such liability or order results from or arises out of events, facts or circumstances occurring or existing at or prior to the Closing, notwithstanding that the date on which any action or claims is commenced or made is after the Closing; or (vii) any liabilities, obligations, debts or commitments which Buyer could become liable for as a result of or in connection with the failure by Buyer or Seller to fully and properly comply with any bulk sales or transfers laws, or with respect to Seller’s failure to comply with any law applicable to the transactions contemplated by this Agreement. Seller retains and shall hereafter pay, satisfy, discharge, perform and fulfill all Retained Liabilities promptly as they become due, without any charge or cost to Buyer.

(b) All transfer, sales, use, registration and other such Taxes (including all applicable real estate transfer or gains Taxes) and related fees (including any penalties, interest and additions to Tax) incurred in connection with this Agreement, the other Documents and the transactions contemplated hereby shall be paid by Seller, and Seller and Buyer shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of such Tax laws. Seller shall bear and pay any stock transfer Taxes due as a result of the sale of the Station Assets to Buyer. All documentary and FCC filing fees related to the transactions contemplated hereby shall be paid one-half by Seller and one-half by Buyer.

### **1.4 Purchase Price.**

(a) The purchase price (the “Purchase Price”) to be paid for the Station Assets shall be an amount equal to the sum of (i) \$3,600,000 plus or minus (ii) the Closing Date



Adjustment Amount pursuant to Section 1.6 hereof (clauses (i) and (ii) collectively, the “Cash Purchase Price”) plus (iii) the assumption of the Assumed Obligations. Upon Closing, the Closing Payment shall be paid by Buyer in immediately available funds pursuant to written instructions of Seller to be delivered by Seller to Buyer at least three (3) Business Days prior to Closing.

(b) Upon the execution and delivery of this Agreement, Buyer shall deposit \$180,000 (the “Deposit”) into escrow with Sunbelt Media, Inc. (the “Escrow Agent”) pursuant to the escrow agreement (the “Escrow Agreement”) of even date herewith among Buyer, Seller and Escrow Agent. At the Closing, the Deposit shall be applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Sections 10.1(f) or 10.1(g), then the Deposit and any interest accrued thereon shall be disbursed by Escrow Agent and paid to Seller as liquidated damages and the sole and exclusive remedy of Seller for breach by Buyer of this Agreement (and Seller hereby waives all other legal and equitable remedies). If this Agreement is terminated for any other reason, then the Deposit and any interest accrued thereon shall be disbursed to Buyer and no Party shall have any further liability or obligation to any other Party; provided, however, that in the event of a termination of this Agreement pursuant to Sections 10.1(d), 10.1(e), 10.1(f), 10.1(g), 10.1(h) or 10.1(i) then the Party so terminating this Agreement shall also be entitled to receive from the other Party an amount equal to the reasonable fees and expenses incurred by such Party in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions as contemplated hereby; provided further, however, that the maximum aggregate amount payable by any Party for any claim or claims for the payment or reimbursement of such legal fees shall not exceed the Deposit. Seller and Buyer shall each instruct the Escrow Agent to disburse the Deposit and any interest accrued thereon to the party entitled thereto, and shall not by any act or omission delay or prevent any such disbursement; provided that in the event this Agreement is terminated by Buyer pursuant to Sections 10.1(d), 10.1(e), or 10.1(h), written instructions executed solely by Buyer and delivered to the Escrow Agent shall be sufficient instruction for the Escrow Agent to disburse the Deposit plus any interest accrued thereon to Buyer.

(c) Upon Closing, the (i) Closing Payment shall be paid by Buyer to Seller in immediately available funds pursuant to written wire instructions of Seller to be delivered by Seller to Buyer at least three (3) Business Days prior to Closing, (ii) Deposit, reduced by the amount, if any, disbursed by the Escrow Agent pursuant to Section 4.9(b), shall be paid by the Escrow Agent to Seller in immediately available funds pursuant to written wire instructions of Seller and Buyer to be delivered to the Escrow Agent as required pursuant to the terms of the Escrow Agreement and (iii) Escrow Amount shall be delivered by Buyer to David L. Eddy, PA (the “Post-Closing Escrow Agent”) by wire transfer to an account specified by the Post-Closing Escrow Agent at least three (3) Business Days prior to Closing, pursuant to the terms of a post-closing escrow agreement (the “Post-Closing Escrow Agreement”) to be entered into among Seller, Buyer and the Post-Closing Escrow Agent.

(d) Following the one-hundred and eightieth day after the Closing Date (the “Release Date”), Buyer and Seller shall give the Post-Closing Escrow Agent written instructions to release \$90,000 of the Escrow Amount to Seller; provided, however, that in the event that (i) the Escrow Amount has been reduced as a result of the settlement of claims asserted by any Buyer Indemnitee and/or (ii) any Buyer Indemnitee has asserted a claim or claims for

indemnification under Article IX hereof prior to the Release Date and any such claim has not been settled prior to the Release Date (the “Unsettled Claims”), Seller shall instead receive an amount equal to the difference, if any, between one-half of the Escrow Amount on the Release Date and the amount of the Unsettled Claims. Any such release of the Escrow Amount pursuant to the foregoing provisions shall not, in any event, reduce the amount that the Buyer Indemnitees can claim against the Seller Indemnitees pursuant to Article IX hereof. Promptly following the expiration of the Survival Period, but in any event within four Business Days thereof, Buyer and Seller shall give the Post-Closing Escrow Agent written instructions to release the remaining Escrow Amount to Seller; provided, however, that in the event that any Buyer Indemnitee has asserted a claim for indemnification under this Article IX and such claim has not been settled prior to the expiration of the Survival Period, then an amount reasonably determined by the parties to be sufficient to cover such asserted claim (and any expenses in connection therewith) shall remain with the Post-Closing Escrow Agent pursuant to the Post-Closing Escrow Agreement until such asserted claim is settled.

### **1.5     Allocation.**

The Purchase Price shall be allocated among the Station Assets and Assumed Obligations, in accordance with a statement (the “Statement of Allocation”) set forth on Schedule 1.5 hereto. Seller and the Stockholder shall complete and execute a Form 8594 Asset Acquisition Statement under Section 1060 of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), promptly following the Closing Date, in a manner consistent with the Statement of Allocation, and shall deliver a copy of such form to Buyer and file a copy of such form with their respective tax returns for the period that includes the Closing Date. None of Buyer, Seller and the Stockholder shall take any action inconsistent with the Statement of Allocation.

### **1.6     Adjustments.**

(a) The operation of the Station and the income and normal operating expenses attributable thereto through the date preceding the Closing Date (the “Adjustment Date”) shall be for the account of Seller and thereafter for the account of Buyer, and, if any income or expense is properly allocable or credited, then it shall be allocated, charged or prorated accordingly. Expenses for goods or services received both before and after the Adjustment Date, power and utilities charges, frequency discounts, and rents and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Adjustment Date in accordance with generally accepted accounting principles. All special assessments and similar charges or liens imposed against the Tangible Personal Property in respect of any period of time through the Adjustment Date, which are due and payable prior to the Adjustment Date, shall be the responsibility of Seller, and amounts payable on or after the Adjustment Date with respect to such special assessments, charges or liens in respect of any period of time after the Adjustment Date shall be the responsibility of Buyer, and such charges shall be adjusted accordingly. To the extent that any of the foregoing prorations and adjustments cannot be determined as of the Closing Date, Buyer and Seller shall conduct a final accounting and make any further payments, as required on a date mutually agreed upon, within ninety (90) days after the Closing.

(b) Notwithstanding clause (a) above, the proration of Taxes that are chargeable based on the ownership of property on a periodic basis ("Property Taxes") for a taxable year or period beginning before and ending after the Adjustment Date shall be pro rated to the period before and after the Closing Date based on the ratio of the number of days in such pro rated period over the total number of days in the applicable tax period. Sales and use Taxes shall be deemed to accrue in accordance with GAAP.

(c) Within ten (10) Business Days prior to the Closing, Seller shall deliver to Buyer a preliminary list of all items to be prorated pursuant to Sections 1.6(a) and 1.6(b) and, to the extent agreed to by Buyer at or prior to the Closing, such prorations shall be credited against or added to the Purchase Price at Closing (the "Closing Date Adjustment Amount"). In the event Buyer and Seller do not reach a final agreement on such Closing Date Adjustment Amount at the Closing, Buyer shall deliver to Seller a schedule of its proposed Closing Date Adjustment Amount (the "Proration Schedule") no later than 45 days after the Closing Date. The Proration Schedule shall be conclusive and binding upon Seller unless Seller provides Buyer with written notice of objection (the "Notice of Disagreement") within ten (10) Business Days after Seller's receipt of the Proration Schedule, which notice shall state the prorations of expenses proposed by Seller (the "Seller's Proration Amount"). Buyer shall have ten (10) Business Days from receipt of a Notice of Disagreement to accept or reject Seller's Proration Amount. If Buyer rejects Seller's Proration Amount, and the amount in dispute exceeds \$1,000, the dispute shall be promptly submitted to a mutually-agreeable disinterested certified public accounting firm not associated with either party (the "Referee") for resolution, such resolution to be made within twenty (20) days after submission to the Referee and to be final, conclusive and binding on Seller and Buyer. Such determination shall be (A) in writing, (B) furnished to Seller and Buyer as soon as practicable after the items in dispute have been referred to the Referee, (C) made in accordance with Sections 1.6(a) through (c), and (D) nonappealable and incontestable by Seller, Buyer, the Stockholder and each of their respective Affiliates and successors and not subject to collateral attack for any reason other than manifest error or fraud. Buyer and Seller agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. If the amount in dispute is equal to or less than \$1,000, such amount shall be divided equally between Buyer and Seller. Payment by Buyer or Seller, as the case may be, of the Closing Date Adjustment Amount determined pursuant to this Section 1.6(c) shall be due five (5) Business Days after the last to occur of (i) Seller's acceptance of the Proration Schedule or failure to give Buyer a timely Notice of Disagreement; (ii) Buyer's acceptance of the Seller's Proration Amount or failure to reject Seller's Proration Amount within ten (10) Business Days of receipt of a Notice of Disagreement; (iii) Buyer's rejection of Seller's Proration Amount in the event the amount in dispute equals or is less than \$1,000; and (iv) notice to Seller and Buyer of the resolution of the disputed amount by the Referee in the event that the amount in dispute exceeds \$1,000. Any payment of the Closing Date Adjustment Amount required by Seller to Buyer or by Buyer to Seller, as the case may be, under this Section 1.6(c) shall be paid by check or wire transfer of immediately available federal funds to the account of the payee with a financial institution in the United States as designated by Buyer in the Proration Schedule or by Seller in the Notice of Disagreement (or by separate notice in the event that Seller do not send a Notice of Disagreement). If either Buyer or Seller fail to pay the Closing Date Adjustment Amount when due under this Section 1.6(c), interest on such Closing Date Adjustment will accrue from the date payment was due to the date such payment is made at a per annum rate equal to the prime rate plus two percentage points, and such interest shall be payable on demand.

