

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "**Agreement**") is made this 18<sup>th</sup> day of September, 2012, between MIDWEST COMMUNICATIONS, INC., a Wisconsin corporation (the "**Buyer**"), and RADIO FARGO-MOORHEAD, INC. a North Dakota corporation (the "**Seller**").

### **RECITALS:**

A. Seller is the owner, operator, and licensee of radio stations KFGO (AM 790) (FCC Facility ID No. 34421); KVOX (AM 740) (FCC Facility ID No. 135847); WDAY-FM (FM 93.7) (FCC Facility ID No. 22123); and KRWK(FM) (FM 101.9) (FCC Facility ID No. 34422), all licensed to Fargo, North Dakota); KBVB(FM) (FM 95.1) (FCC Facility ID No. 37001) licensed to Barnesville, Minnesota; and KMJO(FM) (FM 104.7) (FCC Facility ID No. 88502) licensed to Hope, North Dakota (collectively, the "**Stations**").

B. Seller desires to sell and Buyer desires to purchase substantially all of the assets that are used or held for use in connection with the operation of the Stations, and Seller desires to assign to Buyer all licenses issued by the United States Federal Communications Commission ("**FCC**") for the Stations pursuant to the terms and conditions set forth in this Agreement.

### **AGREEMENT:**

NOW THEREFORE, in consideration of the above recitals and of the mutual terms, covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE 1.** **PURCHASE OF ASSETS.**

1.1. Purchase of Assets. Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, transfer, and deliver to Buyer at Closing (as defined herein), and Buyer agrees to purchase at Closing, all of the tangible and intangible assets owned by Seller and used or held for use in connection with the operation of the Stations, except for the "Excluded Assets" described in **Section 1.2** hereof (the "**Purchased Assets**"), free and clear of all liens and encumbrances other than Permitted Liens (as defined herein), including without limitation the following:

(a) All towers, transmitters, fences, Station equipment, tools, vehicles, furniture, leasehold improvements, office equipment, studio equipment, satellite dishes, transmitting and receiving equipment, ground systems, tuning units, tapes, records, albums, CDs, DVDs, and all other forms of recorded and/or digitally stored sound and information, inventory of spare parts, supplies, promotional materials, and other tangible personal property set forth in **Schedule 1.1(a)** (the "**Tangible Personal Property**");

(b) All real property used in conjunction with the ownership and operation of the Stations as more fully described in **Schedule 1.1(b)**, together with all improvements thereto and all rights, benefits, privileges, easements, and appurtenances to such real property (the “**Real Properties**”);

(c) All contract rights and benefits under the contracts, leases, and security deposits held under such leases, non-governmental licenses, and other agreements related to the Stations as listed in **Schedule 1.1(c)** (the “**Contracts**”);

(d) All assignable rights in licenses associated with the Stations, including permits and other authorizations issued to the Seller by the FCC or any other federal, state, or local governmental authority in connection with the operation of the Station (the “**Licenses**”), which Licenses are listed in **Schedule 1.1(d)**, and any renewals or extensions thereof made between the date hereof and the Closing Date (as defined in **Section 9.1(a)**);

(e) All copyrights, trademarks, trade names, service marks, service names, Internet names/domains/websites/pages/social media accounts, slogans, licenses, and patents listed in **Schedule 1.1(e)** and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) issued to, claimed, or owned by the Seller, and the broadcast call letters and call signs of the Stations (the “**Intangibles**”);

(f) All warranties, representations, and guarantees made by suppliers in connection with products or services furnished to the Seller, pertaining to the Stations or affecting the Purchased Assets (the “**Warranties**”); and

(g) All customer and supplier lists, credit records, personal guarantees given by customers, correspondence, payroll, personnel, and other such books and records, sales, sales history, and advertising materials, entertainment and sporting tickets or passes, specifications, drawings, plans, reports and notes, research, market, design and technical data in manuals, computer software, and other books and records of the Seller relating to the Stations maintained in either physical or electronic forms (the “**Records**”).

1.2. **Excluded Assets.** Notwithstanding anything herein to the contrary, Buyer shall not purchase, and Seller shall not sell, any of the following assets (the “**Excluded Assets**”):

(a) Except for the Wind Farm Settlement (as defined **Section 6.10**) Seller’s cash or cash equivalents and prepaid expenses as of the Closing Date including any cash deposits made by Seller as of the Closing Date and all other cash in any of Seller’s accounts, except security deposits under the Contracts (the “**Cash Accounts**”);

(b) All books and records relating to Seller’s internal corporate organization, including, without limitation, minute books, ownership record books and organization documents, and accounting and tax records other than the Records;

(c) Any interest in and to any refunds of taxes of any nature for periods prior to the Closing Date;

(d) Subject to the obligation to deliver any insurance proceeds thereunder to Buyer as provided for herein, any of Seller’s insurance policies;

(e) All retirement savings plans or trust and any assets thereof and all other employee benefit plans;

(f) Any losses, loss carry-forward, rights to receive refunds (together with interest accrued thereon), and credits with respect to any taxes of the Seller in respect of any taxable year or other taxable period that ends before the Closing Date, and with respect to any taxable year or other taxable period beginning before and ending on or after the Closing Date, the portion of such taxable year or period ending before the Closing Date;

(g) All tangible and intangible personal property (except the Intangibles) disposed of or consumed by Seller between the date of this Agreement and the Closing Date as occurs in the ordinary course of business of the Stations and in accordance with best business practices; and

(h) Except for the Wind Farm Settlement, all of Seller's accounts receivable.

### 1.3. Liabilities Assumed.

(a) Subject to the terms and conditions of this Agreement, at the Closing Buyer shall assume and agree to perform and discharge all of Seller's liabilities and obligations arising on and after the Closing Date under the Contracts and Licenses (the "**Assumed Liabilities**"). Seller's liabilities and obligations under the Contracts and Licenses shall be current, paid, and fulfilled as of the Closing Date (as defined below) and Seller shall not be in default under such Contracts or Licenses as of the Closing Date (or, if in default, such default shall have been cured or waived to Buyer's satisfaction).

(b) Buyer acknowledges and agrees that Seller has received and will continue to receive up to the Closing Date certain barter contract benefits under the barter and trade agreements listed in Schedule 1.3 and such other barter and trade agreements (*i.e.*, any agreement or arrangement for the sale of broadcast time for which payment is to be made in whole or in part other than in cash), which have been approved and consented to in advance by Buyer, and entered into by Seller in the ordinary course of business following the effective date of this Agreement and prior to the Closing Date (the "**Barter Agreements**"). As of the Closing Date, Seller shall assign to Buyer all right, title, and interest in and to such Barter Agreements including, but not limited to, all the remaining benefits to be received thereunder, and Buyer shall assume and agree to perform and discharge all of Seller's remaining obligations and liabilities under such Barter Agreements including, without limitation, Seller's obligation to provide barter advertising thereunder, on, and after the Closing Date. Unless otherwise prohibited by written agreement, such advertising shall be provided by Buyer at rates based on Buyer's then-effective rate Schedule for the time and period in which the broadcast service is run. Seller represents and warrants that Schedule 1.3 (i) lists all written Barter Agreements, copies of which have been provided by Seller to Buyer, and (ii) describes in reasonably complete detail what Seller are required to give and entitled to receive under any such Barter Agreements that are not fully in writing. Schedule 1.3 itemizes, in accordance with generally accepted accounting principles, the aggregate value of time owed ("**Barter Payable**") pursuant to each of the Barter Agreements and the aggregate value of goods and services to be received ("**Barter Receivable**") pursuant to each of the Barter Agreements, in each case as of the date hereof. Seller agrees that it will not enter into any other Barter Agreements or similar arrangements after

the execution and delivery of this Agreement which exceed an aggregated total trade liability for all of the Stations of **FIFTY THOUSAND AND NO/100THS U.S. DOLLARS** (\$50,000.00). At the Closing, Seller shall deliver to Buyer a report, dated as of the Closing Date (the “**Closing Date Trade Report**”), which report lists all Trade Agreements included in the Purchased Assets and the contract end date for each Trade Agreement together with an itemized statement, determined in accordance with generally accepted accounting principles, of the aggregate value of the Barter Payable and Barter Receivable pursuant to each of the Trade Agreements. To the extent that the aggregate value as reflected on the Closing Date Trade Report of the Stations’ Barter Payable is greater than the aggregate value as reflected on the Closing Date Trade Report of the Barter Receivable, Buyer shall be entitled to receive the difference at Closing as a credit against the Purchase Price. There shall be no adjustment in Seller’s favor regardless of any imbalance in liability under the Barter Agreements. Seller further represents and warrant that there is no obligation on the part of Seller, or after assumption on the part of Buyer, to continue the Barter Agreements beyond the expiration date set forth in **Schedule 1.3**. Seller agrees to report and pay any applicable tax liabilities arising from the Barter Agreements up to the Closing Date, and after the Closing Date Buyer shall report and pay any applicable tax liabilities arising on or after the Closing Date.

1.4 Liabilities Not Assumed. Except for the Assumed Liabilities, Buyer shall not assume and shall not be liable or responsible for any debt, obligation, or liability of Seller, including, but not limited to, (a) any obligations or liabilities of Seller under the Contracts or Licenses relating to the period prior to the Closing Date (except to the extent addressed and included in the closing prorations contemplated hereby), (b) any claims or pending litigation or proceedings relating to the operation of the Stations prior to the Closing Date, (c) any obligations or liabilities of Seller under any employment agreement, employee pension, retirement, or other employee or welfare benefit plans, (d) any federal, state, and local tax liabilities of Seller, including any sales tax obligations resulting from the sale of the Purchased Assets pursuant to this Agreement, (e) any obligations or liabilities arising under Title IV of the Employee Retirement Income Security Act of 1974, as amended, or other similar laws with respect to current or past employees of Seller, or (f) any obligations or liabilities arising under Environmental Laws (as defined herein).

