

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“**Agreement**”), made as of the 1st day of April 2004, is by and among **New Horizon Seventh-Day Christian Church, Inc.** (the “**Seller**”), and **Simmons-Austin, LS, LLC**, a Utah limited partnership (“**Licensee**”), **Simmons-Austin, LLC**, a Utah limited liability company (“**Operating Company**,” and collectively with Licensee, the “**Buyer**”).

RECITALS

Seller is the licensee of radio station KSLG(AM) licensed to St. Louis, Missouri (the “**Station**”), together with related licenses and authorizations issued by the Federal Communications Commission (the “**FCC**”).

Seller is also the owner of the operational assets used in the broadcasting of the Station.

Seller desires to sell to Operating Company certain assets, as described herein, relating to the operation of the Station, and Operating Company desires to purchase such assets on the terms and conditions contained in this Agreement.

Seller desires to assign its FCC licenses related to the Station to Licensee, subject to consent of the FCC and the terms of this Agreement.

The defined terms shall have the meanings ascribed to them in **Article 13**.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Seller and Buyer hereby agree as follows:

ARTICLE 1 **ASSETS TO BE CONVEYED**

1.1 Closing. Subject to (i) the provisions of **Section 10.1** and (ii) the satisfaction or, to the extent permissible by law, waiver (by the party for whose benefit the closing condition is imposed), on or prior to the date scheduled for the Closing, of the closing conditions set forth in **Article 7** hereof, including, for example, the consent of the FCC to the transaction contemplated by this Agreement, the closing (the “**Closing**”) of the sale and purchase of the Station’s Assets (as defined in **Section 1.2**) shall take place in the offices of the Buyer, at 11:00 a.m., local time, on the fifth business day following the satisfaction or waiver of the conditions set forth in **Article 7**, or at such other place, time or date as Buyer and Seller may mutually agree in writing.

1.2 Transfer of Assets. Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, assign, transfer, convey and deliver to Buyer on the Closing Date, and Buyer agrees to purchase all of Seller’s right, title and interest in, the

following assets (collectively, the “**Station’s Assets**”), free and clear of all Liens, except as otherwise provided in this Agreement, but excluding the assets described in **Section 1.3**:

(a) All licenses, permits, construction permits, and other authorizations issued by the FCC, the Federal Aviation Administration, or any other federal, state or local governmental authority to Seller, currently in effect and used in the conduct of the business or operations of the Station, together with renewals or modifications thereof and any additions thereto between the date hereof and the Closing Date, including, without limitation, the licenses, permits and authorizations listed on Schedule 1.2(a) attached hereto (the licenses, permits and authorizations issued by the FCC collectively are referred to herein as the “**FCC Licenses**,” and the FCC Licenses and the licenses, permits and other authorizations issued by any other governmental authority collectively are referred to herein as the “**Station’s Licenses**”);

(b) All of Seller’s right, title and interest in the towers, transmitters, antennas, equipment, spare parts, furniture, fixtures, and other tangible personal property located at the Station’s transmitters or studio site and used exclusively in the operation of the Station and in any other tangible personal property identified on Schedule 1.2(b) (the “**Personal Property**”);

(c) Seller’s right, title and interest in and to only (i) those contracts listed on Schedule 1.2(c) hereto (the “**Assumed Contracts**”), provided that, as to any such contract the assignment of which requires the consent of a party other than Seller, such consent is obtained by Seller prior to Closing, and (ii) such contracts that are entered into between the date hereof and the Closing which Buyer has pre-approved in writing and which Seller agrees to assign, and Buyer agrees to assume, in writing at Closing, provided that, with respect to any such contract the assignment of which requires the consent of a party other than Seller, such consent is obtained by Seller prior to the Closing;

(d) Seller’s public inspection file, filings with the FCC relating to the Station, and such technical information, engineering data, rights under manufacturers’ warranties as exist at Closing and relate exclusively to the assets being conveyed hereunder;

(e) All call letters, websites and website domain names used by the Station;

(f) All books and records required by the FCC to be kept by the Station;

(g) All of Seller’s proprietary information, technical information and data, machinery and equipment warranties, maps, computer discs and tapes, plans, diagrams, blueprints and schematics, including filings with the FCC, relating to the business and operation of the Station; and

(h) Seller’s right, title and interest in and to the real property listed either as Owned Real Property or Leased Real Property on Schedule 1.2(h), including the fee and/or leasehold interest in the real property, any appurtenant water, easement or other similar rights, and all of the improvements thereon (the “**Real Property**”).

The FCC Licenses and the call letters for the Station shall be assigned and transferred to Licensee. All other items comprising the Station's Assets shall be assigned and transferred to the Operating Company.

1.3 Excluded Assets. The Station's Assets shall not include the following:

- (a) All cash, cash equivalents or similar investments such as certificates of deposit, treasury bills and other marketable securities on hand and/or in banks, deposits or prepaid expenses of Seller;
- (b) All accounts receivable of Seller;
- (c) All contracts not listed on Schedule 1.2(c) hereto;
- (d) Any insurance policies, promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposit, or other similar items, and any cash surrender value in regard thereto;
- (e) Any pension, profit-sharing or cash or deferred (401(k)) plans and trust and assets thereof, and any other employee benefit plan or arrangement and the assets thereof of Seller;
- (f) Duplicate copies of such records as may be necessary to enable Seller to prepare and file tax returns and reports, all original financial statements and supporting materials, all books and records that Seller is required by law to retain, and all records of Seller relating to the sale of the Station's Assets;
- (g) Any interest in and to any refunds of federal, state or local franchise, income or other taxes for periods prior to the Closing;
- (h) All tangible and intangible personal property disposed of or consumed between the date of this Agreement and the Closing, as permitted under this Agreement;
- (i) Any other assets identified on Schedule 1.3(h);
- (j) The account books of original entry and general ledgers and all records of the Seller, including, but not limited to, tax returns and transfer books;
- (k) All of Seller's right, title and interest in and to the agreements with advertisers to broadcast commercial messages on the Station which have not been performed as of the Closing;
- (l) Those agreements and arrangements for the exchange of advertising time for consideration other than money which remain in effect and unfulfilled as of the Closing Date ("**Barter Obligations**"); and

- (m) Assets not used by Seller in the operation of the Station.

1.4 Assumption of Liabilities and Obligations. As of the Closing Date, Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities of Seller arising or accruing after the Closing under the Station's Licenses and Assumed Contracts. Buyer shall not assume any other obligations or liabilities of Seller or the Station, including (i) any obligations or liabilities under any contract or agreement not included in the Assumed Contracts, (ii) any obligation or liabilities under the Assumed Contracts relating to the period prior to the Closing except insofar as an adjustment therefore is made in favor of Buyer under **Section 2.5**, (iii) any claims or pending litigation or proceedings relating to the operation of the Station prior to the Closing, (iv) any obligations or liabilities of Seller which are unrelated to the Station, (v) any agreements, executed or executory, relating to the exchange of broadcast time on the Station for goods, wares, services, advertising, promotions, merchandising or anything other than cash, (vi) any obligations relating to current or former employees of the Station, and (vii) any obligations relating to the Excluded Assets.