(d) With respect to trade, barter or similar agreements for the sale of time for goods or services (“Barter Agreements”) assumed by Buyer pursuant to Section 1.1(c), if any, if there exists on the Closing Date an aggregate negative barter balance (i.e., the amount by which the value of air time (based upon the Station’s then prevailing rates) to be provided exceeds the fair market value of goods or services to be received therefore), then such excess will be treated as prepaid time sales and adjusted for as a proration in Buyer’s favor for purposes of Section 1.6.

## **1.7 Closing.**

(a) The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “Closing”) shall take place at a date and time designated by Buyer after the date of the grant of FCC Consent, but in no event later than the earlier of (i) one year after the date of this Agreement (the “Closing Date Deadline”) or (ii) ten (10) Business Days after the date of Public Notice of the grant of FCC Consent, in any case subject to the satisfaction or waiver of the conditions required to be satisfied or permitted to be waived pursuant to Article VI or Article VII below (other than those requiring a delivery of a certificate or other document, or the taking of other action, at the Closing). Alternatively, the Closing may take place at such other place, time or date as the Parties may mutually agree upon in writing. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

(b) If the Closing occurs prior to Final FCC Consent, and prior to becoming Final, the FCC Consent is rescinded, revoked, reversed or otherwise set aside by a Final order of the FCC or by a court of competent jurisdiction, then the purchase and sale of the Station Assets shall be rescinded. In such event, Buyer shall after obtaining FCC consent reconvey to Seller the Station Assets, and Seller shall repay to Buyer the Purchase Price and reassume the Station Contracts assigned and assumed at Closing. Any such reconveyance shall be consummated on a mutually agreeable date within thirty (30) days of grant of all requisite FCC approvals. In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and execution by Seller of instruments of assumption of the contracts and leases assigned and assumed at Closing) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission. In the event that Closing occurs hereunder prior to a Final FCC Consent, then Seller’s obligations under this Section shall survive the Closing.

## **1.8 Stockholder Undertaking.**

If the Stockholder or any Affiliate thereof (other than Seller) holds any right, title or interest in or to any assets, properties, interests in properties or rights used or held for use on connection with the business or operation of the Station that the Parties would have otherwise intended to be conveyed by Seller to Buyer pursuant to this Agreement, whether by reason of any defects in corporate organization of Seller or the proper maintenance of corporate status or good standing of Seller or otherwise, then all provisions of this Agreement shall apply to such assets, properties, interests in properties and rights notwithstanding that they are not held by Seller, and all such provisions of this Agreement shall be binding on each Stockholder, or Affiliate, if applicable, as well as Seller.

### **1.9 Certain Contracts.**

Notwithstanding any other provision of this Agreement to the contrary, to the extent that the assignment by Seller of any Station Contract to be assigned hereunder shall require the consent or approval of another party thereto, this Agreement shall not constitute an assignment or attempted assignment thereof or an assumption by Buyer of Seller's obligations thereunder if such assignment or attempted assignment would, without the consent of such other party, constitute a breach thereof. Seller and the Stockholder shall use their best efforts to obtain the written consent or approval to the assignment to Buyer of each such Station Contract with respect to which such consent is required for such assignment. Until such consent or approval is obtained, each Party agrees to cooperate with the other Parties in any reasonable arrangement necessary or desirable to provide to Buyer the benefits of such Station Contracts.

### **1.10 Right of Endorsement.**

Effective as of the Closing, Seller and the Stockholder hereby constitute and appoint Buyer, and its successors and assigns, the true and lawful attorney of Seller and the Stockholder with full power of substitution, in the name of Buyer or the name of Seller and/or the Stockholder, on behalf of and for the benefit of Buyer, (a) to collect all Station Assets conveyed pursuant to this Agreement, (b) to endorse, without recourse, checks, notes and other instruments in connection with the Station and attributable to the Station Assets, (c) to institute and prosecute all Proceedings which Buyer may deem proper in order to collect, assert or enforce any claim, right or title in or to the Station Assets, (d) to defend and compromise all Proceedings with respect to any of the Station Assets and (e) to do all such reasonable acts and things with respect to the Station Assets as Buyer may deem advisable, subject to the consent of Seller, which consent shall not be unreasonably withheld. Seller and the Stockholder agree that the foregoing powers are coupled with an interest and shall be irrevocable by Seller and the Stockholder directly or indirectly by the dissolution of Seller or in any other manner. Buyer shall retain for its own account any amounts collected pursuant to the foregoing powers and Seller and/or the Stockholder shall promptly pay to Buyer any amounts received by Seller or the Stockholder after the Closing with respect to the Station Assets.

### **1.11 Funded Indebtedness.**

On the Closing Date, the Seller will provide Buyer with customary pay-off letters from all holders of Funded Indebtedness related to the Station and/or Station Assets, if any, in form and substance satisfactory to Buyer, and make arrangements satisfactory to Buyer for such holders to provide to Buyer recordable form mortgage and lien releases, canceled notes, trademark and patent assignments and other documents requested by Buyer simultaneously with, or promptly following, the Closing. Buyer may direct the Seller to pay any such Funded Indebtedness with any cash or cash equivalents available to the Seller on the Closing Date.

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES OF SELLER AND THE  
STOCKHOLDER**

To induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller and the Stockholder, as applicable, jointly and severally represent and warrant to Buyer as follows:

**2.1 Organization.**

Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (as first set forth above). Seller has the requisite power and authority to own and operate the Station, to carry on the Station's business as now conducted by it, and to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered Seller pursuant hereto (collectively, the "Seller Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof. No Person other than the Stockholder has any right to or interest in the outstanding capital stock of Seller or has any right, contingent or otherwise, to purchase, acquire or own, directly or indirectly, any equity interest in Seller.

**2.2 Authority.**

The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when executed and delivered by Seller and/or Stockholder and the other parties thereto will be, a legal, valid and binding agreement of Seller and/or Stockholder, enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

**2.3 No Conflicts.**

Except as set forth in Schedule 2.3, neither the execution and delivery by Seller and/or the Stockholder of this Agreement and the Seller Ancillary Agreements or the consummation by Seller and/or the Stockholder of the transactions contemplated hereby or thereby nor compliance by Seller and/or the Stockholder with or fulfillment by Seller and/or the Stockholder of the terms, conditions and provisions hereof or thereof will:

- (i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under, or result in the creation or imposition

of the Lien upon the of the Station Assets under, the charter or other organizational documents of Seller, or the contract, lease, agreement or instrument, or any governmental license, permit or authorization, or any Order or award to which Seller and/or the Stockholder is a party or any of the Station Assets is subject or by which Seller and/or the Stockholder is bound, or any statute, other law or regulatory provision affecting Seller, the Station Assets and/or the Stockholder; or

(ii) require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except for such of the foregoing as are necessary pursuant to the Communications Laws (defined below).

## **2.4 No Undisclosed Liabilities.**

(a) Schedule 2.4 sets forth all Liabilities (including Funded Indebtedness, if any) related to the Station and/or the Station Assets, determined as of the date hereof. Schedule 2.4 was prepared in accordance with Seller's historical and past internal accounting practices.

(b) Except as set forth in Schedule 2.4, Seller is not subject, with respect to the Station or the Station Assets, to any Liability (including Funded Indebtedness, if any).

## **2.5 Taxes.**

(a) Seller and each other Person included in any consolidated or combined Tax Return and part of any affiliated, consolidated or unitary group for Federal, state or local income Tax purposes of which Seller is or have ever been a member (the "Seller Tax Group"):

(i) has timely paid or caused to be paid all Taxes ("Covered Taxes") that could be a liability of Seller required to be paid through the date hereof and as of the Closing Date (including any Taxes shown due on any Tax Return); and

(ii) has timely filed all Tax Returns required to be filed by it through the date hereof and as of the Closing Date with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed, and such Tax Returns were (and will be) true, correct and complete.

(b) Seller has not been notified that either the Internal Revenue Service or any other Taxing authority has raised any issues, or notified any member of Seller Tax Group of an intent to raise such issues, in connection with any Tax Return of Seller, any member of the Seller Tax Group, or relating to Covered Taxes, and no basis exists for any such issues to be raised; there are no pending Tax audits and no waivers of statutes of limitations have been given or requested with respect to Seller or any member the Seller Tax Group, or relating to Covered Taxes.

(c) Seller has complied in all respects with all applicable Laws relating to the collection or withholding of Taxes (such as sales Taxes or withholding of Taxes from the wages of employees).

(d) No Liens for Taxes exist with respect to any of the Station Assets. There are no Covered Taxes asserted by any Taxing authority to be due that have not been paid. The Tax Returns of Seller and with respect to all Covered Taxes have either been examined and settled with the relevant Taxing authority or close by virtue of the expiration of the applicable statute of limitations for all periods through the date hereof.

## **2.6 Station Assets.**

(a) Seller has good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Encumbrances. Schedule 2.6 specifies the locations of the Station Assets. Upon delivery to Buyer at Closing of the documents contemplated by Section 8.1(a), Seller will thereby transfer to Buyer good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Encumbrances. There are no developments affecting any of the Station Assets pending or, to the knowledge of Seller threatened, which might materially detract from the value, materially interfere with any present or intended use or materially adversely affect the marketability of such Station Assets.