1.5 Assignability and Consents.

(a) Required Consents. Seller represents and warrant that **Schedule 1.5** sets forth a list of all Purchased Assets (other than the Licenses) which are non-assignable or non-transferable or cannot be subleased to Buyer without the permission or consent of some other individual, entity, or governmental or quasi-governmental authority (collectively, “**Persons**” or individually, a “**Person**”). Prior to Closing, Seller shall, at Seller’s sole cost and expense, obtain such permission or consents and satisfy all requirements with respect thereto (“**Consents**”) from any Persons necessary to authorize, approve, or permit the full and complete sale of the Purchased Assets in accordance with this Agreement.

(b) Non-assignable Assets. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to sell, convey, assign, sublease, or otherwise transfer any of the Purchased Assets if an attempted sale, conveyance, assignment, sublease, or transfer thereof without the permission or consent of another Person would

constitute a breach of, or in any way affect the rights, of Seller or Buyer with respect to such Purchased Asset (collectively, "**Non-assignable Assets**"). Seller and Buyer shall cooperate at no cost or expense to Buyer to obtain and satisfy all Consents and to resolve all impracticalities of sale, conveyance, assignment, sublease, or transfer necessary to convey to Buyer all Non-assignable Assets. If any such Consents are not obtained and satisfied or if an attempted sale, conveyance, assignment, sublease, or transfer would be ineffective, Seller and Buyer shall enter into such arrangements in order to reasonably compensate Buyer for the loss of, or to provide to Buyer the benefit of, any such Non-assignable Assets (it being acknowledged that such arrangements may include obligations imposed on Seller to pay to Buyer when received all monies and other items of value received by Seller under any such Non-assignable Asset). For purposes of this Agreement, compensation for the loss of the benefit of such Non-assignable Assets shall be determined by use of the applicable portions of the BIA, Inc. appraisal's opinion as to value thereof and the corresponding allocation of purchase price thereto by Buyer, and if no such information is available from this appraisal, the compensation to Buyer shall be established utilizing the best available evidence of the cost to Buyer to replace such Non-Assignable Assets in the open market at the time of Closing in arms-length transactions between a willing buyer and seller. In the event Seller obtains and delivers to Buyer a Consent that was that was not obtained by Closing within one hundred twenty (120) days following Closing, Seller shall contemporaneously assign such Non-Assignable Asset to Buyer and Buyer promptly shall reimburse Seller for any compensation provided Buyer pursuant to this Section.

## **ARTICLE 2.**

### **PURCHASE PRICE.**

2.1. Purchase Price. The total purchase price for the Purchased Assets shall be the sum of **TWENTY-FIVE MILLION AND NO/100THS U.S. DOLLARS** (\$25,000,000.00) (the "**Purchase Price**").

2.2. Earnest Money Deposit. Within five (5) business days following the execution date of this Agreement, Buyer shall deliver to BMO Harris Bank, located in Wausau, Wisconsin ("**Escrow Agent**") the sum of One Million and No/100ths Dollars (\$1,000,000.00) ("**Earnest Money Deposit**") to be held and distributed by the Escrow Agent pursuant to the terms of an earnest money deposit agreement ("**Earnest Money Deposit Agreement**") substantially in the form of **Exhibit 2.2.**

2.3. Payment of Purchase Price. Subject to the adjustments and prorations set forth in **Section 2.4**, at the Closing Buyer shall pay to Seller by wire transfer the Purchase Price, less the Earnest Money Deposit, the Holdback Amount (as defined in **Section 11.4(d)**) and closing prorations for the account of Buyer. Seller shall deliver wire transfer instructions to Buyer to allow for this payment at least two (2) days prior to the Closing Date.

2.4. Prorations. As of the Effective Date (as defined in **Section 9.1(a)**), an accounting cutoff shall be made prorating income and expenses between the parties. Resulting adjustments to the Purchase Price shall be made at Closing to prorate to the Effective Date all ordinary and necessary operating expenses of the Stations and all expenses associated with the Purchased Assets, including, without limitation, maintenance expenses, property and equipment rentals,

utility charges, sales and service charges, business and license fees, and real and personal property taxes and assessments. Real and personal property taxes shall be prorated based on the amount of Purchase Price allocated to the Real Properties multiplied by most recently established assessment and mil/tax rate (if such rate has not yet been established for the year in which Closing occurs, such rate will be the rate established in the most recent fiscal period multiplied by one hundred five percent [105%]). Notwithstanding the foregoing, Seller shall be responsible for all real estate transfer fees and stamps and Buyer shall be responsible for all recording fees incurred in connection with the transfer of the Real Properties from Seller to Buyer. Special assessments, if any, for work actually commenced or levied with respect to the Real Properties prior to the Closing shall be paid by Seller at the Closing. All other special assessments shall be paid by Buyer.

2.5. Allocation of Purchase Price. The Purchase Price shall be allocated by Buyer for tax purposes among the Purchased Assets in accordance with § 1060 of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, in accordance with the Appraisal (as defined herein), and as set forth in Schedule 2.5. Buyer and Seller agree (a) to file timely with their respective federal income tax returns Internal Revenue Service Form 8594, in accordance with and accurately reflecting such allocation of the Purchase Price pursuant to this section, and (b) to report consistent with such allocation for all tax purposes.

### **ARTICLE 3.** **REPRESENTATIONS AND** **WARRANTIES OF SELLER.**

Seller hereby represents and warrants to Buyer as follows:

3.1. Organization, Standing, and Authority. (a) Seller is a corporation, duly formed, validly existing, and in good standing under the laws of the State of North Dakota, and (b) Seller has the requisite power and authority to enter into and/or to perform its obligations under this Agreement and to own and operate the Stations. Seller has delivered to Buyer a true and correct copy of Seller's Articles of Incorporation and Bylaws with all amendments thereto (the "**Seller Organizational Documents**").

3.2. Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement and the other documents and instruments to be executed and delivered by Seller pursuant hereto have been duly authorized by all necessary action on the part of Seller. This Agreement and the other documents and instruments to be executed and delivered by Seller pursuant hereto have been and will be duly executed and delivered by Seller and shall constitute the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally, and by general equitable principles.

3.3. No Breach or Violation; Required Consents. Subject to receipt of the Consents set forth in Schedule 1.5, the execution, delivery, and performance of this Agreement by Seller will not (a) conflict with the terms of the Seller Organizational Documents, and will not conflict with, or result in a breach or termination of, or constitute a default under, any lease, agreement,

commitment, or other instrument, or any order, judgment, or decree, to which Seller is a party, by which Seller is bound, or to which any of the Purchased Assets is subject; (b) constitute a violation by Seller of any law applicable to Seller; (c) result in the creation of any lien, claim, charge, or encumbrance (“**Lien**”) upon any of the Purchased Assets, other than Permitted Liens; and (d) result in the suspension, modification, or revocation of any License. No consent, approval, or authorization of, or designation, declaration, or filing with, any governmental authority is required on the part of Seller in connection with the execution, delivery and performance of this Agreement, except for the filings referred to herein with the FCC.

3.4. Licenses. **Schedule 1.1(d)** includes a complete list of the Licenses held by Seller. Seller has furnished Buyer with copies of the long-form Licenses and related tower registrations. The Licenses have been issued by the FCC to Seller, are in full force and effect, and Seller is the authorized legal holder of the Licenses. Seller has made timely application to the FCC for renewal of the Licenses as necessary. The Licenses comprise all of the licenses, permits, and other authorizations required from any governmental or regulatory authority for the lawful operation of the Stations in the manner and to the full extent they are now conducted. No proceedings are pending or, to the knowledge of Seller, are threatened with respect to the Licenses, which may result in the revocation, modification, nonrenewal, or suspension of any License, the denial of any pending applications, the issuance of any cease and desist order, the imposition of any administrative actions by the FCC with respect to the Licenses, the issuance of a cease-and-desist order, or the imposition of any administrative or judicial sanction with respect to the Stations that may adversely affect, in any material respect, the rights of Buyer under the Licenses.

3.5. Contracts. **Schedule 1.1(c)** contains a complete list of Contracts, which include, and is categorized into (a) all future commitments and other agreements for the purchase of services, materials, supplies, or equipment; (b) all notes, mortgages, and other agreements relating to any indebtedness that is secured by any of the Purchased Assets; (c) all easements, licenses, leases, subleases, or other similar agreements related to the operations or business of the Stations (or complete written descriptions thereof if such agreements are oral) (the “**Leases**”); (d) all network affiliation agreements; (e) all Barter Agreements; (f) all programming agreements, including for each of those agreements the amounts and availability dates of programming and the dollar amount and schedule of any payments thereunder; and (g) all other agreements, commitments, and understandings (written or oral) that cannot be immediately terminated without liability (all such categories shall indicate clearly if and to what extent any contracts that are not specifically Barter Agreements have as a component of consideration for any party thereto non-cash consideration that is typically deemed “trade” or “barter” in the radio broadcast industry). Except for Time Sales Contracts, true and complete copies of all Contracts have been delivered to the Buyer by Seller. All Contracts were entered into in the ordinary course of the business of the Stations. Each Contract is in full force and effect in accordance with its terms. There are no defaults under any Contracts, no party to any of the Contracts has made, asserted, or has any defense, setoff, or counterclaim under any of those Contracts or has exercised any option granted to it to cancel or terminate its agreement, to shorten the term of its agreement, or to renew or extend the term of its agreement, and Seller has not received any notice to that effect, and no event has occurred which by the passage of time or the giving of notice would constitute a default thereunder.

(a) Definition – Time Sales Contracts. “**Time Sales Contracts**” means and refers to all contracts for the sale for cash of broadcast time on the Stations either prior to, or on or after the Closing Date, *provided that* said contracts shall have been entered into in the normal course of business

3.6. Real Properties.

(a) Owned Real Properties. Seller has good and marketable fee simple title to each of the owned Real Properties free and clear of all liens and encumbrances, except for the Permitted Liens. For purposes of this Agreement, “**Permitted Liens**” shall mean (i) liens for real property and ad valorem taxes for the year of Closing that are not yet due and payable, and (ii) any existing liens, mortgages, or other claims that will be satisfied and removed on or before the Closing Date by Seller.

(b) Leased Real Properties. There has been no assignment, transfer, conveyance, mortgage, deed in trust, or any alienation (other than any Permitted Lien) caused or permitted to exist with respect to any real property subject to any of the Leases (collectively, the “**Leased Properties**”).