1.5 Local Marketing Agreement. Concurrently with the execution and delivery of this Agreement, the parties are entering into a Local Marketing Agreement (the "LMA"), pursuant to which Seller will make the Station's broadcast facilities available to Operating Company for the broadcast of programming, including the sale of advertising time in connection therewith by Operating Company, commencing on the date set forth in the LMA (the "LMA Date"). Notwithstanding anything to the contrary contained in this Agreement or otherwise, Seller shall not be deemed to have breached or failed to comply with any representations, warranties, covenants, or agreements with respect to the Station or the Station's Assets if such breach or failure is due or caused directly by any act, omission or instruction of Buyer under or in connection with the LMA or any activities or transactions by Buyer in furtherance thereof or in connection therewith.

ARTICLE 2 **PURCHASE PRICE**

2.1 Purchase Price. The purchase price (the "Purchase Price") for the Station's Assets shall be \$2,050,000.

2.2 Deposit. Buyer has delivered \$205,000 (the "Deposit Amount") to Chicago Title, as the "Escrow Agent," subject to an escrow agreement in substantially the form set forth on Schedule 2.2. The Deposit Amount is to be held subject to the following:

(a) If the purchase of the Assets under this Agreement is not consummated due to a breach by Buyer of any of its obligations under this Agreement, Seller shall be entitled to the Deposit Amount (together with interest thereon) as liquidated damages, to compensate Seller for the damages resulting to Seller from such breach.

(b) If the purchase of the Assets under this Agreement is not consummated due to the failure of any of the conditions in **Article 7** (other than as a result of Buyer's breach of any of its obligations under this Agreement), Seller shall not be entitled to the Deposit Amount (or interest thereon) and, promptly after the termination of this Agreement in accordance with

Section 7, the Deposit Amount (together with interest thereon) shall be paid by the Escrow Agent to Buyer.

(c) If the purchase of the Assets under this Agreement is not consummated due to the FCC failing to consent to the assignment of the Station's Licenses or such other event beyond the control of either party, the Deposit Amount (together with interest thereon) shall be paid by the Escrow Agent to Buyer.

(d) At the Closing, the parties shall cause the Deposit Amount (together with all interest accrued to date on the Deposit Amount) to be paid to Seller as part of the Purchase Price.

2.3 Payment of Purchase Price. At the Closing, Buyer shall pay Seller the Purchase Price, subject to the pro rations set forth in **Section 2.5** hereof, less the Deposit Amount, by wire transfer of immediately available funds to an account at a bank or other financial institution pursuant to wire transfer instructions that Seller shall deliver to Buyer at least five (5) days prior to the Closing Date.

2.4 Allocation. The Purchase Price shall be allocated for income tax purposes in a manner as mutually agreed between the parties based upon an appraisal prepared by Buyer's engineering staff. Such agreed allocations shall be used by the parties in preparing all relevant tax returns, information reports and other tax documents and forms.

2.5 Pro Rations. All income and expenses arising from the conduct of the business and operations of the Station shall be pro rated between Buyer and Seller as of 12.01 a.m. local time, on the Closing Date in accordance with generally accepted accounting principles. Except as may be contemplated by the LMA, such pro rations shall be based upon the principles that Seller shall be entitled to all income earned and shall be responsible for all liabilities and obligations accruing in connection with the operation of the Station until the Closing Date, and Buyer shall be entitled to such income earned and be responsible for such liabilities and obligations accruing in connection with the operation of the Station thereafter. Such pro rations shall include, without limitation, all ad valorem and other property taxes (but excluding taxes arising by reason of the transfer of the Station's Assets as contemplated hereby, which shall be paid as set forth in **Section 12.1** of this Agreement), deposits, utility expenses, liabilities and obligations under all Assumed Contracts, rents and similar prepaid and deferred items and all other expenses attributable to the ownership and operation of the Station; *provided, however*, there shall be no adjustment for, and Seller shall remain solely liable for, any contracts or agreements not included in the Assumed Contracts and any other obligation or liability not being assumed by Buyer in accordance with **Section 1.4**.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that, except as otherwise disclosed in the schedules to this Agreement (the "**Schedule of Exceptions**"), the following representations and warranties will be true and correct on the Closing Date, except for those representations and

warranties specifically noted as being true and correct as of the date of this Agreement through the Closing Date:

3.1 Sole Owner. As of the date of this Agreement through the Closing Date, Seller is the sole owner of the Station's Assets and Seller is the sole licensee of the Station's Licenses and each Seller all necessary power and authority to carry on the business of the Station.

3.2 Authorization and Binding Obligation. As of the date of this Agreement through the Closing Date, Seller has all necessary power and authority to enter into and perform his obligations under this Agreement and the documents contemplated hereby and to consummate the transactions contemplated hereby and thereby. As of the date of this Agreement through the Closing Date, this Agreement has been duly executed and delivered by Seller and is enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies.

3.3 Absence of Conflicting Agreements or Required Consents. As of the date of this Agreement through the Closing Date, the execution, delivery and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) by Seller: (a) does not and will not conflict with, result in a material breach of, constitute a default under, or violate any applicable law, judgment, order, ordinance, injunction, decree, rule, regulation or ruling of any court or governmental authority; (b) does not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of, result in a material breach of, constitute a material default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, lease, instrument, license or permit to which Seller is a party or by which Seller is bound; and (c) will not create any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance upon any of the Station's Assets.

3.4 Litigation. Other than as set forth on Schedule 3.4, there is no claim, action, counterclaim, suit, litigation, labor dispute, or other legal, administrative, or tax proceeding, nor any order, decree, or judgment, pending, against or relating to Seller with respect to the ownership or operation of the Station or otherwise relating to the Station's Assets or the business or operations of the Station. However, Seller has entered into a Memorandum of Settlement Agreement with Unity Broadcasting, LLC, dated March 22, 2004 (the "Memorandum"), to resolve a dispute captioned Unity Broadcasting v. New Horizon Seventh-Day Christian Church, case number 584890004104, between Seller and Unity Broadcasting, which was subject to arbitration on March 22, 2004. Said arbitration was suspended and settled based on the Memorandum.

3.5 Station's and Other Licenses.

(a) Schedule 1.2(a) contains a true and complete list of the Station's Licenses, and there are no other licenses, permits or other authorizations required for the lawful operation of the Station in the manner now operated. Seller has made available to Buyer true and complete copies of the Station's Licenses (including any amendments and other modifications thereto).

Seller is the authorized legal holder of the Station's Licenses. The Station's Licenses are in good standing and in full force and effect. To the best of the knowledge of Seller, the Station and the facilities of the Station are being operated in all material respects in accordance with the FCC Licenses and all material FCC rules and policies.