(b) The equipment included in the Station Assets have no material defects, are in good operating condition and repair and have been reasonably maintained consistent with standards generally followed in the industry (giving due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present uses.

## **2.7 FCC Authorizations.**

(a) Seller is the holder of the FCC Authorizations listed and described on Schedule 1.1(a). Such FCC Authorizations constitute all of the licenses and authorizations required under the Communications Laws for, and used in the operation of, the Station. The FCC Authorizations are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending or threatened any action by or before the FCC to revoke, suspend, cancel, rescind or modify any of the FCC Authorizations (other than Proceedings to amend FCC rules of general applicability), and there is not now issued or outstanding or pending or threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller or the Station. The Station is operating in compliance with the FCC Authorizations and the Communications Laws.

(b) All reports and filings required to be filed with, and all regulatory fees required to be paid to, the FCC by Seller with respect to the Station (including without limitation all required equal employment opportunity reports) have been timely filed and paid. All such reports and filings are accurate and complete. Seller maintains public files for the Station as required by FCC rules. Seller is operating only those facilities for which an appropriate FCC Authorization has been obtained and is in effect, and Seller is meeting the conditions of each such FCC Authorization.

(c) Neither Seller nor the Stockholder is aware of any facts indicating that Seller is not in compliance with the Communications Laws, or any other applicable federal, state and local statutes, regulations and ordinances. Neither Seller nor the Stockholder is aware of any



facts and neither Seller nor the Stockholder has received any notice or communication, formal or informal, indicating that (i) the FCC is considering revoking, suspending, canceling, rescinding, terminating or not renewing any FCC Authorization or any action against the Station or the Seller related thereto, or (ii) that any third party is considering any action before the FCC seeking the revocation, suspension, cancellation, rescission, termination, or non-renewal of any FCC Authorization or any action against the Station or the Seller related thereto.

(d) The operation of the Station does not cause or result in exposure of workers or the general public to levels of radio frequency radiation in excess of the FCC Rule 1.1310 and the FCC's OET Bulletin No. 65, "Evaluating Compliance With FCC-Specific Guidelines for Human Exposure to Radio Frequency Radiation."

(e) There are no facts known to Seller or the Stockholder which, under the Communications Laws, would disqualify Seller as the assignor of the FCC Authorizations. Should any other fact come to the attention of Seller or the Stockholder that would cause the FCC to deny the FCC Application or to impose any non-routine condition on the grant of the FCC Application or in connection with the FCC Consent, Seller or the Stockholder, as applicable, shall promptly notify Buyer and take all reasonable measures to remove such impediments.

(f) There are no facts known to Seller or the Stockholder which, under the Communications Laws, would result in the amendment or revocation of the Construction Permit or the failure by the FCC to grant the Cover Application. Should any fact come to the attention of Seller or the Stockholder that would cause the FCC to amend or revoke the Construction Permit or deny or dismiss the Cover Application, or to impose any non-routine condition on the Cover Application, Seller or the Stockholder, as applicable, shall promptly notify Buyer and take all reasonable measures to remove such impediments.

(g) All tower registrations required to be filed with the FCC or any other governmental agency by Seller or by the owner of any transmitting tower used by the Station have been filed. All proofs of performance and measurements that are required to be made by Seller with respect to the Station's transmission facilities have been completed and filed as required. All information contained in the foregoing documents is true, complete and accurate in all material respects.

## **2.8 Real Property.**

Neither Seller nor the Stockholder owns any Real Property and no land, licenses, rights-of-way and other interests of every kind and description in and to any real property and buildings are being conveyed or otherwise transferred hereunder. Schedule 1.1(c) includes a description of each lease or similar agreement (including the rental, expiration date, renewal and the location of the real property covered by such lease or other agreement) under which Seller is lessee or licensee of, or holds, uses or operates, any real property in the business or operation of the Station (the "Real Property Leases"). The Real Property Leases provide, and will continue to provide following the completion of the Upgrades, sufficient rights to access and operate the Station's facilities without need to obtain any other access rights.

## **2.9 Personal Property.**

Schedule 1.1(b) contains a list of all machinery, equipment, vehicles, furniture and other tangible personal property owned by Seller and used or held for use in the business or operation of the Station. Each item of Tangible Personal Property is in good operating condition and repair, is free from material defect or damage, is functioning in the manner and purposes for which it was intended, and has been properly maintained in accordance with industry standards.

## **2.10 Contracts.**

Each of the Station Contracts (including without limitation each of the Real Property Leases) constitutes a valid and binding obligation of Seller and, to the best knowledge of Seller, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally) and is in full force and effect and (except for those Station Contracts which by their terms will expire prior to the Closing Date or will be otherwise terminated prior to the Closing Date in accordance with the provisions hereof) may be transferred to Buyer pursuant to this Agreement and will be in full force and effect at the time of such transfer, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder and without the consent, approval or act of, or the making of any filing with, any other party. Seller has performed its obligations under each of the Station Contracts, and Seller is not in, or alleged to be in, breach or default under any of the Station Contracts, and, to the best knowledge of Seller, no other party to any of the Station Contracts has breached or defaulted thereunder, and no event has occurred and no condition or state of facts exists which, with the passage of time or the giving of notice or both, would constitute such a default or breach by Seller or, to the best knowledge of Seller, by any such other party. Complete and correct copies of each of the Station Contracts, together with all amendments thereto, have been delivered to Buyer by Seller.

## **2.11 Intangible Property.**

Except for the FCC Authorizations, neither Seller nor the Stockholder own any Intangible Property. Except for the FCC Authorizations, there is no Intangible Property used in or necessary to conduct the business of the Station in the manner contemplated by Buyer.

## **2.12 Employees.**

(a) Seller has complied with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing.

(b) There is no (i) unfair labor practice charge or complaint against Seller in respect of the Station's business pending or threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, or (ii) strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business.

(c) Seller is not delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other compensation for any services performed by them to

date or amounts required to be reimbursed to such employees and upon termination of the employment of any such employees, neither Buyer, Seller nor any Station will by reason of anything done prior to the Closing be liable to any of such employees for severance pay or any other payments.

(d) Seller has no employee benefit plan or arrangement that is an “Employee Welfare Benefit Plan” or “Employee Pension Benefit Plan” as such terms are identified in Section 3(1) and 3(2) of ERISA. Schedule 2.12 sets forth a true and complete list of each bonus, incentive compensation, severance, change in control, or termination pay, profit-sharing, pension or retirement plan, program, agreement or arrangement and each other employee benefit plan, program, agreement or arrangement, sponsored, maintained or contributed to or required to be contributed to by Seller, or an ERISA Affiliate of Seller for the benefit of any current or former employee, or director of Seller.

(e) Neither Seller nor any of its ERISA Affiliates of Seller has ever maintained or been obligated to contribute to a Multiple Employer Plan, a Multi-Employer Plan or a Defined Benefit Pension Plan.

(f) Seller is not a party to any agreement, nor has it established any policy or practice, requiring it to make a payment or provide any other form of compensation or benefit to any Person performing services for Seller upon termination of such services which would not be payable or provided in the absence of the consummation of the transactions contemplated by this Agreement. Except as set forth in Schedule 2.12, Seller is not a party to or is bound by any severance agreement.

## **2.13 Compliance with Law.**

Seller has complied with all Laws or franchises of any Governmental Entity which are applicable to the Station Assets, the Station or the Station’s business. There is no Proceeding pending or threatened against Seller or the Stockholder in respect of the Station Assets, the Station or the Station’s business. To the best knowledge of Seller and the Stockholder, there are no claims or investigations pending or threatened against Seller in respect of the Station Assets, the Station or the Station’s business. There is no Proceeding pending or threatened against Seller which questions the legality or propriety of the transactions contemplated by this Agreement.

## **2.14 Insurance.**

Schedule 2.14 lists each insurance policy maintained by the Seller with respect to the Station and/or the Station Assets, including the premiums payable thereunder and the status of any claims made with respect thereto. All such insurance policies are in full force and effect, and the Seller is not in default with respect to its obligations under any of such insurance policies nor has the Seller received any notification of cancellation or modification of any such insurance policies. The Seller has no claim outstanding which could be expected to cause a material increase in the Seller’s insurance rates with respect to any of such insurance policies. To best knowledge of Seller, there are no facts or circumstances which exist that might relieve any insurer under such insurance policies of its obligations to satisfy in full claims thereunder.

### **2.15 Finder.**

Except as set forth on Schedule 2.15, no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

### **2.16 Litigation.**

There are no Proceedings pending or, to the best knowledge of Seller, threatened against Seller or the Stockholder and, to the best knowledge of Seller, there is no basis for any of the foregoing.

### **2.17 UCC Financing Statements.**

Except as set forth on Schedule 2.17, no party has filed a financing statement with respect to the Station Assets.

### **2.18 Disclosure.**

With respect to Seller, the Station and the Station Assets, this Agreement, the Seller Ancillary Agreements and the information provided by Seller in connection with Buyer's due diligence review of the Company do not and will not contain any untrue statement or misrepresentation of material fact or omit to state a material fact required to be made in order to make the statements herein and therein not misleading in light of the circumstances in which they are made. There is no fact which has not been disclosed to Buyer of which Seller or the Stockholder is aware and which constitutes a Material Adverse Effect with respect to Seller, the Station or the Station Assets.

## **ARTICLE III**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller and the Stockholder to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to Seller and the Stockholder as follows:

### **3.1 Organization.**

Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Buyer has the requisite power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer (collectively, the "Buyer Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof.

### **3.2 Authority.**

The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when executed and delivered by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

### **3.3 No Conflicts.**

Neither the execution and delivery by Buyer of this Agreement and the Buyer Ancillary Agreements or the consummation by Buyer of any of the transactions contemplated hereby or thereby nor compliance by Buyer with or fulfillment by Buyer of the terms, conditions and provisions hereof or thereof will: (i) conflict with the charter or other organizational documents of Buyer or any Order to which Buyer is subject; or (ii) require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except for such of the foregoing as are necessary pursuant to the Communications Laws.

### **3.4 Qualification.**

(a) Buyer is qualified under the Communications Laws to hold the FCC Authorizations.