(c) Condition. The buildings, structures, and other improvements included upon or within the Real Properties or Leased Properties, and used or held for use in connection with the Stations, are in good condition and repair, ordinary wear and tear excepted, and are in adequate condition to operate such improvements as currently used, occupied, or operated.

(d) No Proceedings. There is no proceeding in eminent domain or any similar proceeding pending, or, to Seller’s knowledge, threatened, affecting the Real Properties or Leased Properties. There exists no writ, injunction, decree, order, or judgment outstanding, nor any litigation pending, or, to Seller’s knowledge, threatened, relating to the ownership, lease, use, occupancy, or operation of any Real Properties or Leased Properties.

(e) Utility Service. (i) All gas, electric, water, and other utility lines, sewers, and curbs which are required in connection with the operation of the Stations have been installed; (ii) all buildings used in conjunction with the operation of the Station are, to Seller’s Best Knowledge (as defined herein), in compliance in all material respects with all applicable laws; and (iii) no labor, material, or services have been furnished by or at the direction of Seller or, to Seller’s Best Knowledge, any predecessor to Seller in or about the Real Properties or Leased Properties, or any part thereof, as a result of which any mechanics’, laborers’, or materialmen’s liens or claims might arise.

3.7. Tangible Personal Property. Seller owns and will have good title to each item of Tangible Personal Property to be transferred to Buyer, and none of this Tangible Personal Property is subject to any liens or encumbrances. The Tangible Personal Property is in good working condition and repair, ordinary wear and tear excepted, and available for immediate use in the operation of the Stations, excluding salvaged parts and equipment which are in “as is” condition. The Tangible Personal Property is adequate in quantity and quality for the operation of the Stations as currently conducted.

3.8. Intangibles. **Schedule 1.1(e)** contains a complete list of the copyrights, trademarks, trade names, service marks, service names, Internet names/domains/websites/pages/social media accounts, licenses, patents, logos, jingles, and slogans used in the operation of the Stations. Seller owns or will otherwise have the lawful right, subject to the limitations of federal law and internet domain name registration rights, to perpetually use, free and clear of any Liens, all such intellectual property identified in **Schedule 1.1(e)**. To Seller's Best Knowledge the Stations are not being operated in a manner that infringes upon any intellectual property of any third party or otherwise violates the intellectual rights of any third party, and no claim has been made or threatened against Seller or any other party alleging any such infringement or other violation. There has been no infringement or other violation by others of any intellectual property used in the operation of the Stations.

3.9. Financial Statements. Seller has delivered to Buyer Seller's unaudited balance sheets and monthly statements of revenues and operating expenses from operations for fiscal year 2010, and 2011 and each month of fiscal year 2012 up to the month preceding the execution date of this Agreement. All such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, and fairly present the financial position and the results of operations of the Stations as of the dates and for the periods indicated. Seller agrees to continue to provide such statements to Buyer within twenty (20) days of each month end until the Effective Date. Since December 31, 2011, there has been no material adverse change in the financial condition, results of operations, properties, assets, or liabilities of Seller, nor has there been any event or condition which is likely to affect the financial condition, results of operations, properties, assets, or liabilities of Seller or the Stations. The most recently provided balance sheet of Seller reflects all the Purchased Assets which are currently used or held for use in connection with the business of Seller and all liabilities and obligations of each related to or connected with such business or the Purchased Assets.

3.10. Insurance. **Schedule 3.10** contains a complete list of all insurance policies relating to the operation of the Stations specifying the policy limit, type of coverage, location of the property covered, annual premium, premium payment date, and expiration date of each of the policies. All such policies are in full force and effect and no party is in default under any such policies. All personal injury and property damage claims currently pending against Seller are being defended by Seller's insurance carriers or will be covered by Seller's insurance policies.

3.11. Compliance with Laws; Litigation. There is no claim, litigation, proceeding, or governmental investigation pending, or to Seller's knowledge threatened, or any judgment, order, injunction, or decree outstanding, relating to the Seller, the Stations, or the Purchased Assets, which if adversely determined might (a) effect the operations of the Stations in any Material (as defined herein) respect, (b) delay approval by the FCC of the transactions contemplated by this Agreement, or (c) prevent the consummation of the transactions contemplated by this Agreement. There is Material no violation of any law, regulation, or ordinance or any other requirement of any governmental body or court with respect to the operation of the Stations. The term "Material" as used in this section 3.11 shall mean a matter reasonably expected to result in the levying or imposition of a charge, fine or penalty in excess of \$2,500.00 individually (or in the case of any FCC fines or penalties, \$10,000 individually) against Buyer, Seller or any affiliate of Seller, or the revocation, modification, nonrenewal, or

suspension of any License, the denial of any pending applications, the issuance of any cease and desist order, or the imposition of any administrative sanction with respect to any License or Station.

3.12. Personnel.

(a) **Schedule 3.12(a)** contains a complete list of (i) all collective bargaining agreements and (ii) all employment and consulting agreements between any Station personnel and Seller. There are no other contracts of employment or other agreements with any Station employees.

(b) Except as disclosed on **Schedule 3.12(a)**, Seller (i) is not a party to or bound by any fringe benefit or other non-cash compensation plan, or any pension, thrift, annuity, retirement, savings, profit sharing, or deferred compensation plan or agreement, or any bonus, vacation, holiday, sick leave, group insurance, health or other personal insurance, or other incentive or benefit agreement, plan, or arrangement, (ii) does not participate in any multiemployer plan, and (iii) has no severance policy, and no employee of any Station is entitled to any severance payment, either by law or by agreement, upon the termination of his or her employment.

(c) Unless set forth in **Schedule 3.12(a)**, no Station employee is represented by any union or other collective bargaining agent and there are no collective bargaining or other labor agreements with respect to any employee of the Stations.

(d) **Schedule 3.12(d)** contains a complete list of all full-time and part-time Station employees, together with their respective salaries or wages, the employee benefits owed to each such employee, the date of the last increase in compensation provided to each such employee, and the amount of such increase. No controversies, disputes, or proceedings are pending or threatened by or against any Station employee as a result of any such employee's relationship to Seller or any of the Stations.

3.13 Environmental Matters.

(a) As used within this **Section 3.13**, the term "**Real Estate**" shall include any and all Real Properties and Leased Properties and all strata, soils, fill, foundation, sewers, septic systems, leach fields, piping, surface waters, groundwater, and other materials and improvements on, in, or under such real property.

(b) The terms "**Environmental Laws**" or "**Environmental Law**" shall mean all federal, state, and local laws, regulations, and ordinances acting, designed, or intended to minimize, prevent, punish, or remedy the consequences of actions that damage or threaten Natural Resources (as defined herein), the Environment (as defined herein), or public health and safety.

(c) The terms "**Hazardous Substance**," "**Release**," "**Environment**," "**Transportation**," and "**Natural Resources**" shall have the same meanings and definitions as set forth in the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. and regulations promulgated thereunder (collectively

“**CERCLA**”) and any corresponding or similar state or local law or regulation; *provided, however*, that as used herein the term Hazardous Substance shall also include: (i) any Pollutant or Contaminant as defined by CERCLA or by any other Environmental Law; (ii) any Solid Waste, Hazardous Constituent, or Hazardous Waste as defined by, or as otherwise identified by, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §5901 et seq. or regulations promulgated thereunder (collectively “**RCRA**”), or by any other Environmental Law; (iii) crude oil, petroleum, and fractions or distillates thereof; (iv) any toxic substance or hazardous material as defined by any Environmental Law; (v) any unsafe levels of radio frequency (“**RF**”) radiation exposure under applicable FCC standards therefore; (vi) any polychlorinated biphenyls (“**PCBs**”) unless properly labeled and stored; (vii) any infectious waste or medical waste as defined by any applicable Environmental Law; (viii) lead or lead based paint; (ix) urea formaldehyde foam insulation; or (x) asbestos or asbestos containing materials.

(d) The terms “**Storage**,” “**Treatment**,” and “**Disposal**” shall have the same meanings and definitions as set forth in RCRA.

(e) Except for lubricants, cleaners or other consumer products that are maintained in limited quantities for routine maintenance purposes and do not require a hazardous materials license, there are no, and there have not been any, Hazardous Substances on, in, or under the Real Estate, including, without limitation, any improvements incorporated into or contained within any building or other structure on, in, or under the Real Estate.

(f) Except for lubricants, cleaners or other consumer products that are maintained in limited quantities for routine maintenance purposes and do not require a hazardous materials license, there has been no Release, Treatment, Storage, Disposal, or transportation of Hazardous Substances on, in, to, or from the Real Estate.

(g) At all times Seller has operated Seller’s business and the Real Estate has been maintained in compliance with all applicable laws, regulations, and ordinances, including, but not limited to, Environmental Laws; except for lubricants, cleaners or other consumer products that are maintained in limited quantities for routine maintenance purposes and do not require a hazardous materials license Seller has not utilized, stored, accumulated, or generated Hazardous Substances except as permitted by Environmental Laws; and Seller has secured all required permits pursuant to Environmental Laws.

(h) There are not now nor during any other time owned or used by Seller, nor to the Best of Seller’s Knowledge had there otherwise been, aboveground or underground storage tanks or piping (including, without limitation, tanks such as those used to contain heating oil that may be exempt from regulation under RCRA or corresponding state laws or regulations) located in, on, or under the Real Estate.

(i) To Seller’s Best Knowledge, there are no wetlands, within the meaning of or as defined by the Clean Water Act, 33 U.S.C. §404, and regulations promulgated thereunder, or any other federal, state, or local law or regulations, on the Real Estate.

(j) During Seller’s ownership or use thereof, and to Seller’s Best Knowledge at any other time, there are not now nor have there been any, (i) ongoing, unresolved, or threatened administrative or enforcement actions, compliance orders, claims, demands, actions,

or other litigation, or (ii) investigations based on CERCLA, RCRA, or other Environmental Laws or otherwise related to the presence of Hazardous Substances in, on, or under, or transported to or from the Stations or the Real Estate, or other environmental condition of the Real Estate, brought by any Person ("**Environmental Claims**"); nor has any information request, special notice, general notice letter, or other communication indicating or suggesting the possibility or threat of Environmental Claims been received by Seller; nor is Seller aware of any basis for the possibility or threat of Environmental Claims.