(b) Except as set forth in Schedule 1.2(a), and except for proceedings affecting the radio broadcasting industry generally, there are no applications, petitions, complaints, investigations, forfeitures, proceedings or other actions pending or, to the best of the knowledge of Seller, threatened before the FCC relating to the Station or the Station's Licenses. Should any such filing be made or action initiated, Seller shall promptly notify Buyer thereof. To the best of the knowledge of Seller, the Station's transmission towers and equipment have been operated and maintained by Seller in material compliance with the Communications Act and the rules and regulations of the FCC and the Federal Aviation Administration ("FAA"), and the towers have been properly registered with the FCC and approved by the FAA as necessary.

(c) Seller is qualified to hold the FCC Licenses.

(d) In addition to the Station's Licenses, to the best of the knowledge of Seller, Seller possesses all licenses and other required governmental or official approvals, permits or authorizations, the failure to possess which would have a material adverse effect on the business, financial condition or results of operations of the Station. To the knowledge of Seller, such licenses, approvals, permits and authorizations are in full force and effect, Seller is in compliance with their requirements and no proceeding is pending or threatened to revoke or amend any of them. Schedule 1.2(a) contains a complete list of such licenses, approvals, permits and authorizations.

3.6 Title to and Condition of Station's Assets.

(a) Except as disclosed on Schedule 3.6, Seller has good and marketable title to the Personal Property free and clear of all Liens. Except as disclosed on Schedule 3.6, Seller has either (i) good and marketable title to the Real Property which is designated on Schedule 1.2(h) as being owned by Seller ("**Owned Real Property**"), or (ii) a valid leasehold interest in and to the Real Property which is designated on Schedule 1.2(h) as being leased by Seller ("**Leased Real Property**"), in each case free and clear of all Liens.

(b) At the Closing, the Personal Property will be in reasonable condition and working order, ordinary wear and tear excepted, and reasonably suitable for the uses for which intended, free from any defects known to Seller, normal wear and tear excepted, and will be in material compliance with the published rules and regulations of the FCC and, to the best of the knowledge of Seller, all other applicable federal, state and local statutes, ordinances, rules and regulations.

(c) Except as set forth on Schedule 3.6, Seller has not received written notice of any violation of law, municipal or county ordinances or other legal requirements with respect to the Real Property or with respect to its use or occupancy thereof. Except as set forth on Schedule 3.6, Seller has not received any written notice of any pending or threatened termination

or impairment of access to the Real Property or discontinuation of necessary sewer, water, electrical, gas, telephone or other utilities or service.

(d) Seller has not received any written notice (i) that either the whole or any portion of the Real Property is to be condemned, requisitioned or otherwise taken by any public authority, (ii) of violation of restrictive covenants, deed restrictions or governmental requirements on the Real Property which has not been remedied, (iii) of any violation of any zoning or similar land use law or restriction, or of any proceedings which would cause the change, redefinition or other modification of the zoning classification, or (iv) of any proceedings to widen or realign any street or highway adjacent to the Real Property.

3.7 Assumed Contracts. To the best of the knowledge of Seller, the Assumed Contracts are in full force and effect and are legally valid, binding and enforceable by Seller in accordance with their respective terms, except as limited by laws affecting creditor's rights or equitable principles generally. To the best of the knowledge of Seller, Seller is not in any material respect in default under the Assumed Contracts.

3.8 Compliance with Laws. To the best of the knowledge of Seller, Seller has complied in all material respects with, and is not in any material respect in violation of, any federal, state or local laws, statutes, rules, regulations or orders relating to the ownership and operation of the Station.

3.9 Broker's Fees. As of the date of this Agreement through the Closing Date, other than fees owed by Seller to MBT Enterprises, Inc. (dba MGMT Services), neither Seller nor any person or entity acting on Seller's behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, and no person or entity is entitled to any such payment from Seller in connection with the transactions contemplated by this Agreement.

3.10 Consents. As of the date of this Agreement, except for the FCC Consent provided in **Section 5.1**, the consents with respect to certain of the Assumed Contracts so designated on **Schedule 1.2(c)**, no consent, approval, permit, or authorization of, or declaration to, or filing with any governmental or regulatory authority or any other third party is required (a) to consummate the transactions contemplated hereby; or (b) to permit Seller to assign or transfer the Station's Assets to Buyer. The assignment or transfer of the Assumed Contracts, including leases, shall be completed at no additional cost to Buyer, and Seller shall save and hold Buyer harmless from any and all such costs.

3.11 Taxes.

(a) Seller has filed all federal, state, county and local tax returns and reports required to be filed by him with respect to taxes for which successor liability will apply, including payroll, property, withholding, social security, sales and use taxes, to the extent that such taxes relate to the Station's Assets; have either paid in full all such taxes that have become due, as reflected on any return or report, and any interest and penalties with respect thereto or have fully accrued on Seller's books or have established adequate reserves for all taxes payable

but not yet due; and have made required cash deposits with appropriate governmental authorities representing estimated payments of taxes, including employee withholding tax obligations. No extension or waiver of any statute of limitations or time within which to file any return has been granted to or requested by Seller with respect to any such tax. No unsatisfied deficiency, delinquency or default for any such tax, assessment or governmental charge has been assessed (or, to the knowledge of Seller, claimed or proposed) against Seller, nor has Seller received notice of any such deficiency, delinquency or default.

(b) Seller has paid all required state, county, and local sales tax resulting from sales made in the State of Missouri, as such taxes relate to the Station's Assets.

3.12 Reports. All reports and statements that Seller is required to file with the FCC in respect of the Station have been filed, and all reporting requirements of the FCC have been complied with in all material respects.

3.13 Financial Statements of the Station. Unity Broadcasting, LLC, has previously delivered to Buyer the unaudited balance sheet and income statement for the Station as of and for the year ended December 31, 2003. These financial statements have been prepared in all material respects in accordance with generally accepted accounting principles consistently followed by Seller throughout the periods indicated (except that they may omit certain footnotes required by such principles and the interim financial statements do not reflect normal year-end adjustments and accruals) and fairly present the financial position of the Station as of the respective dates of the balance sheets included and the results of their operations for the respective periods indicated.

3.14 Absence of Changes in Seller's Business Operations. With reference to the Station's Assets and the operations of the Station, from December 31, 2003 to the date hereof, there has not been any:

(a) Transaction by Seller related to the Station entered into except in the ordinary course of business;

(b) Material adverse change in the financial condition, liabilities, assets, business or prospects of Seller with respect to the Station;

(c) Destruction, damage, or loss of any Station's Assets (insured or uninsured) that materially and adversely affects the financial condition, business, or prospects of the Station;

(d) Material change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by Seller with respect to the Station;

(e) Sale or transfer of any material asset used by Seller in the operation of the Station, except in the ordinary course of business;

(f) Amendment or termination of any contract, agreement, or license related to the operation of the Station, except in the ordinary course of business;

(g) Commencement or notice or threat of commencement of any civil litigation or any governmental proceeding against or investigation of Seller; or

(h) Labor trouble or claim of wrongful discharge or other unlawful labor practice or action.