(b) Buyer is, or will be at Closing, financially qualified and has, or will have at Closing, liquid assets through its Affiliates sufficient to consummate the transactions contemplated hereby.

## **ARTICLE IV**

### **COVENANTS OF SELLER AND THE STOCKHOLDER**

Seller and the Stockholder, as applicable, covenant and agree that from the date hereof until the completion of the Closing:

#### **4.1 Operation of the Business.**

(a) Seller shall (i) operate the Station in accordance with the terms of the FCC Authorizations and in compliance with the Communications Laws and all other applicable Laws, maintain the FCC Authorizations in full force and effect, and timely file and prosecute any necessary applications for renewal of the FCC Authorizations; (ii) diligently prosecute the Cover Application, and immediately notify Buyer of any written or oral communication made to Seller,

the Stockholder, or any representative of Seller or the Stockholder, whether by the FCC or any third party, concerning the Construction Permit, the Cover Application and/or the Upgrades; (iii) use its best efforts to preserve the business organization of the Station intact, and preserve the goodwill of the Station's suppliers, advertisers, customers and others having business relations with it, if any; (iv) keep all Tangible Personal Property in good operating condition (ordinary wear and tear excepted); and (v) preserve intact the Station Assets and maintain in effect the insurance policies with respect to the Station and the Station Assets. Nothing contained in this Agreement shall give Buyer any right to control the programming, operations or any other matter relating to the Station prior to the Closing, and Seller shall have complete control of the programming, operations and all other matters relating to the Station up to the Closing.

(b) Notwithstanding Section 4.1(a), Seller shall not, without the prior written consent of Buyer: (i) sell, lease, transfer, or agree to sell, lease or transfer, any Station Assets except for non-material sales or leases, in the ordinary course of business of items which are being replaced by assets of comparable or superior kind, condition and value; (ii) amend or terminate any existing time sales contracts with respect to the Station except in the ordinary course of business, or enter into any trade or barter agreement with respect to the Station; (iii) amend or terminate any of the Station Contracts or enter into any contract, lease or agreement with respect to the Station except those entered into in the ordinary course of business that will be paid and performed in full before Closing; (iv) by any act or omission cause any representation or warranty set forth in Article II to become untrue or inaccurate; or (v) authorize any of the foregoing or enter into any agreement to do any of the foregoing.

#### **4.2     Access.**

(a) At the request of Buyer and subject to Buyer's obligations of confidentiality hereunder, Seller shall, from time to time give or cause to be given to the officers, employees, accountants, counsel, agents, consultants and representatives of Buyer: (i) full and free access during normal business hours to all facilities, properties, deeds, title papers, insurance policies, licenses, agreements, contracts, commitments, records and files of every character, equipment, machinery, fixtures, furniture, notes and accounts payable and receivable of Seller with respect to the Station and the Station Assets; (ii) all such other information concerning the Station Assets and the affairs of the Station as Buyer may reasonably request; and (iii) copies of any of the foregoing documents requested by Buyer or the officers, employees, accountants, counsel, agents, consultants and representatives of Buyer, such copies to be delivered as soon as practicable following any such request, in all cases in order that Buyer has full opportunity to make such investigation as Buyer shall reasonably desire to make of the Station and the Station Assets, and Seller and the Stockholder shall cooperate fully in connection therewith. Any investigation or examination by Buyer shall not in any way diminish or obviate any representations or warranties of Seller made in this Agreement or in connection herewith. The Parties agree to use their commercially reasonable efforts to minimize any disruptions to any other Party's business in connection with the conduct of the due diligence process contemplated herein.

(b) On and after the Closing Date, Seller will afford promptly to Buyer and its agents reasonable access to their respective books of account, financial and other records (including, without limitation, accountant's work papers), information, employees and auditors to the extent necessary or useful for Buyer in connection with any audit, investigation, dispute or

litigation or any other reasonable business purpose relating to the Station or the Station Assets; provided that any such access by Buyer shall not unreasonably interfere with the conduct of the business of Seller.

(c) In connection with this Section 4.2 and Buyer's due diligence review of the Company, Seller will not, to the best of Seller's knowledge, provide information to Buyer that, contains any misrepresentation of material fact or omits to state a material fact required to made in order to make the information provided therein not misleading in light of the circumstances in which such information is provided.

#### **4.3     Consents.**

Seller shall use best efforts to obtain all of the consents noted on Schedule 2.3 hereto. If Seller does not obtain a consent required to assign a Station Contract hereunder, Buyer shall not be required to assume such Station Contract. Marked with an asterisk on Schedule 2.3 are those consents the receipt of which is a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents"). Seller shall obtain the Required Consents prior to Closing.

#### **4.4     Estoppel Certificates.**

Seller, at Seller's expense, will obtain and deliver to Buyer written estoppel certificates (the "Estoppel Certificates") duly executed by the lessors under the Real Property Leases, in form and substance satisfactory to Buyer, and dated within thirty days prior to Closing.

#### **4.5     Employee Matters.**

(a) Buyer shall not, in any event, be obligated to offer employment to any of Seller's employees (each an "Employee").

(b) Buyer assumes no obligation to continue or assume any compensation arrangements or liabilities of Seller (including, but not limited to, any salary, bonuses, fringe benefits, insurance plans, or pension or retirement benefits under any compensation or retirement plan maintained by Seller) to any Employee.

(c) Seller agrees to remain responsible for the payment of all accrued benefits in accordance with the terms of Seller's retirement plans, including any retiree medical, dental and life insurance plan. Buyer shall not at any time assume any liability under Seller's retirement plans for the payment of benefits to any active or any terminated, vested or retired participants in Seller's retirement plans.

(d) Seller shall retain the responsibility for payment of all medical, dental, health and disability claims incurred by any Employee prior to the Closing Date, and Buyer shall not assume any liability with respect to such claims. Seller also agrees to retain responsibility for disability payments to employees on medical or disability leave.

(e) Seller, with respect to the Employees, will timely give all notices required to be given under the Worker Adjustment and Retraining Notification Act of 1988 or similar

statutes or regulation of any jurisdiction relating to any plant closing or mass lay off or as otherwise required by law and shall fully indemnify and hold harmless Buyer with respect to any liability that may arise with respect thereto relating to the Employees.

#### **4.6 Exclusivity.**

Neither Seller nor the Stockholder shall, and Seller shall use its best efforts to ensure that its officers, directors, employees, accountants, counsel, agents, consultants or representatives do not, directly or indirectly solicit, encourage, initiate or conduct any discussions, enter into any negotiations, enter into any agreements, understandings or transactions or provide any information to any person or entity (other than Buyer and Buyer's Affiliates) with respect to or relating to Another Transaction, provide any non-public financial or other confidential or proprietary information regarding the Station or the Station Assets (including this Agreement and any other materials containing the proposed terms and any other financial information, projections or proposals regarding the Station or the Station Assets) to any person or entity (other than to Buyer and its Affiliates) who Seller or the Stockholder knows, or has reason to believe, would have any interest in participating in Another Transaction. As used herein, the term "Another Transaction" means (A) the sale of the Station or the Station Assets, or (B) the sale (whether by sale of stock, merger, consolidation or otherwise) of more than 50% of the voting securities of Seller. The Stockholder and Seller represents that it is not a party to, or bound by, any agreement with respect to Another Transaction other than this Agreement and this Agreement will not violate any agreement to which Seller or the Stockholder is bound or to which the Station or the Station Assets are subject. If Seller or the Stockholder receives any oral or written offer or proposal to engage in any form of discussions relating to Another Transaction, then Seller or the Stockholder, as the case may be, shall immediately notify Buyer of the identity of the person or entity making, and the specific terms of, any such offer or proposal.

#### **4.7 Tax Covenant.**

Seller (or any member of the Seller Tax Group) shall not make any material Tax election, settle or compromise any Liability for Taxes with respect to the Station Assets.

#### **4.8 Relationships with Vendors and Customers.**

From and after the date hereof, neither the Seller nor the Stockholder shall take or fail to take any action which could reasonably be expected to, directly or indirectly, have an adverse effect on the Station or the business or operations of the Station after the Closing, or on the business relationship between the Seller or the Station and any vendor, supplier or customer thereof.

#### **4.9 Upgrades.**

(a) Seller shall use its best efforts to complete the antenna relocation, transmitter installation and channel upgrade and other modifications and improvements authorized by the Construction Permit, in form and substance satisfactory to Purchaser (collectively, the "Upgrades"), as soon as practicable following the grant of the Construction Permit by the FCC to Seller (the "Grant"), and in any event not later than ninety (90) days following the execution of this Agreement.



(b) In the event that Seller does not complete the Upgrades pursuant to the terms of Section 4.9(a), Buyer shall have the right, exercisable at its sole discretion, to complete the Upgrades and upon such exercise is hereby authorized by Seller and Stockholder to take any and all actions necessary to complete the Upgrades in the manner that Buyer deems advisable. Upon its receipt of notice of the exercise of Buyer's rights hereunder, Seller shall take all actions and provide all information requested by Buyer with respect to the completion of the Upgrades, and Buyer is hereby appointed Seller's attorney-in-fact and exclusive agent to complete the Upgrades and shall have the right to exercise all rights and powers of Seller with respect thereto. Buyer is hereby authorized by Seller and Stockholder, to the fullest extent permitted by law, to set off any and all costs incurred by Buyer in connection with the exercise of its rights set forth in this Section 4.9(b) against any and all amounts at any time held by Buyer or in the Escrow Fund on behalf of Seller or the Stockholder and any and all amounts owed by Buyer to such Party pursuant to the terms of this Agreement and in connection therewith, the Parties hereby agree that written instructions executed solely by Buyer and delivered to Escrow Agent shall be sufficient instruction for the Escrow Agent to disburse all or any portion of the Deposit plus any interest accrued thereon to Buyer in order to cover the costs of completing the Upgrades.

(c) Immediately following the completion of the Upgrades, Seller shall at its sole expense file with the FCC an application of FCC Form 302-FM, in form and substance satisfactory to Buyer (the "Cover Application"), for a license to cover the Construction Permit.