3.14. Brokers. Seller has not retained any brokers who are entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement.

3.15. Taxes. (a) All tax returns required to be filed by Seller have been timely filed and all such tax returns are correct and complete; (b) all taxes required to be paid by Seller, whether or not shown due on such tax returns, have been timely paid; (c) there is no action, suit, proceeding, investigation, audit, or claim pending or, to Seller's knowledge, threatened with respect to Seller's taxes for which any Seller may be liable, and no adjustments relating to Seller's taxes have been proposed by any tax authority and remain unresolved; (d) there are not now, nor as of Closing will be, tax liens on any of the Purchased Assets; and (e) all taxes that Seller is required to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper tax authority. Seller has delivered to Buyer true, correct, and complete copies of all income tax returns of Seller and/or any other party participating in the ownership and operation of the Stations for the past two (2) years. "**Taxes**" as used in this section means all types of taxes imposed by any government or taxing authority on income, sales, use, payroll, social security, unemployment, or other basis.

3.16. No Misleading Statements. No representation or warranty made by Seller in this Agreement, any document provided in connection herewith, or in any schedule, certificate, or exhibit prepared and furnished or to be prepared and furnished by Seller or Seller's representatives pursuant hereto or thereto, or in connection herewith or therewith, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished.

3.17. Government Filings. All returns, reports, and statements required to be filed with the United States Federal Aviation Administration and/or the FCC relating to the Stations (including but not limited to the registration of towers and the filing of annual regulatory fees for the Stations) have been filed and complied with and are complete and correct as filed. The Stations' local public inspection files are complete and up-to-date in all material respects and contain all documents required to be maintained therein by the FCC's Rules and Regulations (as defined below). There are no facts relating to Seller or the Stations that would cause the FCC to deny its consent to the sale of the Stations to Buyer as contemplated herein. All annual FCC regulatory fees applicable to the Stations due or for all periods preceding the Closing have paid.

(a) Definition – Rules and Regulations. The term "**Rules and Regulations**" shall mean the rules of the FCC as set forth in Volume 47 of the Code of Federal Regulations, as well as such other policies of the FCC, as required or permitted by the Communications Act of

1934, as amended, whether contained in the Code of Federal Regulations, or not, that apply to the Stations.

3.18. No Material Changes. Since December 31, 2011, the business of the Stations has been operated in the ordinary course of business, and:

(a) There has been no material adverse change in the business or operations of the Stations;

(b) No transactions with respect to the Stations have been entered into incurring any liability or obligation that is material to the business or operation of the Stations except in the ordinary course of business;

(c) No assets of the Stations have been sold, damaged, lost, or otherwise disposed of other than in the ordinary course of business;

(d) No indebtedness with respect to the Stations has been incurred, or indebtedness of any affiliate of Seller guaranteed, other than indebtedness to trade creditors of the Stations incurred in the ordinary course of business;

(e) No increases have been granted or agreed to in any rate or rates of salaries or compensation or other benefits or bonuses payable to employees of the Stations, except for increases in accordance with the Stations' past employment practices and which are indicated in **Schedule 3.12(a)**; and except as disclosed on **Schedule 3.12(a)** no changes have been granted or agreed to in the Stations' management personnel, policies, or employee benefits.

(f) There has been no strike, walkout, or other labor trouble, which has affected the Seller, any of the Purchased Assets, or the Stations;

(g) There has been no cancellation or waiver of any right affecting the operation of the Stations or Seller's businesses, any cancellation or waiver of any debt or claim of substantial value, or any cancellation or waiver of any debt or claim against any affiliate of Seller;

(h) Except as disclosed on **Schedule 3.18**, since January 1, 2012, there has been no change in management or operations or any method of accounting or keeping of Seller's books of account (including the Records) or accounting practices related to the Stations; and

(i) There has been no disposition of any rights in, to, or for the use of any patent, trademark, service mark, trade name, copyright, or other Intangibles.

3.19. No Technical Interference. Neither Seller nor to Seller's Best Knowledge, any other Person, has taken any action that would materially and adversely affect the interference-free technical service areas of the Stations as presently authorized by the FCC.

3.20. No Citizen Agreements. There are no agreements with any community group, governmental authority, or other third party restricting programming, employment practices or policies, or other respects of the business or operations of the Stations which restricts the discretion to operate the Stations, and there has been no dispute with any community group,

governmental authority, or other third party as to the manner of the business or operations of the Stations.

3.21. Effect of Representations and Warranties. The representations and warranties of Seller set forth in this Article 3 and the schedules and exhibits attached hereto are true and correct as of the date hereof, shall remain true and correct hereafter through and including the Closing Date.

3.22. Definition – Best Knowledge. As used in this Article 3, the term “**Best Knowledge**,” e.g. “to the Best of Seller’s Knowledge,” shall mean that the Party professing Best Knowledge has conducted a diligent inquiry among and between employees, principals and agents, and conducted a general review of its own files and records, and the files and records of its agents pertaining to that Party and relating to the subject matter to which Best Knowledge is asserted.

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

Buyer hereby represents and warrants to Seller as follows:

4.1 Organization, Standing, and Authority. Buyer is a corporation, duly organized and validly existing under the laws of the State of Wisconsin, and has the full power and authority to enter into and perform this Agreement and to own and operate the Stations.

4.2. Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions of the Buyer, and this Agreement constitutes a valid and binding obligation of Buyer enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3. No Breach or Violation. The execution, delivery, and performance of this Agreement by the Buyer will not (a) conflict with the Buyer’s certificate of incorporation or by-laws and will not conflict with or result in the breach or termination of, or constitute a default under, any lease, agreement, commitment, or other instrument, or any order, judgment, or decree, to which the Buyer is a party or by which the Buyer is bound, or (b) constitute a violation by the Buyer of any law applicable to it. Except as otherwise required by this Agreement, no consent, approval, or authorization of, or designation, declaration, or filing with, any governmental authority is required on the part of the Buyer in connection with the execution, delivery, and performance of this Agreement.

4.4. Licensee Qualifications. To Buyer’s knowledge, there is no fact that would, under the Rules and Regulations, disqualify Buyer from being the owner and operator of the Stations.

4.5. Brokers. Buyer has not retained any brokers who are entitled to any commission or finder’s fee in connection with the transactions contemplated by this Agreement.

4.6. Litigation. There is no claim, litigation, proceeding, or governmental investigation pending or, to the best of the Buyer's knowledge, threatened, or any order, injunction or decree outstanding, against the Buyer or any of its affiliates that would prevent the consummation of the transactions contemplated by this Agreement.

4.7. Effect of Representations and Warranties. The representations and warranties of Buyer set forth in this Article 4 and the schedules and exhibits attached hereto are true and correct as of the date hereof and shall be true and correct as of the Closing Date.

## **ARTICLE 5.**

### **OPERATIONS PRIOR TO CLOSING.**

From the date of this Agreement until the earlier of (a) the expiration or termination of this Agreement, or (b) the Closing Date, Seller shall:

5.1 Operate the Stations and conduct its businesses in the usual, regular, and ordinary course and in substantially the same manner as heretofore conducted or as required by the terms of this Agreement;

5.2 Operate the Stations in compliance with the Licenses, the Rules and Regulations, and all other applicable laws;

5.3 Use best, commercially-reasonable, efforts to (i) preserve Seller's businesses intact, (ii) maintain the Stations and Purchased Assets in good condition, reasonable wear and tear excepted, (iii) keep the services of their present employees, and (iv) preserve the goodwill of Seller's customers, suppliers, and others having business relationships with Seller; and

5.4 Not enter into any other transactions, other than those in the ordinary course of business which are permitted or not prohibited by this Agreement, and which will have a material adverse effect upon the Stations, Purchased Assets, or the financial condition or operation of Seller.

## **ARTICLE 6.**

### **SPECIAL COVENANTS.**

6.1. FCC License Consent. Promptly following the execution and delivery of this Agreement, Buyer and Seller shall use their respective best efforts to obtain the FCC's consent to the assignment of the Licenses from Seller to Buyer (the "**FCC License Consent**"). Buyer and Seller shall cooperatively and collectively (a) prepare, file, and prosecute any and all FCC applications for the FCC License Consent (the "**FCC Application(s)**") with all reasonable diligence and otherwise use their best efforts to obtain a grant of the FCC Application(s) as expeditiously as practicable, (b) oppose any petition to deny or informal objection that may be filed against the FCC Application(s) for the FCC License Consent, and (c) oppose any requests for reconsideration or judicial review of the FCC License Consent. Buyer and Seller agree to pay one-half of any and all filing fees or charges required by the FCC in connection with the FCC

License Consent, including publication costs, and Buyer and Seller agree to pay the fees and expenses of their respective FCC counsel to the transactions contemplated by this Agreement.

6.2. Control of Station. Notwithstanding anything in this Agreement to the contrary, prior to Closing, Buyer shall not, directly or indirectly, control, supervise, or direct, or attempt to control, supervise, or direct, the operations of the Stations, and all such operations, including complete control and supervision of the Stations, shall be the sole responsibility of Seller until the Closing.

6.3 Employment Matters.

(a) Employees. Seller shall exercise it best, commercially-reasonable efforts to retain all employees employed at the Stations or with regard to the Stations up to the Closing Date, upon which date their employment shall be terminated by Seller. Buyer may offer to hire some or all of such employees. Seller agrees to cooperate with Buyer in its efforts to obtain the employment of any and all employees, which Buyer, in its sole discretion, shall decide to offer employment with Buyer.

(b) Seller's Employment Obligations. Seller shall be responsible for any and all commissions, salaries, wages, benefits, vacation pay, severance pay, employment, and payroll taxes accruing prior to or claimed by any such employees prior to the Closing Date with respect to each employee of Seller.