3.15. Personnel.

(a) Seller is not a party to or subject to any collective bargaining agreements with respect to the Station. To the best knowledge of Seller, there is no representation or organizing effort pending or threatened against or involving or affecting Seller, as the case may be, with respect to employees employed at the Station. There is no pending or, to the knowledge of Seller, threatened labor dispute, strike, or work stoppage affecting the Station.

(b) Each employee benefit plan that is maintained by Seller and in which any Covered Employee participates and that is intended to be "qualified" under Code Section 401(a) has been determined by the Internal Revenue Service to be so qualified (or an application for such a determination has been filed with the Internal Revenue Service); no event has occurred that would have a material adverse effect on the qualified status of any such employee benefit plan; and each trust maintained in connection with each such employee benefit plan is tax-exempt under Code Section 501(a).

(c) Seller does not maintain nor has maintained, does not contribute to or has contributed to, or otherwise has any liability for or obligation under any employee pension benefit plan that is a defined benefit plan (as described in Section 3(35) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or a multiemployer plan (as described in ERISA Section 4001(a)(3)).

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

4.1 Organization and Standing. Operating Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Utah. Licensee is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Utah.

4.2 Authorization and Binding Obligation. Buyer has all necessary power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby, subject only to the terms of the Memorandum between Seller and Unity Broadcasting, LLC. This Agreement and all other documents required hereby have been duly executed and delivered by Buyer and constitute valid and binding obligations enforceable against Buyer in accordance with their terms except as may be limited by applicable

bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies.

4.3 Absence of Conflicting Agreements or Required Consents. Except for the FCC Consent, the execution, delivery and performance of this Agreement by Buyer: (a) do not and will not violate any provision of Buyer's organizational documents; (b) do not and will not require the consent of any third party or governmental authority; (c) do not and will not violate any law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; and (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement, lease, instrument, license or permit to which Buyer is now subject.

4.4 Absence of Litigation. There is no claim, litigation, or proceeding pending or before or by any court, governmental authority or arbitrator, that seeks to enjoin or prohibit, that questions the validity of or that might materially hinder or impair Buyer's performance of its obligations under this Agreement.

4.5 FCC Qualifications. To the best of Buyer's knowledge, Licensee is qualified under the Communications Act of 1934, as amended, and the rules and regulations of the FCC to be the assignee of the FCC Licenses, it being understood that Licensee has a duty to ascertain what would cause it to lose such qualification. There are no facts known to Buyer that would delay the consummation of the transactions contemplated by this Agreement. Buyer has no reason to believe that the FCC assignment contemplated hereby might be challenged or might not be granted by the FCC in the ordinary course solely because of its qualifications.

4.6 Broker's Fees. Neither Buyer nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, and no person or entity is entitled to any such payment from Buyer in connection with the transactions contemplated by this Agreement.

4.7 Financial Qualifications. Buyer is financially qualified to consummate the transactions contemplated by this Agreement and to certify to its financial qualifications on FCC Form 314.

4.8 Seller's Representations and Warranties. Buyer has not relied on or been induced to enter into this Agreement by any statement, representation or warranty other than those expressly set forth in **Article 3** of this Agreement.

ARTICLE 5 **GOVERNMENTAL CONSENTS**

5.1 FCC Application.

(a) The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC. Prior to the Closing, Buyer shall not

directly or indirectly control, supervise, direct, or attempt to control, supervise, or direct, the operations of the Station, and all such operations, including complete control and supervision of all of the Station's programs, employees, and policies, shall be the sole responsibility of Seller until the Closing.

(b) Within ten (10) business days after the date hereof, Buyer and Seller shall prepare and jointly file a complete and grantable FCC Application, and the parties shall use reasonable efforts to cause the FCC to accept the FCC Application for filing as soon as practicable thereafter. Seller and Buyer shall thereafter prosecute the FCC Application in good faith and with all reasonable diligence and otherwise use their best efforts to obtain the grant of the FCC Application as expeditiously as practicable; provided, however, that neither Seller nor Buyer shall have any obligation to satisfy any complainant or the FCC by taking any steps which would have a material adverse effect upon Seller or Buyer or upon any affiliated entity, but neither the expense nor inconvenience to a party of defending against a complainant or an inquiry by the FCC shall be considered a material adverse effect on such party. If the FCC Consent imposes any condition on any party hereto, such party shall use its best efforts to comply with such condition; provided, however, that no party shall be required to comply with any condition that would have a material adverse effect upon it or any affiliated entity. If rehearing, reconsideration or judicial review is sought by a third party or by the FCC on its own motion with respect to the FCC Consent, Buyer and Seller shall vigorously oppose such efforts for rehearing, reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to **Article 10** (Termination Rights).

(c) All FCC filing or grant fees with respect to the assignment of the FCC Licenses from Seller to Buyer shall be paid equally by Buyer and Seller. Each party shall otherwise bear its own costs and expenses (including the fees and disbursements of its counsel) in connection with the preparation of the portion of the FCC Application to be prepared by it and in connection with the processing and defense of the application.

5.2 Other Filings and Governmental Consents. Promptly following the execution of this Agreement, the parties shall prepare and file with the appropriate governmental authorities, any other requests for approval or waiver that are required from such governmental authorities in connection with the transactions contemplated hereby and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers. Each party shall bear its own costs and expenses in connection with the preparation of any filings, documents or requests to be prepared by it in order to obtain such governmental consents, approvals or waivers and in connection with any prosecution or defense by it of such filings, documents or requests.

ARTICLE 6
COVENANTS

6.1 Conduct of Business.

(a) **Affirmative Covenants.** Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or the LMA or with the prior written consent of Buyer, which consent shall not be unreasonably withheld, Seller shall:

(i) Comply in all material respects with all laws applicable to Seller's use of the Station's Assets and continue to operate and maintain the Station in conformity with the Station's Licenses, the Communications Act of 1934, as amended, and the rules and regulations of the FCC;

(ii) Maintain the Station's Assets in customary repair, maintenance and condition;

(iii) Use reasonable efforts to obtain the consent of any third party necessary for the assignment to Buyer, without any material adverse change, of the contracts listed on Schedule 1.2(c);

(iv) Timely make or provide all payments, services or other consideration due for the Assumed Contracts so that all payments required to be made as of the Closing Date will have been paid, except for any amounts being contested by Seller in good faith;

(v) Maintain in full force and effect the Station's Licenses and all other licenses, permits and authorizations relating to the Station and take any action necessary before the FCC, including the preparation and prosecution of applications for renewal of the FCC Licenses, if necessary, to preserve such licenses in full force and effect without material adverse change;

(vi) Maintain existing insurance coverage on the Station's Assets and its operations and shall provide proof of such coverage to Buyer at its request;

(vii) To the extent Seller may do so without penalty, terminate, or send notice of termination of, such of the Assumed Contracts as Buyer may request;

(viii) Use its best efforts to complete all of the Station's Barter Obligations prior to the Closing;

(ix) Exercise all renewal options on any transmitter site leases for which notice of renewal would be required to be given prior to the Closing;

(x) Repair, at its expense, all items of Personal Property included in the Station's Assets to the extent Buyer's inspection of same reveals items that, in the reasonable opinion of Buyer, require such repair; and

(xi) Provide to Purchaser, in the ordinary course of business and as available, copies of financial statements for the Station in respect of periods on and after December 31, 2003.