#### **4.10 Antenna Lease.**

Prior to the Closing, Seller shall enter into an antenna space lease, in form and substance satisfactory to Buyer (the "ABF Lease"), with Arkansas Broadcasting Foundation ("ABF") pursuant to which Seller shall lease antenna space for use by the Station on the tower owned by ABF and located in Crystal Mountain, Arkansas. The ABF Lease shall be included in Station Contracts assigned to and assumed by Buyer pursuant to Section 1.1(c). Immediately following the execution of the ABF Lease, Seller shall amend Schedule 1.1(c) to include the ABF Lease.

## **ARTICLE V**

### **COVENANTS OF BUYER AND SELLER**

Buyer and Seller both covenant and agree, as applicable, that from the date hereof until the completion of the Closing:

#### **5.1 Representations and Warranties.**

Each party shall give the other detailed written notice promptly upon learning of the occurrence of any event that would cause or constitute a breach (or would have caused a breach had such event occurred or been known to it prior to the date hereof) of any of its representations and warranties contained in this Agreement.

## **5.2 Notice of Proceedings.**

Each Party shall promptly notify the other in writing upon: (a) becoming aware of any Order or any complaint praying for an Order restraining or enjoining the Party from consummating the transactions contemplated hereunder; or (b) receiving any notice from any Governmental Entity of its intention (i) to institute an investigation into, or institute a Proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

## **5.3 Confidentiality.**

Except for information disclosed in the FCC Application, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including any information regarding Buyer, its Affiliates and the terms of the transactions contemplated hereby (including the Purchase Price)) shall be confidential and shall not be disclosed to any other person or entity, except the parties' attorneys, accountants, investment bankers, investors and lenders, and their respective attorneys for the purpose of consummating the transactions contemplated by this Agreement.

## **5.4 Notice of Prospective Breach.**

Each party shall immediately notify the other parties in writing upon the occurrence, or failure to occur, of any event, which occurrence, or failure to occur, would be reasonably likely to cause (i) any representation or warranty made by such party and contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Closing as if such representation and warranty were made at such time or (ii) any material failure of such party or any officer, director, employee or agent thereof, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that such notification shall not relieve such party of any liability imposed pursuant to this Agreement or otherwise.

## **5.5 FCC Application.**

Within ten (10) Business Days after the date hereof, Seller and Buyer shall file an application with the FCC (the "FCC Application") requesting the FCC's written consent to the assignment of the FCC Authorizations from Seller to Buyer pursuant to this Agreement. Seller and Buyer shall diligently take all steps that are necessary, proper or desirable to prepare and file the FCC Application and to expedite the prosecution and grant of the FCC Application. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC Application, shall immediately notify the other of any communication received from the FCC relating to the FCC Application, shall furnish all information required by the FCC, and shall be represented at all meetings or hearings scheduled to consider the FCC Application.

## ARTICLE VI

### CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

#### **6.1     Representations, Warranties and Covenants.**

Each of the representations and warranties of Buyer contained in this Agreement shall have been true and correct as of the date when made and shall be deemed to be made again on and as of the Closing Date and shall then be true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement. Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Buyer shall have furnished Seller with a certificate, dated the Closing Date and duly executed by an officer of Buyer authorized on behalf of Buyer to give such a certificate, to the effect that the conditions set forth in this Section 6.1 have been satisfied.

#### **6.2     Proceedings.**

None of the Stockholder, Seller or Buyer shall be subject to any restraining order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby. In the event such a restraining order or injunction is in effect, this Agreement may not be abandoned by Seller pursuant to this Section 6.2 prior to the Closing Date Deadline, but the Closing shall be delayed during such period. This Agreement may be abandoned after the Closing Date Deadline if such restraining order or injunction remains in effect.

#### **6.3     FCC Consent.**

The FCC Consent shall have been granted by the FCC.

#### **6.4     Deliveries.**

Buyer shall have complied with each and every one of its obligations set forth in Section 8.2.

## ARTICLE VII

### CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

### **7.1 Representations, Warranties and Covenants.**

Each of the representations and warranties of Seller and the Stockholder contained in this Agreement shall have been true and correct as of the date when made and shall be deemed to be made again on and as of the Closing Date and shall then be true and correct except to the extent changes are permitted or contemplated pursuant to this Agreement. Seller and the Stockholder shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Seller shall have furnished Buyer with a certificate, dated the Closing Date and duly executed by an officer of Seller authorized on behalf of Seller to give such a certificate, to the effect that the conditions set forth in this Section 7.1 have been satisfied.

### **7.2 Proceedings.**

None of the Stockholder, Seller or Buyer shall be subject to any restraining order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby. In the event such a restraining order or injunction is in effect, this Agreement may not be abandoned by Buyer pursuant to this Section 7.2 prior to the Closing Date Deadline, but the Closing shall be delayed during such period. This Agreement may be abandoned after such date if such restraining order or injunction remains in effect.

### **7.3 Construction Permit and License; FCC Consent.**

(a) The FCC shall not have revoked or amended the Construction Permit, Seller shall have completed, in form and substance satisfactory to Buyer, the Upgrades, and Seller shall have filed the Cover Application with the FCC.

(b) The FCC Consent shall have been granted by the FCC, without any conditions materially adverse to Buyer or its Affiliates.

### **7.4 Deliveries.**

Seller and the Stockholder shall have complied with each and every one of its obligations set forth in Section 8.1.

### **7.5 Absence of Material Adverse Change.**

Since the date of this Agreement, there shall have been no Material Adverse Change with respect to the Station Assets.

### **7.6 Release of Liens.**

Buyer shall have received duly executed releases (including, without limitation, UCC-3 Termination Statements) of all Liens on the Station Assets in form and substance reasonably satisfactory to Buyer.

**7.7 KLZE Downgrade.**

The FCC shall have granted its consent to the downgrade of FM station KLZE, in form and substance satisfactory to Buyer and, at Buyer's option, such FCC consent shall have become Final.

**ARTICLE VIII**

**ITEMS TO BE DELIVERED AT THE CLOSING**

**8.1 Deliveries by Seller and the Stockholder.**

At the Closing, Seller and the Stockholder shall deliver to Buyer duly executed by Seller, the Stockholder or such other signatory as may be required by the nature of the document:

(a) bills of sale, certificates of title, endorsements, assignments, general warranty deeds and other good and sufficient instruments of sale, conveyance, transfer and assignment, in form and substance satisfactory to Buyer, sufficient to sell, convey, transfer and assign the Station Assets to Buyer free and clear of Liens (other than Permitted Encumbrances) and to quiet Buyer's title thereto;

(b) the Required Consents and any other consents obtained by Seller under Section 4.3;

(c) certified copies of resolutions authorizing the execution, delivery and performance by Seller of this Agreement, which shall be in full force and effect;

(d) the certificate referred to in Section 7.1;

(e) an opinion of Seller's counsel in form and substance reasonably satisfactory to Buyer;

(f) an opinion of Seller's FCC counsel in form and substance reasonably satisfactory to Buyer;

(g) the Estoppel Certificates and the Lien Search Reports;

(h) the Post-Closing Escrow Agreement duly executed by Seller;

(i) UCC-3 Termination Statements with respect to any Liens which have been placed on the Station Assets; and

(j) Seller shall deliver to Buyer at the Closing a certificate complying with the Code and Treasury Regulations, in form and substance satisfactory to Buyer, duly executed and acknowledged, certifying that the transactions contemplated hereby are exempt from withholding under Section 1445 of the Code.

## **8.2 Deliveries by Buyer.**

At the Closing, Buyer shall deliver to Seller:

- (a) the Purchase Price, which shall be paid in the manner specified in Section 1.4;
- (b) an instrument or instruments of assumption of the Assumed Obligations; and
- (c) the certificate referred to in Section 6.1.

## **ARTICLE IX**

### **SURVIVAL; INDEMNIFICATION**

#### **9.1 Survival.**

All representations and warranties contained in this Agreement or in any certificate, agreement, or other document or instrument, delivered pursuant hereto, shall survive (and not be affected in any respect by) the Closing, any investigation conducted by any party hereto and any information which any party may receive, until the date which is twelve (12) months after the Closing Date (the “Survival Period”); provided, however, that (i) the representations and warranties of Seller and the Stockholder contained in Sections 2.1, 2.2, 2.3, 2.7 and 2.13 shall survive the Closing Date without any time limit and (ii) the representations and warranties set forth in Section 2.5 shall survive the Closing Date until the expiration of the statute of limitations, if any, applicable to the matters set forth therein. The covenants and other agreements of the parties contained in this Agreement shall survive the Closing Date until they are otherwise terminated, whether by their terms or as a matter of applicable law.

#### **9.2 Indemnification.**

(a) From and after Closing, Seller and the Stockholder hereby agree to jointly and severally indemnify and hold harmless Buyer, the directors, officers and employees of Buyer and all persons which directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with Buyer, and their respective successors and assigns (collectively, the “Buyer Indemnitees”) from, against and in respect of, and to reimburse the Buyer Indemnitees for, the amount of any and all Deficiencies (as defined in Section 9.3(a)).

(b) From and after Closing, Buyer hereby agrees to indemnify and hold harmless Seller and the Stockholder, and the directors, officers and employees of Seller and all persons which directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with Seller, and their respective successors and assigns (collectively, the “Seller Indemnitees”) from, against and in respect of, and to reimburse the Seller Indemnitees for, the amount of any and all Deficiencies (as defined in Section 9.3(b)).

### **9.3     Deficiencies.**

(a) As used in this Article IX, the term “Deficiencies” when asserted by Buyer Indemnitees or arising out of a third party claim against Buyer Indemnitees shall mean any and all Losses, payments, damages, liabilities and claims sustained or paid by the Buyer Indemnitees and arising out of, based upon or resulting from: (i) any misrepresentation, breach of warranty, or any failure to comply with any covenant, obligation or agreement on the part of Seller or the Stockholder contained in or made pursuant to this Agreement; (ii) any failure by Seller or the Stockholder to pay or perform any of the Retained Liabilities; (iii) any severance pay or other payment (including, without limitation, bonuses or accrued vacation or benefits) paid with respect to any employee of Seller or the Station for any time period prior to the Closing; (iv) without limiting the foregoing, any litigation, Proceeding or claim by any third party relating to the business, the Station Assets, or operation of the Station prior to Closing; (v) the exercise of Buyer’s rights pursuant to Section 4.9(b); or (vi) any Liability imposed upon Buyer by operation of Law (whether due to Buyer’s status as an owner or operator of the any Station or any of the Station Assets or its alleged status as a successor to Seller or otherwise), if and to the extent such Liability would be eliminated or reduced if all Retained Liabilities (whether liquidated, contingent, inchoate, disputed or otherwise) were fully satisfied and discharged immediately prior to the Closing. Such Deficiencies include without limitation any and all acts, Proceedings, demands, assessments and judgments, and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all Legal Expenses).