6.4. Confidentiality. Except as and to the extent required by law, governmental inquiry, or regulation, each party will keep confidential any information obtained from the other party or any of its employees, agents, or representatives in connection with the transactions contemplated by this Agreement. Buyer and Seller shall each (a) maintain such information in a secure place, (b) limit access to such information to those employees, agents, and representatives to whom it is necessary to disclose in furtherance of the transaction contemplated by this Agreement, and (c) assume liability for any breach of this **Section 6.4** by it or any of its employees, agents, or representatives. If this Agreement expires or is terminated, each party will return to the other party all information obtained by such party from the other party in connection with the transactions contemplated by this Agreement. The obligations imposed by this **Section 6.4** shall apply for a period of three (3) years following the date of this Agreement. Buyer and Seller agree that the provisions of this **Section 6.4** are necessary to protect the legitimate business interests of the parties and that any violation or breach of such provisions will result in irreparable injury to the non-breaching party for which a remedy at law would be inadequate and that, in addition to any relief at law which may be available and regardless of any other provision contained herein to the contrary, the non-breaching party shall be entitled to injunctive and other equitable relief as a court may grant after considering the intent of these provisions.

6.5. Risk of Loss. The risk of any loss, damage, impairment, confiscation, or condemnation of any of the Purchased Assets or Stations from any cause shall be borne by Seller at all times prior to the Closing Date, and upon Closing risk of loss shall pass to Buyer. If any portion of the Purchased Assets is destroyed or damaged by fire or any other cause prior to the Closing Date, other than by ordinary wear and tear or loss in the ordinary course of business, or

due to the negligence or intentional misconduct of Buyer, its agents, or invitees, Seller shall give Buyer written notice thereof as soon as practicable after discovery of such damage or destruction. Seller shall have thirty (30) days to restore or repair such destruction or damage to the Purchased Assets, or if such restoration or repair cannot be reasonably completed within such thirty (30) day period, Seller shall have a reasonable period of time to complete such restoration or repair *provided that* Seller commence such restoration or repair within the initial thirty (30) day period and such restoration is completed within ninety (90) days. If Seller is unable to restore or repair the damaged Purchased Assets prior to the Closing and the Purchased Assets are, in Buyer's reasonable opinion, material to the operation of any or all of the Stations, Buyer shall have the option, exercisable prior to Closing by providing Seller written notice at least ten (10) days prior to Closing or as soon as practical after Seller's notice if received within such ten (10) day period, to (a) accept the damaged Purchased Assets at Closing, in which event Seller shall assign to and Buyer shall be entitled to received the insurance proceeds payable with respect to such loss (if any) or to deduct from the Purchase Price the lost value of such damaged Purchased Assets (as reasonably determined jointly by the respective accountants for Buyer and Seller), or (b) terminate this Agreement.

6.6. Broadcast Transmission Interruptions. Notwithstanding any other provision hereof, if prior to the Closing any event occurs which prevents the broadcast transmission of any of the Stations for more than twenty-four (24) hours, Seller shall give prompt written notice thereof to Buyer. If such facilities are not restored so that operation is resumed in the manner the Stations has heretofore been operating within ten (10) Business Days (as defined below) of such event, or, in the case of more than one (1) event, the aggregate number of days preceding such restorations from all such events is more than fourteen (14) days, Buyer shall have the right, by giving written notice to Seller of its election to do so, to terminate this Agreement forthwith without any further obligation on any party hereunder.

(a) Definition – Business Day. The term “**Business Day**” shall mean any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the city of Fargo, North Dakota, are regularly open for business.

6.7. Buyer's Due Diligence; Access to Records. At any time prior to Closing, Seller shall allow Buyer and Buyer's identified representatives and experts reasonable access to the Stations during normal business hours, the Purchased Assets (including the Real Properties and Leased Properties), Seller's contracts, books, and records (including the Records), and all other documents and data with respect to the Stations. Buyer may use such access to inspect and test the Purchased Assets prior to Closing *provided that* any such inspection or testing is conducted in a manner that does not unreasonably interfere with Seller's business operations. Buyer agrees that any contact with any of Seller's employees, officers, agents, or customers shall be coordinated through and subject to advance approval of the designated representative of Seller who is James D. Ingstad. Seller acknowledges that Buyer intends to designate more than one (1) individual to engage in this review of the Stations' records and operations. Seller shall reasonably cooperate with such individuals in connection with such review, who shall be employees or agents of and paid by Buyer. No later than ten (10) Business Days after the full execution and delivery of this Agreement by Buyer and Seller, Seller shall deliver to Buyer (a) a commitment (whether one or more, the “**Title Commitment**”) for an Owner's Policy of Title

Insurance (with Lessee coverage with respect to the Leased Properties) issued by a title company selected by Buyer (the "**Title Company**") showing title to the Real Properties in Seller and in the Leased Properties to Seller's landlord(s) free and clear of all Liens and encumbrances except Permitted Liens (in the case of Leased Properties, Permitted Liens may include a mortgage or deed of trust issued by the landlord thereunder to a third party lender), with a commitment to issue title insurance policies for each of the Real Properties and Leased Properties in conjunction with Closing (subject to any requirements for such issuance), and (b) legible copies of all documents cited, raised as exceptions or noted in each such Commitment (the "**Title Documents**"). Buyer will be responsible for all premiums for endorsements or special coverages as deemed necessary or desirable by Buyer, and Seller shall be responsible for and pay when due the base premium with extended coverage for the Title Commitments.

6.8 Cooperation. Buyer and Seller shall cooperate fully and reasonably with each other and their respective counsel, advisors, and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and Buyer and Seller each shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement, and otherwise use their commercially reasonable efforts to consummate the transactions contemplated hereby and to fulfill their obligations under this Agreement.

6.9. Pre-Closing Accounts Receivable.

(a) Within five (5) days prior to the Closing Date, Seller shall furnish to Buyer a list of the accounts receivable that arose out of the operations of the Stations as of the close of business from the week preceding the five (5) days prior to the Closing Date, but which are yet due and payable ("**Pre-Closing Accounts Receivable**"). For a period of ninety (90) days after the date of the Closing, Buyer, as Seller's disclosed agent, shall, without compensation, collect the Pre-Closing Accounts Receivable for Seller. During such ninety (90) day period, Buyer shall pay to Seller at the place designated for notice in this Agreement, all amounts so collected by Buyer with respect to such Pre-Closing Accounts Receivable during the preceding calendar month. Buyer shall furnish Seller with such records and other information as Seller may reasonably require to verify the amounts collected by Buyer with respect to the Pre-Closing Accounts Receivable. Upon five (5) days prior written notice from Seller, Buyer shall terminate all collection efforts on behalf of Seller with respect to any Pre-Closing Accounts Receivable specified in the notice and those Pre-Closing Accounts Receivable shall no longer be considered Pre-Closing Accounts Receivable for purposes of this **Section 6.9**.

(b) For the purpose of determining amounts collected by Buyer with respect to the Pre-Closing Accounts Receivable, all payments by an account debtor shall first be applied to the oldest Pre-Closing Accounts Receivable that are (i) due from the account debtor, (ii) not indicated by the account debtor to be subject to a bona fide and unresolved dispute (any notice regarding a dispute of such Pre-Closing Accounts Receivable shall be promptly provided to Seller), or (iii) not specifically directed by such account debtor to be applied to accounts receivable other than the Pre-Closing Accounts Receivable for such account debtor.

(c) Buyer shall not be required to retain a collection agency, bring any suit, or take any other action out of the ordinary course of business to collect any of the Pre-Closing

Accounts Receivable. Buyer shall not compromise, settle, or adjust the amount of any of the Pre-Closing Accounts Receivable without the written consent of Seller.

(d) Pre-Closing Accounts Receivable shall remain the property of Seller, and at the end of the ninety (90) day time period, Buyer shall return to Seller all written materials in Buyer's possession concerning the collection or attempt to collect such Pre-Closing Accounts Receivable hereunder. After the expiration of the collection period, Buyer shall have no further obligation hereunder with respect to Pre-Closing Accounts Receivable other than (i) to use reasonable efforts to cause all payments, correspondence, and other communications in respect of or relating to the Pre-Closing Accounts Receivable to be delivered or directed to Seller at Seller's last known address, and (ii) to remit directly to Seller any payments with respect to any of the Pre-Closing Accounts Receivable that Buyer subsequently receives to Seller's last known address.

(e) Seller and Buyer will cooperate in all matters necessary or appropriate to carry out fully the purposes and intent of this **Section 6.9**. Without limiting the generality or effect of the preceding sentence, (i) Seller hereby authorizes Buyer to act as Seller's fiduciary to collect and receive the benefit of all payments in respect of Pre-Closing Accounts Receivable after the Closing Date and to receive and open all mail and other communications relating to the Stations received by Buyer, and (ii) Seller hereby authorizes Buyer, after the Closing Date, to endorse, without recourse, the name of Seller, as appropriate, on any check or other evidence of payment received by Buyer on account of any of the Pre-Closing Accounts Receivable.

6.10 Transfer of AM Tower Site Claims. At Closing, Seller shall convey, assign and transfer to Buyer all claims, accounts, contracts, awards, judgments, damages, compensation, and right, title and interest in and to the forgoing which Seller has theretofore received or to which Seller is entitled to receive and deems itself entitled to receive as a result of the development of a so-called wind farm operation (*i.e.*, group of wind-driven generators, *e.g.* windmills or wind turbines, that produce a supply of electricity for commercial sale or distribution) on lands adjoining or in proximity to the Owned Real Properties (referred to herein as "**Wind Farm Settlement**").

6.11 Delivery of Schedules. Buyer and Seller agree that due to certain time constraints at the time of execution of this Agreement, not all the schedules and exhibits referenced herein were prepared. Seller shall deliver to Buyer within twenty (20) days of the date of execution and deliver hereof proposed schedules and exhibits to this Agreement, to the extent such schedules and exhibits were not attached to this Agreement on the date of execution (the "**Proposed Schedules and Exhibits**"). Buyer shall have a period of forty-five (45) days following the receipt thereof to review such Proposed Schedules and Exhibits (the "**Schedule and Exhibit Inspection Period**") and shall notify Seller within five (5) days following the conclusion of the Schedule and Exhibit Inspection Period whether Buyer accepts or rejects such Proposed Schedules and Exhibits or any portion thereof. Seller shall have an additional period of time not to exceed ten (10) days thereafter to correct any Proposed Schedules and Exhibits so rejected to the reasonable satisfaction of Buyer. If any or all of the Proposed Schedules and Exhibits are not acceptable to Buyer, Buyer may terminate this Agreement. If the Proposed Schedules and Exhibits are approved by Buyer, they shall thereafter be deemed "**Approved Schedules and Exhibits**" and attached hereto and incorporated herein by reference.