(b) **Negative Covenants.** Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or the LMA or with the prior written consent of Buyer, which consent shall not be unreasonably withheld, Seller shall not:

(i) Terminate, modify or amend any Assumed Contract except as contemplated in **Section 6.1(a)(vii)**;

(ii) Create any Lien on any of the Station's Assets; or

(iii) Sell, assign, lease or otherwise transfer or dispose of any of the material Station's Assets now owned or hereafter acquired, except for assets consumed or disposed of in the ordinary course of business;

6.2 Access. Between the date hereof and the LMA Date and thereafter as contemplated in the LMA, Seller will afford Buyer reasonable access to the Station and the Station's Assets. Buyer, at its sole expense, shall be entitled to make such engineering and other inspections of the Station's Assets as Buyer may desire, so long as such inspection would not unreasonably interfere with the operation of the Station.

6.3 No Inconsistent Action. Between the date of this Agreement and the Closing, each party shall use its reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the other party to consummate the sale and purchase and shall take no actions which are inconsistent with its obligations under this Agreement or that would materially hinder or delay the consummation of the transactions contemplated by this Agreement. In particular, neither party shall take any action that would jeopardize the Station's Licenses, result in its disqualification to hold the FCC Licenses or in any way delay grant of the FCC Application or consummation of the transactions contemplated by this Agreement, and Buyer shall take no action which would impair its financial or other qualifications to consummate this transaction in accordance with its terms. Should either party become aware of any such fact or circumstance, such party shall promptly inform the other.

6.4 Confidentiality.

(a) Buyer and Seller shall each keep confidential all information obtained by it with respect to the other in connection with this Agreement, except where such information is known through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason, Buyer and Seller shall return to the other, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby. Except as is required for the consummation of the transaction contemplated by this Agreement, during the period from the date hereof through the Closing Date, both Buyer and Seller shall also keep confidential the fact that the parties have entered into this Agreement and all other matters relating to this transaction.

(b) Except as required by the FCC in connection with the filing of the FCC Application, without the prior consent of both Buyer and Seller, there shall be no public announcement relating to this Agreement.

6.5 Further Assurances. Seller and Buyer shall cooperate and take such actions, and execute such other documents, at the Closing or subsequently, as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement, including, for example, promptly advising each other of all communications relevant to the transactions contemplated by this Agreement received from the FCC after the date of this Agreement and furnishing each other with copies of all such written communications and summaries of all such oral communications.

6.6 Employees; ERISA.

(a) **Employment.** The Buyer may, but is not obligated to, offer employment to any of the employees of the Station in positions and on terms substantially similar to their present employment, effective as of the LMA Date. To the extent that Buyer employs any employees of the Station and terminates such employees after the LMA Date, the Buyer shall be responsible for any severance pay owed to such employee of the Station that the Buyer terminates within three months after the LMA Date. To the extent the employees are not offered employment with Buyer and are terminated by Seller, the Seller shall pay to any such employee severance in accordance with the policy of the Station.

(b) **Employee Benefits Generally.** The Buyer shall provide all employees of the Station that become employees of the Buyer ("Covered Employees") employee benefits that are maintained by the Buyer generally for its employees (the "Simmons Plans") in accordance with their terms. To the extent permitted by the terms of the Simmons Plans, the Buyer will (i) waive all deductibles, waiting periods and limitations with respect to pre-existing conditions and other conditions applicable to employees of Seller under the Simmons Plans, and (ii) grant full past service credit (including credit for eligibility, benefit accrual and for vesting) to the Covered Employees for service with Seller or its subsidiaries or affiliates under any and all of the Simmons Plans. Neither this Agreement nor the consummation of the transactions contemplated

by this Agreement will entitle any employee, including but not limited to, Covered Employees, to any other severance benefits nor will it accelerate compensation due any such Covered Employee as of the LMA Date. Subject to the foregoing, the Buyer shall have the right in the good faith exercise of operations and managerial discretion to make changes or cause changes to be made after the LMA Date in compensation, benefits and other terms of employment and to terminate any such employee.

6.7 Cooperation Relative to Accounts Receivable. Following the LMA Date, the Buyer shall (i) assist the Seller, as reasonably requested in the collection of the Accounts Receivable for a period of 60 days (it being understood that Buyer is not required to expend any of its own funds in connection therewith), (ii) deliver to the Seller, on or before the 15th day following the Closing (the “**Turnover Date**”) and thereafter, any checks or other instruments received by the Buyer in respect of the Seller’s Accounts Receivables (and endorse to the order of Seller any such checks which are erroneously made payable to the Buyer). In addition, the Buyer hereby agrees and acknowledges (a) that the Accounts Receivable accrued prior to Closing are solely the property of the Seller, (b) that all payments received by the Buyer on account of the Accounts Receivable accrued prior to Closing shall be held in trust for the benefit of the Seller and (c) that all such payments shall be delivered to Seller together with any necessary endorsements thereon, on the Turnover Date. To the extent that Seller has not received payment on any Accounts Receivable as of the 60th day following the Closing, Buyer shall have no further obligation or right to collect the Accounts Receivable, unless otherwise agreed upon by Seller and Buyer, and Buyer shall promptly return any and all documentation related to the Accounts Receivable to Seller. Notwithstanding the foregoing, Buyer shall have no obligation to contact account debtors or undertake other collection efforts in respect of Seller’s Accounts Receivables.

6.8 Title Commitments. Seller shall obtain for Buyer’s benefit, no later than 30 days after the execution of this Agreement, a commitment for a standard ALTA Owner’s Title Insurance Policy or other form of policy acceptable to Buyer for each Owned Real Property relating to the Station, issued by a title company satisfactory to Buyer (the “**Title Company**”), together with a copy of all documents referenced therein (the “**Title Commitments**”), and shall update the Title Commitments no more than 20 days prior to the Closing.

ARTICLE 7

CONDITIONS PRECEDENT

7.1 To Buyer’s Obligations. The obligations of Buyer hereunder are, at its option, subject to satisfaction or waiver by Buyer (except for prior FCC consent), at or prior to the Closing Date, of each of the following conditions:

(a) **Representations, Warranties and Covenants.**

(i) All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects (except as otherwise expressly permitted by this Agreement) on and as of the Closing Date as if made on and as of that date.