(b) As used in this Article IX, the term “Deficiencies” when asserted by Seller Indemnitees or arising out of a third party claim against Seller Indemnitees shall mean any and all Losses, payments, damages, liabilities and claims sustained or paid by the Seller Indemnitees and arising out of, based upon or resulting from: (i) any misrepresentation, breach of warranty, or any failure to comply with any covenant, obligation or agreement on the part of Buyer contained in or made pursuant to this Agreement; (ii) any failure by Buyer to pay or perform any of the Assumed Obligations; or (iii) any Proceeding or claim by any third party relating to the business or operation of the Station after Closing. Such Deficiencies include without limitation any and all acts, Proceedings, demands, assessments and judgments, and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all Legal Expenses).

### **9.4     Procedures.**

(a) If any third party shall notify any Party to this Agreement (the “Indemnified Party”) with respect to any matter which may give rise to a claim for indemnification against any other Party to this Agreement (the “Indemnifying Party”) under this Article IX, then the Indemnified Party shall notify each Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced by the delay. Within 30 days after receipt of notice of a particular matter, the Indemnifying Party may assume the defense of such matter if the Indemnifying Party admits in writing responsibility and affirms its obligations for providing indemnification (including payment of any amounts to the Indemnified Party in connection therewith) with respect to such matter; provided, however, that (i) the Indemnifying

Party shall retain counsel reasonably acceptable to the Indemnified Party and (ii) the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), enter into any settlement of a claim, consent to the entry of any judgment with respect to a claim or cease to defend such claim, if pursuant to or as a result of such settlement, consent or cessation, injunctive or other equitable relief shall be imposed against the Indemnified Party or if such settlement does not expressly unconditionally release the Indemnified Party from all liabilities and obligations with respect to such claim, with prejudice; provided, further, however, that notwithstanding the foregoing, the Indemnifying Party shall not have the right to assume the defense of any such matter if (i) the claim seeks only an injunction or other equitable relief, (ii) the Indemnified Party shall have been advised by counsel that there are one or more legal or equitable defenses available to them which are different from or in addition to those available to the Indemnifying Party, (iii) such matter involves, or could have a material effect on, any material matter beyond the scope of the indemnification obligation of the Indemnifying Party or (iv) in the reasonable judgment of the Indemnified Party, the Indemnifying Party either shall not have assumed the defense of any such matter in a timely fashion or shall not be prosecuting or defending any such matter in a reasonable manner (including failure to use or expend appropriate amounts or resources with respect thereto). The Indemnified Party may participate in the defense of such matter with co-counsel of its choice to the extent that the Indemnified Party believes in its sole discretion that such matter shall affect its ongoing business; provided, however, that the fees and expenses of the Indemnified Party's counsel shall be at the expense of the Indemnified Party unless (A) the Indemnifying Party has agreed in writing to pay such fees and expenses, or (B) (x) any of the provisions set forth in sub-clauses (i) through (iv) of the immediately preceding sentence are true and (y) the Indemnified Party determines, in its sole discretion, that both the Indemnified Party and the Indemnifying Person shall participate in the defense of such claim, in which case such co-counsel shall be at the expense of the Indemnifying Party; provided, however, that the Indemnifying Party will not be required to pay the fees and expenses of more than one separate principal counsel (and any appropriate local counsel) for all Indemnified Parties. If, within such 30-day period, the Indemnifying Party does not assume the defense of such matter, the Indemnified Party may defend against the matter in any manner that it reasonably may deem appropriate and may consent to the entry of any judgment with respect to the matter or enter into any settlement with respect to such matter without the consent of the Indemnifying Party.

(b) If an Indemnified Party's notice of indemnification does not relate to a claim or the commencement of an action or Proceeding by a third party, the defense of which has been assumed by the Indemnifying Party, the Indemnifying Party shall have 30 days after receipt of such notice to object to the subject matter and the amount of the claim for indemnification set forth in such notice by delivering written notice thereof to the Indemnified Party. If the Indemnifying Party does not so object within such 30-day period, it shall be conclusively deemed to have agreed to the matters set forth in such notice of indemnification and shall pay the amount of any Deficiency pursuant to Section 9.5 below. If the Indemnifying Party sends notice to the Indemnified Party objecting to the matters set forth in such notice of indemnification, the parties shall use their best efforts to settle such claim for indemnification. If the parties are unable to settle such dispute, then the Indemnified Party shall seek resolution of the dispute by initiating litigation in any jurisdiction in which litigation arising under this Agreement may be commenced by the parties hereto.



(c) The parties recognize and acknowledge that a breach by Seller or the Stockholder of this Section 9.4 will cause irreparable and material loss and damage to Buyer as to which Buyer will not have an adequate remedy at law or in damages. Accordingly, each party acknowledges and agrees that the issuance of an injunction or other equitable remedy is an appropriate remedy for any such breach.

## **9.5 Payment.**

(a) The Indemnifying Party hereby agrees to pay the amount of established Deficiencies within five (5) days after the establishment thereof. The amount of established Deficiencies shall be paid in cash. At the option of the Indemnitees, the Indemnitees may offset any Deficiency or any portion thereof that has not been paid by the Indemnifying Party to the Indemnitees against any obligation the Indemnitees, or any of them, may have to the Indemnifying Party.

(b) At Closing, pursuant to Section 1.4(c), the Escrow Amount shall be deposited in the Escrow Fund to cover Seller's and the Stockholder's obligations to indemnify the Buyer Indemnitees under this Article IX. The Parties acknowledge and agree that existence of the Escrow Fund shall not, in any event, reduce the amount that the Buyer Indemnitees can claim pursuant to this Article IX. Following the expiration of the twelfth month (the "Post-Closing Escrow Termination") following the Closing, Buyer and Seller shall give the Post Closing Escrow Agent written instructions to release the funds remaining in the Escrow Fund to Seller; provided, however, that in the event that any Buyer Indemnitee has asserted a claim for indemnification under this Article IX and such claim has not been settled prior to the Post-Closing Escrow Termination, then an amount reasonably determined by Buyer and Seller to be sufficient to cover any such asserted claim (and any expenses in connection therewith) shall remain in the Escrow Fund until such asserted claim is settled.

(c) Any obligation of Seller or the Stockholder to indemnify any Buyer Indemnitee shall be satisfied (i) first, in cash, by recourse to the funds deposited and remaining in the Escrow Fund until the funds contained in the Escrow Fund are depleted, and Buyer and Seller shall execute joint written instructions to the Post Closing Escrow Agent directing the Post Closing Escrow Agent to make payment to such Buyer Indemnitee, provided that in the event Seller or the Stockholder is conclusively deemed to have agreed to the matters set forth in a notice of indemnification pursuant to Section 9.4(b), written instructions executed solely by Buyer shall be sufficient to direct the Post Closing Escrow Agent to make payment to the Buyer Indemnitee and (ii) thereafter, from Seller and/or the Stockholder, by payment in cash to such Buyer Indemnitee, provided that in lieu of payment pursuant to this Section 9.5(c), the Buyer Indemnitee shall also have the right of set-off pursuant to Section 9.5(a).

## **9.6 Limitations.**

In the absence of fraud or knowing or intentional misrepresentations or breach of warranty, Seller and Stockholder shall not be obligated to indemnify the Buyer Indemnitees against Deficiencies arising out of any misrepresentations or, breach of warranty on the part of Seller or the Stockholder contained in or pursuant to this Agreement to the extent that such Deficiencies exceed the Cash Purchase Price; provided, however, that the limitations set forth in

this Section 9.6 shall not apply to Deficiencies relating to or arising from any or all (i) non-payment of or failure to satisfy any Retained Liabilities, (ii) violations or failure to comply with any Environmental and Safety Requirements or (iii) liabilities relating to Taxes for the period prior to the Closing Date.

## **ARTICLE X**

### **TERMINATION**

#### **10.1 Termination.**

This Agreement may be terminated at any time prior to Closing: (a) by the mutual consent of Seller and Buyer; (b) by any Party hereto if the FCC has denied the FCC Application by an order which has become Final; (c) by Buyer as provided in Section 10.3 (Risk of Loss); (d) by Buyer on or prior to the earlier of (such earlier date, the “Buyer Termination Date”) (1) the Closing Date Deadline or (2) the date on which Buyer reasonably determines that the conditions set forth in Article VII will be unable to be satisfied, if on such Buyer Termination Date, any of the conditions set forth in Article VII shall not have been satisfied; (e) by Buyer, if Seller or the Stockholder has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) calendar days after it receives notice from Buyer of such breach (except no cure period shall be provided for a breach which is intentional or by its nature cannot be cured); (f) by Seller, if on the Closing Date Buyer has failed to satisfy either of the conditions set forth in Section 6.1 or 6.4; (g) by Seller if Buyer has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) calendar days after it receives notice from Seller of such breach; (h) by Buyer if Seller has failed to satisfy its obligations set forth in Section 4.9(a); or (i) by Seller on or prior to the earlier of (such earlier date, the “Seller Termination Date”) (1) the Closing Date Deadline or (2) the date on which Seller reasonably determines that the conditions set forth in Article VI will be unable to be satisfied, if on such Seller Termination Date, any of the conditions set forth in Article VI shall not have been satisfied; provided however, that neither Seller nor the Stockholder shall be entitled to terminate this Agreement pursuant to Sections 10.1(f) or 10.1(g) if such party’s intentional or willful breach of this Agreement has prevented the satisfaction of a condition. A termination pursuant to this Section 10.1 shall not relieve any party of any liability it would otherwise have for a breach of this Agreement.