**ARTICLE 7.**  
**CONDITIONS TO BUYER'S OBLIGATION TO CLOSE.**

7.1 FCC License Consent. All obligations of Buyer at the Closing are subject to the FCC License Consent being granted and becoming a Final Order (as defined herein). For purposes of this Agreement, the FCC License Consent shall have become a "**Final Order**" if (a) it has not been reversed, stayed, enjoined, set aside, annulled, or suspended; (b) no request is pending for administrative or judicial review, reconsideration, appeal, or stay; and (c) the time for filing any such request and the time for the FCC to set aside the action on its own motion shall have expired.

7.2 Transaction Conditions Precedent. In addition to the conditions in **Section 7.1**, Buyer's obligation to close hereunder shall be subject, as of the Closing Date, to each of the following express conditions precedent:

(a) Instruments of Conveyance and Transfer. Seller shall deliver the instruments of conveyance and other documents required to be delivered by them pursuant to **Section 9.2(a)** hereof.

(b) Representations True and Correct. The representations and warranties made in Article 3 hereof shall be true and correct as of the Closing Date with the same force and effect as if made on and as of said date.

(c) Compliance with Agreement. All of the terms, covenants, and conditions of this Agreement to be complied with and performed by the Seller on or before the Closing Date shall have been duly complied with and performed.

(d) Authorization. Buyer shall have received certified copies of all action taken by each of the Seller to authorize the transactions provided for herein.

(e) BIA, Inc. Appraisal. Buyer shall have received, at its expense, the appraisal report of the Purchased Assets conducted by BIA, Inc. allocating the Purchase Price to the Purchased Assets consistent with the requirements of **Section 2.4**.

(f) Environmental Phase I. Buyer shall have obtained, at Buyer's expense, ASTM-compliant, written reports from an environmental consultant chosen by Buyer confirming that there are no Recognized Environmental Conditions or Historic Recognized Environmental Conditions (as those terms are defined by ASTM) with respect to the Real Properties or Leased Properties, that the representations and warranties of Seller contained in **Section 3.13** are true and correct, and that are otherwise satisfactory to Buyer in its sole discretion. If, as a result of any such environmental assessment Buyer determines that a Phase II or Phase III assessment need be conducted, Buyer shall promptly send Seller an Environmental Investigation Demand (defined below) which, if accepted by Seller, shall cause the expense of the Phase II or III assessment to shift to the Seller and shall condition the Closing upon the Seller (i) conducting the Phase II or Phase III assessments and (ii) curing or remediating any adverse environmental condition(s). If Seller, upon receiving the Environmental Investigation Demand, determines that Seller does not wish to accept the burden imposed by the Environmental Investigation Demand, Seller may give Buyer Notice of Intention (defined below) and no later than five (5) Business

Days after receiving the Notice of Intention Buyer may withdraw Buyer's Environmental Investigation Demand, whereupon Buyer's obligation to Close shall *not* be conditioned upon conducting any further assessment. If Seller has not received such a withdrawal of the Environmental Investigation Demand within five (5) Business Days, this Agreement shall be terminated without any liability of either Seller or Buyer to the other. If, by forty five (45) days after the effective date of this Agreement, Buyer does not deliver an Environmental Investigation Demand accompanied by a copy of the Phase I environmental assessment recommending further procedures, Buyer shall be deemed satisfied with the results of such environmental assessments for the purposes hereof. In the absence of Notice of Intention and Seller's election to cure or remediate the adverse environmental condition, then Seller shall immediately undertake and be responsible for all costs of such recommended remediation and the Closing shall be delayed until such remediation is completed to Buyer's sole and absolute satisfaction.

(1) Definition – Environmental Investigation Demand. The term “**Environmental Investigation Demand**” shall mean a determination and written demand to Seller by Buyer, based upon Buyer's Phase I environmental assessment, that Buyer has conditioned any obligation of Buyer with respect to Closing upon Seller conducting a Phase II or Phase III environmental assessment. If reasonably available to Buyer, Buyer shall include in the Environmental Investigation Demand any cost estimates that Buyer has received for the Phase II or Phase III environmental assessments.

(2) Definition – Notice of Intention. The term “**Notice of Intention**” shall mean a determination by Seller, after receipt from Buyer of Buyer's Environmental Investigation Demand, that Seller does not wish to accept the condition of performing a Phase II or Phase III environmental assessment as a condition of Closing, and accordingly that Seller intends to elect to terminate this Agreement.

(g) Carry On in Regular Course. Seller shall have carried on the business of the Stations in the regular course and substantially in the same manner as heretofore carried on by Seller.

(h) Title Commitments. The Title Company shall be unconditionally committed to issue to Buyer a current form of ALTA Owner's Policy of Title Insurance with Buyer's requested endorsements thereto for each of the Real Properties and Leased Properties.

(i) Survey(s). Buyer shall have obtained, at Seller's expense, in a form meeting the requirements of **Exhibit 7.2(i)**, surveys of the Real Properties and Leased Properties prepared by a registered land surveyor approved by Buyer and certified to Buyer and such others as Buyer may reasonably request.

(j) No Bankruptcy. That at no time prior to Closing shall any of the following have been done by or against or with respect to Seller: (i) the commencement of a case under Title 7 or 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii) the appointment of a trustee or receiver of any property interest; or (iii) an assignment for the benefit of creditors.

(k) No Judicial Orders. No order, writ, injunction, or decree shall have been entered and be in effect by any court of competent jurisdiction or any governmental authority,

and no statute, rule, regulation, or other requirement shall have been promulgated or enacted and be in effect, that restrains, enjoins, or invalidates the transactions contemplated hereby.

(1) Proposed Schedules and Exhibits. The Proposed Schedules and Exhibits shall have become Approved Schedules and Exhibits.

7.3 Waiver. Buyer may at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer. No such waiver shall reduce the rights or remedies of Buyer by reason of any breach by Seller (but if a condition is waived, the party waiving the same may not rescind this Agreement on the basis of the failure of such waived condition). In the event that for any reason any item required to be delivered to Buyer by Seller hereunder shall not be delivered when required, then Seller shall nevertheless remain obligated to deliver the same to Buyer, and nothing (including, but not limited to, the closing of the transaction hereunder) shall be deemed a waiver by Buyer of any such requirement. The failure of any of the aforesaid conditions, if uncured by Seller within fifteen (15) Business Days of written notice from Buyer, shall entitle Buyer, at its option, to cancel and terminate this Agreement without liability and upon which this Agreement shall be null and void. Buyer, in its reasonable discretion, may waive the requirement for a Final Order as a condition to Closing if no formal or informal protest to the FCC Application(s) is filed prior the grant by the FCC of the FCC License Consent. In the event Buyer intends to effectuate such a waiver, for the waiver to be effective, Seller shall enter into an unwind agreement in a form reasonably prescribed by Buyer for this purpose.

## **ARTICLE 8.**

### **CONDITION TO SELLER'S OBLIGATION TO CLOSE.**

8.1 FCC Consent. All obligations of Seller at the Closing are subject to the FCC License Consent being granted and becoming a Final Order; *provided, however*, that such condition shall be deemed waived if the FCC License Consent is not granted due to Seller's breach of this Agreement.

8.2 Transaction Conditions Precedent. In addition to the conditions in **Section 8.1**, Seller's obligation to close hereunder shall be subject, as of the Closing Date, to each of the following express conditions precedent:

(a) Representations True and Correct. The representations and warranties made in Article 4 hereof shall be true and correct as of the Closing Date with the same force and effect as if made on and as of said date.

(b) Compliance with Agreement. All of the terms, covenants, and conditions of this Agreement to be complied with and performed by Buyer on or before the Closing Date shall have been duly complied with and performed.

(c) Authorization. Seller shall have received certified copies of all action taken by the Buyer to authorize the transactions provided for herein.

(d) No Bankruptcy. That at no time prior to Closing shall any of the following have been done by or against or with respect to Buyer: (i) the commencement of a case under

Title 7 or 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (ii) the appointment of a trustee or receiver of any property interest; or (iii) an assignment for the benefit of creditors.

(e) No Judicial Orders. No order, writ, injunction, or decree shall have been entered and be in effect by any court of competent jurisdiction or any governmental authority, and no statute, rule, regulation, or other requirement shall have been promulgated or enacted and be in effect, that restrains, enjoins, or invalidates the transactions contemplated hereby.

8.3 Waiver. Seller may at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Seller. No such waiver shall reduce the rights or remedies of Seller by reason of any breach by Buyer (but if a condition is waived, the party waiving the same may not rescind this Agreement on the basis of the failure of such waived condition). In the event that for any reason any item required to be delivered to Seller by Buyer hereunder shall not be delivered when required, then Buyer shall nevertheless remain obligated to deliver the same to Seller, and nothing (including, but not limited to, the closing of the transaction hereunder) shall be deemed a waiver by Seller of any such requirement.

## **ARTICLE 9.**

### **CLOSING AND CLOSING DELIVERIES.**

#### **9.1. Effective Date and Closing.**

(a) Effective Date and Closing. Unless otherwise agreed to in writing by the parties, the accounting cut-off effective date (the “**Effective Date**”) for the transactions contemplated by this Agreement shall be seven (7) business days after the first date on which all of the conditions set forth in Articles 7 and 8 have been satisfied and/or waived, or such earlier date as the parties hereto may agree in writing. The closing for the transactions contemplated herein (the “**Closing**”) shall take place on the first business day immediately following the Effective Date, or as soon thereafter as all documentation and the accounting cut-off described in **Section 2.2** shall have been completed (the “**Closing Date**”).

(b) Closing Place. The Closing shall be held at the offices of Ruder Ware, L.L.S.C., 500 First Street, Suite 8000, Wausau, Wisconsin, commencing at 10:00 A.M. Wisconsin time, or alternatively, at such reasonable location as may be specified by Buyer, or such other place as shall be mutually agreed upon in writing by Seller and Buyer. At the election of Buyer and Seller, mutually agreed in writing, the Closing may be performed by mail, and/or electronically (*i.e.*, via email and/or telephonic facsimile) and/or courier service, and/or a combination of the foregoing procedures provided for in this sentence.

