

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made this 10th day of August, 2005, between MIDWEST COMMUNICATIONS, INC., a Wisconsin corporation (the "Buyer"), and RBH ENTERPRISES, INC., a Wisconsin corporation (the "Seller"), and RANDAL B. HOPPER, a Wisconsin resident ("Shareholder").

### **RECITALS:**

A. Seller is the owner, operator, and licensee of Station WXER (104.5 FM) Plymouth, Wisconsin, and the construction permit and equipment for Station 96.1 FM (call sign W241AG, facility id. 147291) Sheboygan, Wisconsin (individually, a "Station"; 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 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) [Intentionally Omitted];

(c) All contract rights and benefits under the contracts, leases, and security deposits held under such leases, non-governmental licenses, and other agreements exclusively related to the Stations among which are the contracts described 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 Stations (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;

(e) All copyrights, trademarks, trade names, service marks, service names, internet names/domains/websites/pages, 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 or owned by the Seller, and the Seller’s right, title, and interest in and to the broadcast call letters and call signs of the Stations set forth on Schedule 1.1(e) (the “Intangibles”);

(f) All right, title, and interest under or pursuant to 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, 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”); provided, however, that the Seller reserves the right to retain copies thereof and to inspect and copy such Records and to be furnished with the originals thereof (if necessary and such originals are available) from time to time after the Closing Date (as defined herein) during normal business hours, for the purpose of preparing financial statements and tax returns or in connection with general and tax audits or in connection with asserting, prosecuting, or defending claims in litigation or to the extent otherwise reasonably required by the Seller; provided further, the Seller’s corporate records and accounting records shall be retained by Seller (if requested in writing in advance of the Closing by the Seller, Buyer will retain Seller’s corporate and accounting records on behalf of Seller for a period of six (6) years and may thereafter dispose of such records unless prior to such time Seller requests delivery of such 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) 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, 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) Any of Seller’s insurance policies;

(e) 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;

(f) All of Seller’s accounts receivable; and

(g) All other remaining assets of the Seller.

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, which have been approved and consented to in advance by Buyer, 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. 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 is required to give and entitled to receive under any such Barter Agreements that are not fully in writing. Seller further represents and warrants 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. In the event that the cost of providing such advertising as assumed by Buyer hereunder exceeds the fair market value of the goods or services to be received by Buyer under such Barter Agreements (as estimated in good faith by Buyer), such difference in value shall be credited against the Purchase Price (as defined herein) at Closing.

(c) Buyer and Seller acknowledge that certain contracts between Seller and third parties were entered into by Seller for the benefit of the Stations and other stations owned and operated by Seller, including the Retained Station (as defined herein). Buyer will not assume any such contracts. From and after the date hereof, to the extent requested by Buyer, Seller (with the reasonable cooperation of Buyer, if so requested by Seller) shall use reasonable efforts to obtain for Buyer and Seller the benefits of such contracts in proportion to the benefits received by the Stations and Seller's retained assets, respectively. For example, Seller intends to obtain an amendment to Seller's service agreement with Arbitron, Inc. so that the Retained Station and Seller's other stations continue to receive services under such contract after Closing, for a service rate substantially similar to the rate charged for the services provided to the Retained Station and Seller's other stations prior to Closing, and for termination of such services with respect to the Stations; and Buyer intends to amend its existing service contract with Arbitron, Inc. to include the Stations.

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 relating to the period prior to the Closing Date or any claims against Seller relating to the operation of the Stations prior to the Closing Date, including without limitation (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 warrants that Schedule 1.5 sets forth a list of Purchased Assets (other than the Licenses) which are non-assignable or non-transferable or cannot be subleased to Buyer without the consent of some other individual, entity, or governmental or quasi-governmental authority (collectively, "Persons"). Subject to the provisions of Section 1.3(c), Seller shall use its reasonable best efforts to obtain or satisfy all such consents ("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 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 ("Non-assignable Assets"). Seller shall use its best efforts and Buyer shall cooperate at no cost or expense to Buyer in all reasonable respects with Seller 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 as are mutually agreed to by the parties 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).

## **ARTICLE 2.** **PURCHASE PRICE.**

2.1. Purchase Price. The total purchase price for the Purchased Assets shall be the sum of Two Million Two Hundred Fifty Thousand and No/100ths Dollars (\$2,250,000.00) (the "Purchase Price").

2.2. Payment of Purchase Price. Subject to the adjustments and prorations set forth in Section 2.3, at the Closing Buyer shall pay to Seller by wire transfer of same-day funds the Purchase Price, less closing prorations. Seller shall deliver wire transfer instructions to Buyer to allow for this single payment at least two (2) days prior to the Closing Date.

2.3. Prorations and Expenses. As of the Effective Date (as defined herein), 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, insurance premiums (if insurance policies are assumed by Buyer), utility charges, sales

and service charges, business and license fees, and personal property taxes. Personal property taxes shall be prorated based on the most recent assessment and mil/tax rate, if available, or otherwise on the amount of taxes imposed for the immediately preceding tax year. Notwithstanding the foregoing, Seller shall be responsible for all sales taxes incurred in connection with the transfer of the Purchased Assets from Seller to Buyer.