#### **10.2 Specific Performance; Remedies.**

In the event of a breach or threatened breach by Seller or the Stockholder of any representation, warranty, covenant or agreement under this Agreement, at Buyer’s election, in addition to any other remedy available to it, Buyer shall be entitled to an injunction restraining any such breach or threatened breach and, subject to obtaining any requisite approval of the FCC, to enforcement of this Agreement by an Order of specific performance requiring Seller or the Stockholder, as applicable, to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required. The remedies provided in this Agreement shall be cumulative and

shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other party hereto.

### **10.3 Risk of Loss.**

The risk of loss, damage or destruction to any of the Station Assets shall be borne by Seller at all times up the Closing, and it shall be the responsibility of Seller to repair or cause to be repaired and to restore the property to its condition prior to any such loss, damage, or destruction. In the event of any such loss, damage, or destruction, the proceeds of any claim for any loss, payable under any insurance policy with respect thereto, shall be used to repair, replace, or restore any such property to its former condition, subject to the conditions stated below. In the event of any loss or damage to any of the Station Assets, Seller shall notify Buyer thereof in writing immediately. Such notice shall specify with particularity the loss or damage incurred, the cause thereof (if known or reasonably ascertainable), and the insurance coverage. In the event that the property is not completely repaired, replaced or restored on or before the scheduled Closing Date, Buyer at its option: (a) may elect to postpone Closing until such time as the property has been completely repaired, replaced or restored (and, if necessary, Seller shall join Buyer in requesting from the FCC any extensions of time in which to consummate the Closing that may be required in order to complete such repairs); (b) may elect to consummate the Closing and accept the property in its then condition, in which event Seller shall pay to Buyer all proceeds of insurance and assign to Buyer the right to any unpaid proceeds; or (c) in the event that the property is not completely repaired, replaced or restored within thirty (30) days following the scheduled Closing Date, (and, if necessary, Seller shall join Buyer in requesting from the FCC any extensions of time in which to consummate the Closing that may be required in order to complete such repairs) terminate this Agreement.

## **ARTICLE XI**

### **MISCELLANEOUS**

#### **11.1 Expenses.**

Each party hereto shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation, accounting and legal fees incurred in connection herewith; provided, however, that: (i) Seller and Buyer shall each pay one-half of the FCC filing fees required to be paid in connection with the FCC Application; and (ii) Seller shall be exclusively responsible for, and Buyer shall not have any liability or responsibility for any sales or transfer taxes (including without limitation any real estate transfer taxes), arising from the transfer of the Station Assets to Buyer.

#### **11.2 Further Assurances.**

(a) Subject to the terms and conditions herein provided, the Parties shall do or cause to be done all such acts and things as may be necessary, proper or advisable, consistent with all applicable Laws, to consummate and make effective the transactions contemplated hereby as soon as reasonably practicable. Each of the Parties agrees that it will from time to time

on or after the Closing promptly do, execute, acknowledge and deliver and will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, certificates, bills of sale, assignments, transfers, conveyances, powers of attorney, assurances and other documents as may be reasonably requested by any of the other Parties for better assigning, transferring, granting, conveying, assuring and conferring right, title and interest to Buyer of the Station Assets and for the better assumption by Buyer of the Assumed Obligations. Without limiting the generality of the foregoing, the Parties agree to cooperate with each other and to provide each other with all information and documentation reasonably necessary to permit the preparation and filing of all federal, state, local, and other Tax returns and Tax elections with respect to the Business. Seller and Buyer agree that for the purposes of FICA tax withholding and any comparable state or local tax withholding, Buyer shall treat all wages paid by Seller during the calendar year in which the Closing occurs to each current employee of Seller who is employed by Buyer immediately after the Closing as paid by Buyer pursuant to Section 3121 of the Code and any comparable provisions of applicable state and local laws, and Seller agrees to provide Buyer with all related documentation, including, without limitation, a sufficient quantity of completed W-4 forms for each such employee, and a statement to the Internal Revenue Service and any comparable state or local Governmental Entities outlining all of the foregoing.

(b) The Parties shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

### **11.3 Public Announcements.**

Prior to Closing, no Party shall, without the approval of the other Parties hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except (i) to announce it has been entered into, and (ii) as and to the extent that such Party shall be so obligated by law, in which case such party shall give advance notice to the other Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued. Notwithstanding the foregoing, the parties acknowledge that the Communications Laws require that public notice of the transactions contemplated by this Agreement be made after the FCC Application has been filed with the FCC. The form and substance of such public notice, to the extent not dictated by the Communications Laws, shall be mutually agreed upon by Seller and Buyer.

### **11.4 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. Each of Seller and the Stockholder may not assign any of its rights or delegate any of its duties hereunder without the prior written consent of Buyer, and any such attempted assignment or delegation without such consent shall be void. Prior to the Closing, Buyer may not assign its rights and obligations hereunder in whole or in part without Seller's or the Stockholder's consent, which consent shall not be unreasonably

withheld; provided, however, that Buyer may assign its rights and obligations hereunder to an Affiliate thereof and any financial institution that provides Buyer or its Affiliates with financing in whole or in part without Seller's or the Stockholder's consent. Following the Closing Buyer may assign its rights and obligations hereunder in whole or in part without Seller's or the Stockholder's consent.

#### **11.5 Amendments; Waivers.**

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

#### **11.6 Notices.**

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by telex or facsimile transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by telex, graphic scanning or other facsimile communications equipment, delivered by such equipment, and addressed as follows:

if to Seller:

Malvern Entertainment Corp.  
4303 County Avenue #77  
Texarkana, Arkansas 71854  
Attention: Scott A. Gray  
Telephone: (501) 454-7675  
Facsimile: (501) 653-4933

if to the Stockholder:

Scott A. Gray  
c/o Malvern Entertainment Corp.  
4303 County Avenue #77  
Texarkana, Arkansas 71854  
Telephone: (501) 454-7675  
Facsimile: (501) 653-4933

with copies  
(which shall not  
constitute notice) to:

W.N. Cate, President  
Sunbelt Media, Inc.  
167 Gendreau Lane  
Russellville, Arkansas 72802

Telephone: (479) 880-1720

and

Farrar Firm  
135 Section Line Road  
Box 5  
Hot Springs, Arkansas 71913  
Telephone: (501) 525-3130  
Facsimile: (501) 525-3933

if to Buyer:

ABG Arkansas, LLC  
c/o Archway Broadcasting Group, LLC  
1221 Avenue of the Americas  
40th Floor  
Attention: Managing Director  
Telephone: (212) 899-3455  
Facsimile: (212) 899-3783

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

O'Melveny & Myers LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Telephone: (212) 408-2418  
Telecopy: (212) 218-9418  
Attention: Phillip Isom, Esq.

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

#### **11.7 Captions.**

The captions of Articles and Sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

#### **11.8 Governing Law.**

This Agreement will be governed by and construed in accordance with the domestic laws of the State of Arkansas, without giving effect to any choice of law or conflicting provision or rule (whether of the State of Arkansas or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Arkansas to be applied. In furtherance of the foregoing, the internal laws of the State of Arkansas will control the interpretation and construction of this Agreement, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

### **11.9 Right of Set Off.**

In the event of a breach by Seller or the Stockholder of the provisions of any Document, Buyer is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all amounts at any time held by Buyer or in the Escrow Fund on behalf of such Party and any and all indebtedness at any time owing by Buyer to such Party against any and all of the obligations of such Party now or hereafter existing under the Documents.

### **11.10 Entire Agreement.**

This Agreement and the other Documents constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof. This Agreement has been prepared by all of the parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any party hereto

### **11.11 Counterparts and Facsimile Execution.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. Any counterpart or other signature to this Agreement or any Document that is delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Agreement or such Document.

### **11.12 Knowledge of The Stockholder Attributable to Seller.**

Whenever any statement herein or in any schedule, exhibit, certificate or other document delivered to any Party pursuant to this Agreement is made “to the best knowledge of Seller”, “to the knowledge of Seller” or containing words of similar intent or effect, the knowledge of Seller will be deemed to include, without limitation, the knowledge of each of the Stockholder. Seller shall be required (and the Stockholder shall be required to cause Seller) to examine all relevant documents and to make due inquiries of each of its directors and officers and each of its other employees, lawyers, accountants and agents who would likely have knowledge of the relevant facts or circumstances.

### **11.13 Severability.**

It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **11.14 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. 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 AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

#### **11.15 Incorporation of Exhibits and Schedules.**

The Exhibits, Schedules and other attachments identified in this Agreement are incorporated herein by reference and made a part hereof.

#### **11.16 Independence of Covenants and Representations and Warranties.**

All covenants hereunder shall be given independent effect so that if a certain action or condition constitutes a default under a certain covenant, the fact that such action or condition is permitted by another covenant shall not affect the occurrence of such default, unless expressly permitted under an exception to such initial covenant. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of or a breach of a representation and warranty hereunder.

#### **11.17 Rules of Construction.**

The following rules of construction shall apply to this Agreement:



(a) the use in this Agreement of the term “including” shall mean “including, without limitation;”

(b) the words “herein,” “hereof,” “hereunder” and other words of similar import shall refer to this Agreement as a whole, including the schedules and exhibits to this Agreement, as the same may from time to time be amended, amended and restated, supplemented or otherwise modified from time to time, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement;

(c) all references to sections, paragraphs, schedules and exhibits shall mean the sections and paragraphs of this Agreement and the schedules and exhibits attached to this Agreement, except where otherwise stated;

(d) where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates;

(e) the language used in this Agreement has been chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party;

(f) all references herein to dollars, funds or payments shall mean United States dollars or funds or payments in United States dollars.

Unless expressly provided otherwise, the measure of a period of one month or year for purposes of this Agreement shall be that date of the following month or year corresponding to the starting date, provided, however, that if no corresponding date exists, the measure shall be that date of the following month or year corresponding to the next day following the starting date. For example, one month following February 18 is March 18, and one month following March 31 is May 1.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

BUYER:

ABG ARKANSAS, LLC

By: \_\_\_\_\_

Name:

Title:

SELLER:

MALVERN ENTERTAINMENT CORP.