9.2. Deliveries by Seller. Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance satisfactory to Buyer and its counsel:

(a) Transfer Documents. Duly executed warranty bills of sale, warranty deeds, motor vehicle titles, assignments, real estate affidavits, and other transfer documents, which shall be sufficient to vest good and marketable title to the Purchased Assets in the name of Buyer, free

and clear of all liens and encumbrances except for Permitted Liens, and to allow for the issuance of the Title Policies.

(b) Consents. A copy of each instrument evidencing issuance to Buyer and Seller of the Consents required hereby.

(c) Landlord Estoppel Certificates. Landlord consent and estoppel certificates for each lease assumed as part of the Contracts in the form set forth in Exhibit 9.2(c) and otherwise satisfactory to Buyer.

(d) Tenant Estoppel Certificates. Fully executed estoppel certificates from all tenants from any lease assumed as part of the Contracts in the form set forth in Exhibit 9.2(d) and otherwise reasonably satisfactory to Buyer.

(e) Opinion of Counsel. An opinion of Seller's counsel dated as of the Closing Date, equivalent in all material respects to the form attached as Exhibit 9.2(e) and otherwise reasonably satisfactory to Buyer.

(f) Non-compete and Solicitation Agreements. Executed three-year non-compete and non-solicitation agreements issued by Seller and the owners of Seller in favor of Buyer in a form reasonably agreed to by the parties (the "**Non-compete and Non-Solicitation Agreements**").

(g) Unemployment Account. If so required by Buyer in writing not less than five (5) business days prior to Closing, the appropriate forms, properly executed, transferring to Buyer Seller's unemployment compensation account and experience rate for purposes of determining unemployment compensation contributions.

9.3 Deliveries by Buyer. Prior to or on the Closing Date, Buyer shall deliver to Seller the following, in form and substance satisfactory to Seller and Seller's counsel:

(a) Purchase Price. The Purchase Price, subject to the prorations, adjustments, credits, and debits as provided herein, which amount shall not include any payments made pursuant to the Non-compete and Solicitation Agreements.

(b) Assumption Agreements. Assumption agreements acceptable to Seller pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Contracts and Licenses.

9.4 Closing Prior to Final Order. Notwithstanding any other agreement contained herein to the contrary, in the event Closing occurs prior to Final Order, the final amount of Purchase Price due pursuant to Section 9.3(a) shall be placed into an interest bearing escrow account with Escrow Agent pursuant to an escrow agreement that will provide that the funds held in escrow will be paid out to Seller no later than the last business day of calendar year 2012, provided no matters have been filed with the FCC with respect to the transfer of the Licenses prior to Final Order, and will contain such other terms and conditions as are reasonably prescribed by Buyer.

**ARTICLE 10.**  
**TERMINATION.**

10.1. Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Stations abandoned, if Seller is not then in material default of this Agreement, by written notice to Buyer, upon the occurrence of any of the following:

(a) Breach. If Buyer has committed a material breach of this Agreement which has not been remedied within thirty (30) days of Seller's written notice of the same, including without limitation, Buyer's failure to comply with any FCC requirements (other than special conditions imposed by the FCC).

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order of any court or administrative body with proper jurisdiction over the subject matter against Buyer that would prevent or make unlawful the Closing.

(c) Upset Date. If the Closing shall not have occurred on or before one (1) year from the date of filing by the Parties with the FCC of the FCC Application(s).

(d) Conditions. If, on the date that would otherwise be the Closing Date, the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Seller.

10.2. Termination by Buyer. This Agreement may be terminated by Buyer, and the purchase and sale of the Stations abandoned, if Buyer is not then in material default, by written notice to Seller, upon the occurrence of any of the following:

(a) Breach. If Seller has committed a material breach of this Agreement that has not been remedied within thirty (30) days of Buyer's written notice of the same; *provided, however*, that Buyer may alternatively elect to waive such material breach if Buyer, in its sole reasonable discretion elects to deduct from the Purchase Price Buyer's estimated cost to cure such breach.

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order of any court or administrative body with proper jurisdiction over the subject matter that would prevent or make unlawful the Closing.

(c) Upset Date. If the Closing shall not have occurred on or before one (1) year from the date of filing by the Parties with the FCC of the FCC Application(s).

(d) Conditions. If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(e) Environmental Matters. The Real Properties or Leased Properties are not in compliance with Environmental Laws and remediation has been declined by Seller as provided by **Section 7.2(f)**.

10.3. Buyer's Rights on Termination.

If this Agreement is terminated by Buyer pursuant to **Section 10.2(a)**; **Section 10.2(b)** if such judgment, decree or order is intentionally caused or permitted by Seller; **Section 10.2(c)** if such delay is intentionally caused by Seller; 10.2(d) if the failure of such condition is intentionally caused or permitted by Seller; or **Section 10.2(e)**, or if Seller elects to terminate this Agreement and has not basis to do so pursuant to **Section 10.1**, Seller shall immediately pay to Buyer as liquidated damages in immediately available funds the amount of **FIVE MILLION AND NO/100THS U.S. DOLLARS (\$5,000,000.00)**, which amount the parties hereto deem reasonable to compensate Buyer for a breach by Seller, it being determined that a determination of actual damages would be too difficult under the circumstances of this transaction. The parties acknowledge and agree that such a payment is and shall be damages for Seller's breach and not a penalty. If this Agreement is otherwise terminated by Buyer pursuant to **Section 10.2**, this Agreement shall be of no further force and effect.

10.4. Seller's Rights on Termination. If this Agreement is terminated by Seller pursuant to **Section 10.1(a)**; **Section 10.1(b)** if such judgment, decree or order is intentionally caused or permitted by Buyer; **Section 10.1(c)** if such delay is intentionally caused by Buyer; or **Section 10.2(e)** if the failure of such condition is intentionally caused or permitted by Buyer, or if Buyer elects to terminate this Agreement by written notice to Seller and Buyer has not basis to do so pursuant to **Section 10.2**, Buyer shall immediately pay to Seller as liquidated damages in immediately available funds the amount of **FIVE MILLION AND NO/100THS U.S. DOLLARS (\$5,000,000.00)**, which amount the parties hereto deem reasonable to compensate Seller for a breach by Buyer, it being determined that a determination of actual damages would be too difficult under the circumstances of this transaction. The parties acknowledge and agree that such a payment is and shall be damages for Buyer's breach and not a penalty. If this Agreement is otherwise terminated by Buyer pursuant to **Section 10.2**, this Agreement shall be of no further force and effect.

10.5. Other Remedies. Except as provided in **Section 10.3** and **Section 10.4**, if this Agreement expires or is otherwise terminated pursuant to **Section 10.1** or **Section 10.2** and no party is in breach of any provision of this Agreement, then the parties hereto shall not have any further liability to each other with respect to the purchase and sale of the Purchased Assets or the Stations. Seller, in all cases of termination, shall be responsible for fees and expenses of Seller's broker.

**ARTICLE 11.**  
**POST-CLOSING REMEDIES.**

11.1. Survival of Representations and Warranties. The representations and warranties of the parties made in this Agreement shall be ongoing and survive the Closing for thirty-six (36) months from the Closing Date; provided, however, that the preceding time limitation shall not apply with respect to the representations and warranties of Seller made in Sections 3.1, 3.2, 3.3, 3.9, 3.13, 3.14, and 3.15, which shall be ongoing.

11.2. Indemnification by Seller. From and after the Closing, Seller agrees to indemnify, defend, and hold Buyer harmless from and against and with respect to, and shall reimburse Buyer for, all demands, claims, causes of action, suits, proceedings, losses, damages, installments, liabilities, costs, and expenses, including reasonable attorneys' fees, disbursements, and costs:

(a) Resulting from a breach by Seller of any representation or warranty contained in this Agreement.

(b) Resulting from the non-fulfillment by Seller of any covenant required to be performed by Seller after the Closing that is contained in this Agreement or in any certificate, document, agreement, or instrument delivered to Buyer under or pursuant to this Agreement.

(c) Resulting from any and all liabilities and obligations of Seller not assumed by Buyer pursuant to this Agreement or otherwise.

(d) Resulting from any and all losses, liabilities, or damages resulting from the operation or ownership of the Purchased Assets or the Stations prior to the Closing.

(e) Resulting from and including any fees or commissions payable to any finder, broker, advisor, or similar person retained by or on behalf of Seller in connection with the transactions contemplated by this Agreement.

11.3. Indemnification by Buyer. Except as otherwise provided below, from and after the Closing, Buyer agrees to indemnify, defend, and hold Seller harmless from and against and with respect to, and shall reimburse Seller for, all demands, claims, causes of action, suits, proceedings, losses, damages, installments, liabilities, costs, and expenses, including reasonable attorneys' fees and costs:

(a) Resulting from a breach by Buyer of any representation or warranty contained in this Agreement.

(b) Resulting from the non-fulfillment by Buyer of any covenant required to be performed by Buyer after the Closing that is contained in this Agreement or in any certificate, document, or instrument delivered by Buyer under this Agreement.

(c) Resulting from any and all liabilities and obligations of Seller assumed by Buyer pursuant to this Agreement upon Closing.

(d) Resulting from any and all losses, liabilities, or damages resulting from the operation or ownership of the Purchased Assets or Stations on and after the Closing, except for matters resulting from the operation or ownership of the Purchased Assets or Stations prior to the Closing Date.

11.4. Procedure for Indemnification. The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "**Claimant**") shall give notice to the party from which indemnification is claimed (the "**Indemnifying Party**") of any claim, whether between the parties or brought by a third party, specifying in reasonable detail the

factual basis for the claim. The Claimant shall give such notice to the Indemnifying Party within thirty (30) business days after the Claimant becomes aware of facts giving rise to a claim of indemnification or, if the claim relates to an action, suit, or proceeding filed by a third party against Claimant, within thirty (30) business days after written notice of such action, suit, or proceeding was given to Claimant.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty (30) day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within the thirty (30) day period (or any mutually agreed upon extension thereof), the Claimant may seek an appropriate remedy at law or in equity.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such claim with counsel reasonably acceptable to Claimant, if the Indemnifying Party delivers written notice to Claimant within ten (10) days following its receipt of notice of the claim acknowledging its obligations to indemnify Claimant with respect to such claim, and establishes security in form and substance reasonably satisfactory to Claimant to secure the Indemnifying Party's obligations under this Article 11 with respect to such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any third-party claim, it shall be bound by the results obtained by the Claimant with respect to such claim.