(ii) All of the terms, covenants and conditions to be complied with and performed by Seller under this Agreement on or prior to Closing Date shall have been complied with or performed by Seller in all material respects.

(b) **FCC Consent**. The FCC Consent shall have been obtained, without the imposition of any condition materially adverse to Buyer except those that are customary in the assignment of broadcast licenses. Seller shall have complied with any conditions imposed on it by the FCC Consent, and the FCC Consent shall have become a Final Order (unless Buyer elects to waive the Final Order).

(c) **No Injunction**. No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated by this Agreement in accordance with its terms.

(d) **Governmental Authorizations**. Seller shall be the holder of all FCC Licenses, and there shall not have been any modification of any Station's License relating to the Station that could have an adverse effect on the Station or the conduct of the business and operations of the Station. No proceeding (other than proceedings affecting the broadcasting industry generally) shall be pending which presents a substantial probability of revocation, failure to renew, suspension or materially adverse modification of any FCC License. Seller shall have provided a list to Buyer of all amounts due to the FCC and such amounts due shall be paid directly by Buyer at Closing as part of the Purchase Price.

(e) **Consents**. Seller shall have obtained all necessary approvals and consents to the assignment to Buyer of each Assumed Contract without any adverse change in the terms or conditions of such contracts.

(f) **Deliveries**. Seller shall have made or stand willing to make all deliveries required under **Section 8.1**.

7.2 To Seller's Obligations. The obligations of Seller hereunder are, at their option, subject to satisfaction or waiver by Seller (except for prior FCC Consent), at or prior to the Closing Date, of each of the following conditions:

(a) **Representations, Warranties and Covenants**.

(i) All representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects (except as otherwise expressly permitted by this Agreement) on and as of the Closing Date as if made on and as of that date.

(ii) All of the terms, covenants and conditions to be complied with or performed by Buyer under this Agreement on or prior to the Closing Date shall have been complied with or performed by Buyer in all material respects.

(b) **FCC Consent**. The FCC Consent shall have been obtained, without the imposition of any condition materially adverse to Seller except those that are customary in the

assignment of broadcast licenses. Buyer shall have complied with any conditions imposed on it by the FCC Consent.

(c) **No Injunction.** No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated by this Agreement in accordance with its terms.

(d) **Deliveries.** Buyer shall have made or stand willing to make all the deliveries required under **Section 8.2** and shall have paid or stand willing to pay the Purchase Price as provided in **Section 2.3**.

(e) **Consent.** All necessary approvals and consents to the assignment to Buyer of each Assumed Contract shall have been obtained.

ARTICLE 8

DOCUMENTS TO BE DELIVERED AT THE CLOSING

8.1 Documents to be Delivered by Seller. At the Closing, Seller shall deliver to Buyer the following:

(a) A certificate, dated as of the Closing Date, executed by Seller, certifying that the closing conditions specified in **Section 7.1** have been satisfied;

(b) Duly executed instruments of conveyance and transfer, in form and substance reasonably satisfactory to Buyer, effecting the sale, transfer, assignment and conveyance of the Station's Assets to Buyer free and clear of all Liens, including, but not limited to, the following:

(i) an assignment of the FCC Licenses;

(ii) bills of sale for all Personal Property;

(iii) grant deeds for all Owned Real Property; and

(iii) an assignment of Seller's rights under the Assumed Contracts;

(c) A copy of any instrument evidencing receipt of any of the required consents described in **Section 7.1(e)**;

(d) A duly executed non-foreign affidavit dated as of the Closing Date and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code so that Buyer is exempt from withholding any portion of the Purchase Price thereunder (the "**FIRPTA Certificate**");

(e) The title insurance policies in accordance with the Title Commitments, insuring Buyer's fee simple title to the Owned Real Property relating to the Station, free and

clear of all liens, subject only to the delivery of the documents, materials and funds described in this **Section 8.1**, the recordation of the grant deeds referred to in **Section 8.1(b)(iii)** above, and payment by Seller of the applicable title insurance premiums (the parties recognize that it may take up to 10 days post-closing for Seller to deliver the policies to Buyer); and

(f) Such other documents, information, certificates and materials as may be required by this Agreement.

8.2 Documents to be Delivered by Buyer. At the Closing, Buyer shall deliver to Seller the following:

(a) A certificate, dated as of the Closing Date, executed on behalf of Buyer by a duly authorized representative of Buyer, certifying that the closing conditions specified in **Section 7.2(a)** have been satisfied;

(b) The Purchase Price in immediately available wire transferred federal funds as provided in **Section 2.3**; and

(c) Such other documents, information, certificates and materials as may be required by this Agreement.

ARTICLE 9

INDEMNIFICATION, SURVIVAL

9.1 Seller's Indemnities. From and after the Closing, Seller shall indemnify, defend, and hold harmless Buyer and its affiliates and their respective members, managers, partners, directors, officers, employees, and representatives, and the successors and assigns of any of them, and any person claiming by or through any of them, from and against, and reimburse them for, all claims, damages, liabilities, losses, costs and expenses, including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses, resulting from:

(a) The ownership or operation of the Station's Assets prior to the Closing, including without limitation any liabilities arising under the Station's Licenses or the Assumed Contracts which relate to events occurring prior to the Closing;

(b) Any liabilities of Seller not assumed by Buyer under this Agreement, including without limitation any liabilities arising at any time under any contract or agreement not included in the Assumed Contracts;

(c) Any untrue representation, breach of warranty or nonfulfillment of any covenant by Seller contained in this Agreement or in any certificate, document or instrument delivered by Seller to Buyer under this Agreement;

(d) Any failure of Seller to comply with any "bulk sales" laws applicable to the transactions contemplated hereby; or

(e) Any actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity.

9.2 Buyer's Indemnities. From and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and his employees and representatives, and the successors and assigns of any of them, and any person claiming by or through any of them, from and against, and reimburse them for, all claims, damages, liabilities, losses, costs and expenses, including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses, resulting from:

(a) any untrue representation, breach of warranty or nonfulfillment of any covenant by Buyer contained in this Agreement or in any certificate, document or instrument delivered by Buyer to Seller under this Agreement;

_____ (b) the ownership or operation of the Station's Assets from and after the Closing;

(c) any actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity; or

(d) any liability or obligations assumed by Buyer under this Agreement or arising from the conduct of Buyer after the Closing Date.

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

(a) The party seeking indemnification under this **Article 9** (the "**Claimant**") shall give notice to the party from whom indemnification is sought (the "**Indemnitor**") of any claim, reasonably specifying (i) the factual basis for the claim; and (ii) the amount of the claim if then known. If the claim relates to an action, suit or proceeding filed by a third party against Claimant, notice shall be given by Claimant within fifteen (15) days after written notice of the action, suit or proceeding was given to Claimant. In all other circumstances, notice shall be given by Claimant within thirty (30) days after Claimant becomes aware of the facts giving rise to the claim. Notwithstanding the foregoing, Claimant's failure to give Indemnitor timely notice shall not preclude Claimant from seeking indemnification from Indemnitor if Claimant's failure has not materially prejudiced Indemnitor's ability to defend the claim or litigation.