By: \_\_\_\_\_

Name:

Title:

STOCKHOLDER:

\_\_\_\_\_  
Scott A. Gray

## Schedules

- 1.1(a) FCC Authorizations**
- 1.1(b) Tangible Personal Property**
- 1.1(c) Station Contracts**
- 1.5 Statement of Allocation**
- 2.3 Consents**
- 2.4 Liabilities**
- 2.6 Locations**
- 2.12 Employees**
- 2.14 Insurance**
- 2.15 Brokers**
- 2.17 UCC Financing Statements**

## ANNEX I

### DEFINITIONS

The following words and terms shall have the meanings set forth in the Section of this Agreement set forth opposite such term, unless the context clearly requires otherwise:

<u>Term</u>	<u>Section</u>
<u>“ABF”</u>	4.10
<u>“ABF Lease”</u>	4.10
<u>“Adjustment Date”</u>	1.6(a)
<u>“Agreement”</u>	Caption
<u>“Another Transaction”</u>	4.6
<u>“Assumed Obligations”</u>	1.3(a)
<u>“Barter Agreements”</u>	1.6(d)
<u>“Buyer”</u>	Caption
<u>“Buyer Ancillary Agreements”</u>	3.1
<u>“Buyer Indemnitees”</u>	9.2(a)
<u>“Cash Purchase Price”</u>	1.4(a)
<u>“Closing”</u>	1.7(a)
<u>“Closing Date”</u>	1.7(a)
<u>“Closing Date Adjustment Amount”</u>	1.6(c)
<u>“Closing Date Deadline”</u>	1.7(a)
<u>“Code”</u>	1.5
<u>“Cover Application”</u>	4.9(c)
<u>“Covered Taxes”</u>	2.5(a)(i)
<u>“Deficiencies”</u>	9.3(a) and 9.3(b)
<u>“Deposit”</u>	1.4(b)
<u>“Duplicate Records”</u>	1.1(e)
<u>“Employee”</u>	4.5(a)
<u>“Escrow Agent”</u>	1.4(b)
<u>“Escrow Agreement”</u>	1.4(b)
<u>“Estoppel Certificates”</u>	4.4
<u>“Excluded Assets”</u>	1.2
<u>“FCC”</u>	Preamble
<u>“FCC Application”</u>	5.5
<u>“FCC Authorizations”</u>	Preamble
<u>“Grant”</u>	4.9(a)
<u>“Indemnified Party”</u>	9.4(a)
<u>“Indemnifying Party”</u>	9.4(a)
<u>“Liens”</u>	1.1
<u>“Notice of Disagreement”</u>	1.6(c)
<u>“Permitted Encumbrances”</u>	1.1
<u>“Post-Closing Escrow Agent”</u>	1.4(c)
<u>“Post-Closing Escrow Agreement”</u>	1.4(c)
<u>“Post-Closing Escrow Termination”</u>	9.5(c)
<u>“Property Taxes”</u>	1.6(b)

<b><u>Term</u></b>	<b><u>Section</u></b>
<u>“Proration Schedule”</u>	1.6(c)
<u>“Purchase Price”</u>	1.4(a)
<u>“Real Property Leases”</u>	2.8
<u>“Referee”</u>	1.6(c)
<u>“Required Consents”</u>	4.3
<u>“Retained Liabilities”</u>	1.3(a)
<u>“Seller Ancillary Agreements”</u>	2.1
<u>“Seller Indemnities”</u>	9.2(b)
<u>“Seller Tax Group”</u>	2.5(a)
<u>“Seller’s Proration Amount”</u>	1.6(c)
<u>“Statement of Allocation”</u>	1.5
<u>“Station”</u>	Preamble
<u>“Station Assets”</u>	1.1
<u>“Station Contracts”</u>	1.1(c)
<u>“Stockholder”</u>	Caption
<u>“Survival Period”</u>	9.1
<u>“Tangible Personal Property”</u>	1.1(b)
<u>“Termination Date”</u>	10.1
<u>“Upgrades”</u>	4.9(a)

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context clearly requires otherwise:

“Affiliate” means, with respect to any Person, any of (a) a director, officer or stockholder of such Person, (b) a spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of any director or officer of such Person) and (c) any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. The term “control” includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Business Day” means any day that is not a Saturday, Sunday or a day on which banking institutions in New York, New York are not required to be open.

“Closing Payment” means the amount equal to: (i) \$3,600,000 plus or minus (ii) the Closing Date Adjustment Amount pursuant to Section 1.6, minus (iii) the Deposit, minus (iv) the Escrow Amount.

“Communications Laws” means the Communications Act of 1934, the Telecommunications Act of 1996, and the published and effective rules, regulations, and policies of the FCC promulgated thereunder, all as amended from time to time.

“Construction Permit” means the Construction Permit granted for the Upgrades by the FCC to Seller in form and substance reasonably satisfactory to Buyer.

“Documents” means this Agreement, any bill of sale, the Seller Ancillary Documents, the Buyer Ancillary Documents and the other documents required to be executed by a Party in connection with the transactions contemplated hereby.

“Environmental and Safety Requirements” means all Laws, Orders, contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, as previously or currently in effect.

“ERISA Affiliate” means, with respect to any Person, any other Person that is a member of a “controlled group of corporations” with, or is under “common control” with, or is a member of the same “affiliated service group” with such Person as defined in Section 414(b), 414(c), or 414(m) or 414(o) of the Code.

“Escrow Amount” means \$180,000.

“Escrow Fund” means the Escrow Amount plus any accrued interest thereon held by the Post-Closing Escrow Agent pursuant to the terms of the Post-Closing Escrow Agreement.

“FCC Consent” means action by the FCC granting its consent to the FCC Application and the transactions contemplated by this Agreement.

“Final” means an action (including the FCC Consent) taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending, and as to which the time for filing any such request, petition, appeal, certiorari by any party or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

“Funded Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by (or which customarily would be evidenced by) bonds, debentures, notes or similar instruments, (c) all reimbursement obligations of such Person with respect to letters of credit and similar instruments, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (e) all obligations of such Person incurred, issued or assumed as the deferred purchase price of property or services other than accounts payable incurred and paid on terms customary in the business of such Person (it being understood that the “deferred purchase price” in connection with any purchase of property or assets shall include only that portion of the purchase price which shall be deferred beyond the date on which the purchase is actually consummated), (f) all obligations secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or

acquired by such Person under forward sales, futures, options and other similar hedging arrangements (including interest rate hedging or protection agreements), (h) all obligations of such Person to purchase or otherwise pay for merchandise, materials, supplies, services or other property shall be made regardless of whether delivery of such merchandise, materials, supplies, services or other property is ever made or tendered, (i) all guaranties by such Person of obligations of others and (j) all capitalized lease obligations of such Person.

“GAAP” means generally accepted accounting principals, consistently applied with historical financial statements of the entity.

“Governmental Entity” means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, Federal, state or local.

“Intangible Property” means all intellectual property rights (whether patentable or unpatentable), including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications or registrations, databases, algorithms, computer programs and other software, know-how, trade secrets, proprietary processes and formulae, proprietary or confidential information, franchises, licenses, world wide web/internet domain names or world wide web/internet uniform resource locators, inventions, trade dress, logos, jingles, slogans, logotypes, trade secrets, design, documentation and media constituting, describing or relating to the above, and other intangible rights, used or held for use in connection with the business or operation of the Station, including, without limitation all right, title and interest in and to the mark consisting of the Station’s call letters and any variations thereof.

“Law” means any constitution, law, statute, treaty, rule, directive, requirement or regulation or Order of any Governmental Entity, including, without limitation, Environmental and Safety Requirements.

“Legal Expenses” shall mean any and all fees (whether of attorneys, accountants or other professionals), costs and expenses of any kind reasonably incurred by any person identified herein and its counsel, including without limitation, any such reasonable fees, costs and expenses incurred in investigating, preparing for, defending against, or providing evidence, producing documents or taking other action with respect to any threatened or asserted claim.

“Liability” means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

“Losses” means any and all losses, shortages, diminution in value (with respect to the Station or any Station Assets), assessments, Tax deficiencies and Taxes incurred in connection with the receipt of indemnification payments (including interest or penalties thereon) arising from or in connection with any such matter that is the subject of indemnification under this Agreement.

“Material Adverse Change” means, with respect to any Person, any event or occurrence that has caused, or could reasonably be expected to cause, a material adverse change in the business, operations, assets, prospects, financial condition, operating results, liabilities or

relations with material customers, material suppliers or key employees of such Person or any material casualty loss or damage to the assets of such Person, whether or not covered by insurance.

“Material Adverse Effect” means an effect that results in or causes a Material Adverse Change.

“Multi-Employer Plan” has the meaning set forth in Section 3(37) of ERISA.

“Multiple Employer Plan” has the meaning set forth in Section 413 of the Code.

“Orders” means judgments, writs, decrees, compliance agreements, injunctions or orders of and Governmental Entity or arbitrator.

“Parties” means Buyer, Seller and the Stockholder.

“Person” shall be construed broadly and shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

“Proceeding” means any action, suit, proceeding, complaint, claim, litigation, charge, hearing, inquiry or investigation before or by a Governmental Entity or arbitrator.

“Real Property” means all land, licenses, rights-of-way and other interests of every kind and description in and to all of the real property and buildings and other improvements thereon, used or held for use in the business or operation of the Station and the Station Assets.

“Tax” as used in this Agreement, means any of the Taxes, and “Taxes” means, with respect to any Person, (a) all income taxes (including any tax on or based upon net income, gross income, income as specially defined, earnings, profits or selected items of income, earnings or profits) and all gross receipts, sales, use, ad valorem, transfer, franchise, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property or windfall profits taxes, alternative or add-on minimum taxes, customs duties and other taxes, fees, assessments or charges of any kind whatsoever, together with all interest and penalties, additions to tax and other additional amounts imposed by any taxing authority (domestic or foreign) on such Person (if any) and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being a “transferee” (within the meaning of Section 6901 of the Code or any other applicable Law) of another entity or a member of an affiliated or combined group.

“Tax Return” means 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.