(d) At Closing, Buyer shall withhold the greater of **ONE MILLIONS AND NO/100THS U.S. DOLLARS** (\$1,000,000.00) (the "**Holdback Amount**") and immediately place such funds into an interest-bearing account with BMO Harris Bank, Wausau, Wisconsin which funds shall be held for up to thirty (30) months from the Closing Date and invested and disbursed, as provided in the Indemnity Escrow Agreement, in the form substantially as set forth in **Exhibit 11.4(d)** hereto. The Holdback Amount shall be for the purposes of paying the indemnity obligations of Seller set forth herein. Provided no claims are then pending pursuant to the Seller's obligations in this **Section 11**, the Holdback Amount shall be periodically disbursed and paid to Seller, along with any interest accrued thereon as of the date of disbursement to Seller in accordance with Seller's written instructions as follows: (i) **TWO HUNDRED FIFTY THOUSAND AND NO/100THS U.S. DOLLARS** (\$250,000) upon the first (1<sup>st</sup>) anniversary of the Closing Date; (ii) **TWO HUNDRED FIFTY THOUSAND AND NO/100THS U.S. DOLLARS** (\$250,000) upon the second (2<sup>nd</sup>) anniversary of the Closing Date; and (iii) the remaining balance of the Holdback Amount on the third (3<sup>rd</sup>) anniversary of the Closing Date.

**ARTICLE 12.**  
**MISCELLANEOUS.**

12.1. Fees and Expenses. Except as otherwise provided in this Agreement, each party shall pay its own expenses incurred in connection with the authorization, preparation, execution, delivery, and performance of this Agreement, including all fees and expenses of counsel, accountants, agents, and representatives, and each party shall be responsible for all fees or commissions payable to any finder, broker, advisor, or similar person retained by or on behalf of such party. Notwithstanding the foregoing, Seller shall pay all transfer and sales taxes due, levied, or otherwise applicable with respect to the transfer of the Purchased Assets to Buyer.

12.2. Attorneys' Fees. In the event of any dispute between the parties hereto which result in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and costs.

12.3. Notices. All notices, requests, demands, consents, waivers, and other communications given under any of the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery, or sent by nationally recognized commercial overnight courier service for next morning delivery, or certified mail, return receipt requested, and fees prepaid, or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch), or by electronic mail with such notice attached in Portable Document Format (PDF) and sent with requests for delivery and read receipts, the return of such receipts being deemed conclusive evidence of such dispatch, (iii) deemed to have been given on the date of personal delivery or the date of delivery set forth in the records of the courier service, or on the return receipt, and (iv) in each case addressed to the persons, parties or entities identified as follows:

If to Seller, to:

Radio Fargo-Moorhead, Inc.  
1020 25<sup>th</sup> Street South  
Fargo, ND 587103  
Attn: James D. Ingstad  
Tel: 701-566-1261  
Email: jingstathomeoffice@gmail.com

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

Dawn M. Sciarrino, Esq.  
Sciarrino & Shubert PLLC  
5425 Tree Line Drive  
Centreville, VA 20120-1676  
Tel: 202-350-9658  
Fax: 703-991-7120 (Fax)  
Email: dawn@sciarrinolaw.com

If to Buyer, to:

Midwest Communications, Inc.  
904 Grand Avenue  
Wausau, WI 54403  
Attn: Paul Rahmlow

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

Ruder Ware, L.L.S.C.  
500 First Street, Suite 8000  
Wausau, WI 54403  
Attn: Joseph M. Mella, Esq.

(a) Notice, as provided by this Section, may be given to any other person or party, as any Party hereto may in the future designate in writing, upon due notice to the other Party(ies).

(b) The date of personal delivery or the delivery date (or date of attempted delivery and refusal by the addressee) specified on any receipt from the U.S. Mail, or courier service or electronic communication specified herein shall establish the date of such notification or communication. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of North Dakota, the last day for such notification, communication or action shall be extended to the first day thereafter which is not a Saturday, Sunday or such legal holiday.

12.4. Benefit and Binding Effect. Neither party to this Agreement may assign this Agreement without the prior written consent of the other party to this Agreement; *provided, however*, that Buyer may assign all or part of its interest in this Agreement to a limited liability company established and majority owned by Duey E. Wright, *provided that* (a) any such assignment does not substantially and unreasonably delay processing of the FCC License Consent or Closing, (b) any such assignee delivers to Seller a written assumption of this Agreement, and (c) Buyer shall remain liable for all of its obligations hereunder. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement. This Agreement shall be binding upon, jointly and severally, and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.5. Further Assurances. The parties shall take any actions and execute any other documents that may be necessary or desirable for the implementation and consummation of this Agreement.

12.6. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of North Dakota (without regard to the choice of law provisions thereof). Venue and jurisdiction for any matters regarding the transactions contemplated hereby shall be the as provided in **Section 12.12**.

12.7. Headings. Headings in this Agreement are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12.8. Gender and Number; Rules of Construction. Words used in this Agreement, regardless of the gender and number specifically used, shall be deemed and construed to include any other gender, masculine, feminine, or neuter, and any other number, singular or plural, as the context requires. As used in this Agreement, the word "including" is not limiting, and the word "or" is not exclusive.

12.9. Entire Agreement. This Agreement, the Exhibits and Schedules hereto, and all documents to be delivered by the parties pursuant hereto collectively represent the entire understanding and agreement between Seller and Buyer with respect to the subject matter hereof.

This Agreement supersedes all prior negotiations among the parties and may not be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and that is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.

(a) The terms “**Exhibit**” or “**Exhibits**” mean and refer to documents referenced in this Agreement, and attached hereto; while the terms “**Schedule**” or “**Schedules**” mean and refer to proprietary documents and information referenced in this Agreement and contained in a separate volume of schedules dated, initialed by, or on behalf of, the parties, and delivered by Seller to Buyer prior to or concurrently with the execution and delivery of this Agreement. The Schedules are confidential and proprietary, and are not, in the ordinary course of business, intended for public consumption or review.

12.10. Time. Time is of the essence in this Agreement.

12.11. Counterparts. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

12.12. Arbitration Provision. Buyer and Seller each agrees that any claim, dispute, or controversy (whether in contract, tort, otherwise) that it may have with, or claims it may have against the other Party arising out of, relating to, or connected in any way with this Agreement, or the determination of the scope or applicability of this agreement to arbitrate, shall be resolved exclusively by private, final and binding arbitration administered by the National Arbitration Forum (“**Forum**”) and conducted before a sole arbitrator pursuant to the Forum’s Code of Procedure. Further, each Party agrees that: (i) This arbitration agreement is made pursuant to and shall be governed by the Federal Arbitration Act (the “**FedAA**”), 9 U.S.C. §§ 1-16; (ii) the arbitration shall be held in Cass County, State of North Dakota, or at such other location as may be mutually agreed by the Parties; (iii) the arbitrator’s decision shall be controlled by the terms and conditions of this Agreement and any of the other agreements referenced herein that the applicable Party may have entered into in connection with this Agreement; (iv) the arbitrator shall apply North Dakota law consistent with the FedAA and the Rules and Regulations, including applicable statutes and the statute of limitations, and shall honor claims of privilege recognized at law; (v) there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only the Parties’ individual claims and the arbitrator may not consolidate or join the claims of any other Persons or Parties who may be similarly situated; and (vi) the arbitrator shall not have the power to award punitive damages against either Buyer or Seller. Moreover, if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Code of Procedure established by the Forum, the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. The prevailing Party shall be awarded reasonable attorney fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings. Any cause of action or claim the Parties may have with respect to this Agreement must be commenced within one (1) year after the claim or cause of action

arises. The Parties agree that time is of the essence in any dispute over this Agreement, and the Parties hereby agree to use their reasonable efforts to expedite the resolution of any disputes.<sup>1/</sup>

12.13. Announcements/Press Releases. All announcements and press releases concerning this Agreement and the transactions contemplated herein shall be mutually agreed to by Buyer and Seller prior to their release. Buyer and Seller agree that, except as and to the extent that such is required by law or by the Rules and Regulations, there shall be no public announcement or press release issued concerning this Agreement and the transactions contemplated herein until the FCC Application(s) is/are accepted for filing by the FCC.

12.14. Explication. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and schedule references are to this Agreement, unless otherwise specified. Any reference in or to this Agreement or any ancillary agreements includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

12.15. Section 73.1150 Statement. Both the Seller and Buyer agree that following Closing, Seller will have retained no rights of reversion of the Licenses for the Stations, no right to the reassignment of the Licenses for the Stations in the future, and has not reserved the right to use the facilities of the Stations in the future for any reason whatsoever.

12.16. Severability. In the event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

12.17. Construction of Agreement. This Agreement is the product of negotiation and preparation by, between and among Buyer and Seller and their respective attorneys. Accordingly, the parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and shall be construed accordingly.

12.18. Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

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<sup>1/</sup> For information about the Forum and/or the Forum's Code of Procedure, see its website at [www.arb-forum.com](http://www.arb-forum.com) or contact the Forum at National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405; Tel: 877-655-7755.

Execution Version

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Execution Version

[ SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT ]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth above.

BUYER:

MIDWEST COMMUNICATIONS, INC.

By:   
Name: Paul Rahmlow  
Title: Secretary and Treasurer

SELLER:

RADIO FARGO-MOORHEAD, INC,

By: \_\_\_\_\_  
Name: James D. Ingstad  
Title: President

Execution Version

[ SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT ]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth above.

BUYER:

MIDWEST COMMUNICATIONS, INC.

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

Name: Paul Rahmlow  
Title: Secretary and Treasurer

SELLER:

RADIO FARGO-MOORHEAD, INC.

By: 

Name: James D. Ingstad  
Title: President