(b) The Claimant shall make available to Indemnitor and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim for indemnity.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification hereunder, the Indemnitor shall defend against the claim with counsel reasonably acceptable to Claimant, and the Claimant shall cooperate fully with the Indemnitor, subject to reimbursement for reasonable expenses incurred by the Claimant as the result of a request by the Indemnitor. The Claimant shall have the right to participate in the defense of the claim at its own expense. If the Indemnitor does not assume control of the defense of any third party claim, Claimant may, but shall have no obligation to, defend or settle such claim or litigation in such a manner as it deems appropriate, and in such event Indemnitor shall be bound by the results obtained by the Claimant with respect to the claim (by default or otherwise) and shall promptly reimburse Claimant for the amount of all expenses (including the amount of any judgment rendered), legal or otherwise, incurred in connection with such claim or litigation. The Indemnitor shall be subrogated to all rights of the Claimant against any third party with respect to any claim for which indemnity was paid.

9.4 Limitations. Neither party shall be required to indemnify the other party under this **Article 9** unless (i) written notice of a claim under this **Article 9** was received by the party within the pertinent survival period specified in **Section 9.5**; and (ii) the aggregate amount of claims against the party to which the other party (as a Claimant) is entitled to be indemnified under this Agreement exceeds \$10,000, after which the Claimant shall be entitled to recover, and the Indemnitor shall be obligated for, all additional losses, costs, liabilities, damages and expenses for Claimant. In calculating the amount of losses to the Buyer or the Seller under **Section 9.1 and Section 9.2**, (a) such losses shall be reduced by any recovery received from any third party (including insurance proceeds) as a result of the facts or circumstances giving rise to the losses, and (b) no amount shall be included in such losses except for the party's actual out-of-pocket costs and expenses.

9.5 Survival of Representations, Warranties and Covenants. The representations, warranties, covenants, indemnities and other agreements contained in this Agreement or in any certificate, document or instrument delivered pursuant to this Agreement are and will be deemed and construed to be continuing representations, warranties, covenants, indemnities and agreements and shall survive the Closing for a period of 18 months (the "**Survival Period**"). No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the Survival Period. In the event such notice is given, the right to indemnification with respect thereto shall survive the Survival Period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

ARTICLE 10 **TERMINATION RIGHTS**

10.1 Termination.

(a) In addition to other available remedies, this Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other if:

(i) the other party is in material breach of this Agreement or the LMA and such breach has been neither cured within thirty (30) days after written notice of such breach nor waived by the party giving such termination notice;

(ii) a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(iii) the Closing has not occurred by a date that is one (1) year from the date of this Agreement (the “**Upset Date**”);

(b) This Agreement may be terminated by mutual written consent of Buyer and Seller.

(c) If either party believes the other to be in breach or default of this Agreement, the non-defaulting party shall, prior to exercising its right to terminate under **Section 10.1(a)(i)**, provide the defaulting party with notice specifying in reasonable detail the nature of such breach or default. Except for a failure to pay the Purchase Price, the defaulting party shall have thirty (30) days from receipt of such notice to cure such default; provided that, if the breach or default is due to no fault of the defaulting party and is not capable of cure within such thirty (30) day period, the cure period shall be extended as long as the defaulting party is diligently and in good faith attempting to effect a cure. Nothing in this **Section 10.1(c)** shall be interpreted to extend the Upset Date.

10.2 Effect of Termination. The following sections shall survive the termination of this Agreement pursuant to **Section 10.1(a)**: **6.4** (Confidentiality), **11.1** (Default), **11.2** (Limitations on Damages), **12.3** (Entire Agreement; Schedules; Amendment; Waiver), **12.4** (Headings), **12.5** (Computation of Time), **12.6** (Governing Law), **12.7** (Attorneys’ Fees), **12.9** (Arbitration), **12.10** (Notices) and **13.1** (Defined Terms).

ARTICLE 11 **REMEDIES UPON DEFAULT**

11.1 Remedies Generally. The parties acknowledge that the Station’s Assets and the transactions contemplated hereby are unique, that a failure by Seller or Buyer to complete such transactions will cause irreparable injury to the other, and that actual damages for any such failure may be difficult to ascertain and may be inadequate. Consequently, Seller and Buyer agree that each shall be entitled, in the event of a default by the other, to specific performance of any of the provisions of this Agreement in addition to any other legal or equitable remedies to which the non-defaulting party may otherwise be entitled.

ARTICLE 12
OTHER PROVISIONS

12.1 Transfer Taxes and Expenses. All recordation, transfer, and documentary fees (but not including FCC fees or sales taxes, if any) imposed on this transaction shall be paid one-half by Buyer and one-half by Seller. Sales taxes, if any, imposed in connection with the transactions contemplated by this Agreement shall be paid by Seller. Except as otherwise provided in this Agreement, each party shall be solely responsible for and shall pay all other costs and expenses (including attorney and accounting fees) incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

12.2 Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither Buyer nor Seller may assign its rights under this Agreement without the prior written consent of the other; provided, however, that Buyer may assign this Agreement to one or more of its wholly-owned subsidiaries and may assign the right to have the Station's Licenses assigned to a designated trustee, so long as (i) any such assignment does not result in any delay of the Closing and (ii) Buyer continues to remain liable hereunder for the obligations of any assignee(s).

12.3 Entire Agreement; Schedules; Amendment; Waiver. This Agreement and the exhibits and schedules hereto and thereto, embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. Any matter that is disclosed in a schedule hereto shall be deemed to have been included in other pertinent schedules, notwithstanding the omission of an appropriate cross-reference. No amendment, waiver of compliance with any provision or condition 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 any waiver, amendment or consent is sought. No failure or delay on the part of Buyer or Seller in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

12.4 Headings. The headings set forth in this Agreement are for convenience only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12.5 Computation of Time. If after making computations of time provided for in this Agreement, a time for action or notice falls on Saturday, Sunday or a federal holiday, then such time shall be extended to the next business day.

12.6 Governing Law. The construction and performance of this Agreement shall be governed by the law of the State of Missouri without regard to its principles of conflicts of law.

12.7 Attorneys' Fees. In the event of any dispute between the parties to this Agreement, Seller or Buyer, as the case may be, shall reimburse the prevailing party for its reasonable attorneys' fees and other costs incurred in enforcing its rights or exercising its

remedies under this Agreement. Such right of reimbursement shall be in addition to any other right or remedy that the prevailing party may have under this Agreement.

12.8 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.9 Arbitration.

(a) Arbitration Disclosures.

(i) ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.

(ii) IN ARBITRATION THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.

(iii) DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.

(iv) ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR TO SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.

(v) IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

(b) Arbitration Provisions. Any dispute or controversy between the parties arising under or in connection with this Agreement and by execution and delivery of this Agreement shall be resolved under the Commercial Arbitration Rules of the American Arbitration Association (the "**Administrator**"). In this regard:

(i) Any claim or controversy ("**Dispute**") between the parties and their assigns, including, but not limited to, Disputes arising out of or relating to this Agreement, this **Section 12.9 ("arbitration clause")**, or any related agreements or instruments relating hereto or delivered in connection herewith ("**Related Documents**"), shall, at the request of either party, be resolved by binding arbitration in accordance with the applicable arbitration rules of the Administrator. The provisions of this arbitration clause shall survive any termination, amendment or expiration of this Agreement or the Related Documents. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

(ii) The arbitration proceedings shall be conducted in Austin, Texas at a place to be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within one hundred twenty (120) days of the filing of the Dispute with the Administrator.

(iii) The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees). The arbitrator(s), either during the pendency of the arbitration proceeding or as part of the arbitration award, also may grant provisional or ancillary remedies, including but not limited to an award of injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver.

(iv) Judgment upon an arbitration award may be entered in any court having jurisdiction, and the amount of the arbitration award shall be binding. The computation of the total amount of an arbitration award shall include amounts awarded for attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees.

(v) Either party may initiate arbitration with the Administrator; however, if either party initiates litigation and another party disputes any allegation in that litigation, the disputing party, upon the request of the initiating party, must file a demand for arbitration with the Administrator and pay the Administrator's filing fee. The parties may serve by mail a notice of an initial motion for an order of arbitration.

Notwithstanding the applicability of any other law to this Agreement, the arbitration clause or Related Documents between the parties, the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.*, shall apply to the construction and interpretation of this arbitration clause.

12.10 Notices. Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be addressed to the following addresses or to such other address as any part may request:

If to Buyer: Simmons-Austin, LLC
c/o Simmons Media Group, LLC
515 South 700 East, #1C
Salt Lake City, Utah 84102
Attention: David E. Simmons
Telephone: 801-323-9315
Fax: 801-323-9316
Email: dsimmons@simmonsmedia.com

With a copy to: Laurie S. Hart
Callister Nebeker & McCullough
Gateway Tower East #900
East South Temple Street
Salt Lake City, UT 84133
Telephone: 801-530-7456
Fax: 801-364-9127
Email: lshart@cnmlaw.com

If to Seller: New Horizon Seventh-Day Christian Church, Inc.
206 Emerling Drive
St. Louis, Missouri 63121-1022
Telephone: 314-524-1244

With a copy to: Christopher B. Bent
The Bent Law Firm, P.C.
5960 Howdershell, Suite 206
Hazelwood, Missouri 63042
Telephone: 314-551-0898
Fax: 314-551-0894
Email: bentlawpc@cs.com

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of personal delivery, (b) on the date of transmission if sent by facsimile, (c) on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, or (d) on the date of a signed receipt if sent by an overnight delivery service.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

ARTICLE 13 **DEFINITIONS**

13.1 Defined Terms. Unless otherwise stated in this Agreement, the following terms when used herein shall have the meanings assigned to them below (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“**Agreement**” shall mean this Asset Purchase Agreement.

“**Assumed Contracts**” shall have the meaning set forth in **Section 1.2(c)**.

“**Buyer**” shall have the meaning set forth in the preamble to this Agreement.

“**Claimant**” shall have the meaning set forth in **Section 9.3**.

“Closing” shall have the meaning set forth in **Section 1.1**.

“Closing Date” shall mean the date on which the Closing is completed.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations thereunder, or any subsequent legislative enactment thereof, as in effect from time to time.

“FCC” shall have the meaning set forth in the preamble to this Agreement.

“FCC Application” shall mean the application or applications that Seller and Buyer must file with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Licensee.

“FCC Consent” shall mean the action by the FCC granting the FCC Application.

“FCC Licenses” shall have the meaning set forth in **Section 1.2(a)**.

“Final Order” as it relates to the FCC shall mean action by the FCC with respect to the FCC Application (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion is pending, and (iii) as to which the time for filing any such appeal, request, petition or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, has expired.

“FIRPTA Certificate” shall have the meaning set forth in **Section 8.1(d)**.

“Indemnitor” shall have the meaning set forth in **Section 9.3**.

“Leased Real Property” shall have the meaning set forth in **Section 3.6(a)**.

“Liens” shall mean mortgages, deeds of trust, liens, security interests, pledges, collateral assignments, condition sales agreements, leases, encumbrances, claims or other defects of title, but shall not include (i) liens for current taxes not yet due and payable and (ii) other liens imposed by law (such as materialman’s, mechanic’s, carrier’s, worker’s and repairman’s liens) arising in the ordinary course of business (provided that such liens do not interfere in any material respect with the use of the Station’s Assets as currently used and that Seller remains liable for paying such liens).

“Owned Real Property” shall have the meaning set forth in **Section 3.6(a)**.

“Personal Property” shall have the meaning set forth in **Section 1.2(b)**.

“Purchase Price” shall have the meaning set forth in **Section 2.1**.

“Real Property” shall have the meaning set forth in **Section 1.2(h)**.

“Seller” shall have the meaning set forth in the preamble to this Agreement.

“Station” shall have the meaning set forth in the preamble to this Agreement.

“Station’s Assets” shall mean the assets to be transferred to Buyer hereunder, as more fully specified in **Section 1.2**.

“Station’s Licenses” shall have the meaning set forth in **Section 1.2(a)**.

“Survival Period” shall have the meaning set forth in **Section 9.5**.

“Title Commitments” shall have the meaning set forth in **Section 6.8**.

“Title Company” shall have the meaning set forth in **Section 6.8**.

“Upset Date” shall have the meaning set forth in **Section 10.1(a)(iii)**.

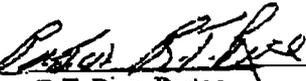
13.2. Miscellaneous Terms. The term “or” is disjunctive; the term “and” is conjunctive. The term “shall” is mandatory; the term “may” is permissive. Masculine terms apply to females as well as males; feminine terms apply to males as well as females. The term “includes” or “including” is by way of example and not limitation.

[Signature page of Asset Purchase Agreement]

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

SELLER

New Horizon Seventh-Day Christian Church, Inc.

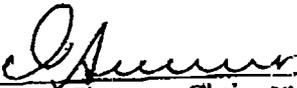
By: 
B.T. Rice, Pastor

BUYER

Simmons-Austin, LLC

By: 
David E. Simmons, Chairman and
Manager

Simmons-Austin, LS, LLC

By: 
David E. Simmons, Chairman and Manager

LIST OF SCHEDULES

1.2(a)	Licenses, Permits and Authorizations
1.2(b)	Tangible Personal Property
1.2(c)	Assumed Contracts
1.2(h)	Real Property
1.3(h)	Other Excluded Assets
2.2	Escrow Agreement
3.4	Litigation
3.6	Liens on Station's Assets