2.4. Allocation of Purchase Price. The Purchase Price shall be allocated 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 2.4. 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. Seller and Shareholder agree to provide Buyer upon request with such information as requested by Buyer to make such filings as required by the American Jobs Creation Act of 2004, and any regulations promulgated thereunder (including, but not limited to a description of the transactions contemplated hereby, the name and address of each Shareholder that recognizes gain as a result of the transaction, and the amount of money and the value of stock or other consideration paid to each such Shareholder).

2.5 Earnest Money Deposit. Within three (3) business days following the effective date of this Agreement, Buyer shall deliver to M&I Marshall & Ilsley Bank, located in Wausau, Wisconsin ("Escrow Agent") the sum of One Hundred Thousand and No/100ths Dollars (\$100,000.00) ("Escrow Money Deposit") to be held and distributed by the Escrow Agent pursuant to the terms of an escrow agreement ("Escrow Money Deposit Agreement") substantially in the form of Exhibit 2.5, subject to the following:

(a) If the purchase of the Purchased Assets under this Agreement is not consummated as a result of a material breach by the Buyer of any of its obligations under this Agreement (and Seller has not breached any of its material obligations under this Agreement), the parties agree that Seller shall be entitled to the Escrow Money Deposit to compensate Seller as liquidated damages resulting to Seller from such breach and not as a penalty. In agreeing to said sum, the parties acknowledge and confirm that the injury to Seller, which would result from such a breach, would be difficult or impossible of accurate estimation but that such sum is a reasonable pre-estimate of the probable loss from such a breach. The parties agree to accept said sum as full and complete payment for any and all claims Seller may have for Buyer's failure to consummate the purchase of the Purchased Assets and, upon such a breach by Buyer, Seller hereby covenants not to sue or initiate any action against Buyer to recover damages other than Seller's right to receive the Escrow Money Deposit.

(b) If the purchase of the Purchased Assets under this Agreement is not consummated due to the non-fulfillment of any of the conditions in Article 7 or for any other reason except Buyer's material breach in the performance of its obligations under this Agreement, Seller shall not be entitled to the Escrow Money Deposit (or interest thereon) and,

promptly after the termination of this Agreement, the Escrow Money Deposit (together with interest thereon) shall be paid by the Escrow Agent to Buyer.

(c) At the Closing, Escrow Agent shall pay the Escrow Money Deposit to Seller, as part of the Purchase Price, and Escrow Agent shall then pay to Buyer all interest accrued thereon.

(d) Any fees associated with the creation of the escrow account provided for in this Section 2.5 shall be paid one-half by Buyer and one-half by Seller.

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

Seller and Shareholder hereby represent and warrant 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 Wisconsin; 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 amendment thereto.

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 corporate 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. Except as set forth in Schedule 3.3, and 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 articles of organization or operating agreements of Seller, 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 validly issued and 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 the rights of Buyer under the Licenses.

3.5. Contracts. Schedule 1.1(c) contains with respect to each Station a complete list of Contracts, which include, and is broken down by category 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 each Station (or complete written descriptions thereof if such agreements are oral); (d) all network affiliation agreements; (e) all “barter” and “trade” 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 “trade” or “barter” 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). True and complete copies of all Contracts have been delivered to the Buyer by Seller. All Contracts to be assumed by Buyer were entered into in the ordinary course of the business of each Station. Each Contract is in full force and effect in accordance with its terms. There are no defaults under any Contracts. Seller has not made or asserted, nor has any other party to any Contracts made or asserted any (nor, to Seller’s knowledge, does any other party to any such Contract have a) defense or counterclaim under any of those Contracts, nor has any party to the Contracts 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.

3.6. Property.



(a) Leased Properties. (i) There has been no assignment, transfer, conveyance, mortgage, deed in trust, or any alienation caused or permitted to exist with respect to any Leased Properties; (ii) Seller is in sole possession of and is occupying the Leased Properties; (iii) each lease for the Leased Properties (individually, a “Lease” and collectively, the “Leases”) is currently in effect and constitutes the entire agreement between the landlord and Seller with respect to the subject matter thereof and has not been amended, modified, or changed, whether in writing or orally; (iv) the commencement date and expiration date of the term of each lease are correctly stated above. Tenant has no options or rights and has not exercised any options or rights to renew, extend, amend, modify, or change the term of each Lease, except as may be stated in each Lease; (v) the monthly base rent for each Lease has been paid through the most recent due date, no rent has been prepaid for more than one (1) month, and Seller has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind; (vi) Seller has deposited any security deposit stated in each Lease with landlord of such lease, and no portion of any such security deposit has been applied by the landlord of any Lease to the payment of rent or any other amounts due under such lease; (vii) any construction, build-out, improvements, alterations, or additions to the Leased Properties required under any Lease have been fully completed in accordance with the plans and specifications described in such Lease; (viii) each landlord under its respective Lease with Seller has fully performed all of such landlord’s obligations under the applicable Lease and is not in default under any term of such Lease, and, no circumstances exist under which any such landlord may be deemed in default merely upon service of notice or passage of time; (ix) Seller has no defenses, set-offs, or counterclaims to the payment of rent and all other amounts due under any Lease; (x) Seller has not been granted and has not exercised any options or rights of expansion, purchase, or first refusal concerning any Lease; and (xi) no landlord under Lease has given any consent to Seller (for example, consent to sublease or alter any Leased Properties) that is required under the applicable Lease before the taking of any action by Seller.

(b) Condition. The buildings, structures, and other improvements included upon or within the Leased Properties are in good condition and repair, ordinary wear and tear excepted, and are in adequate condition to operate such facilities as currently used, occupied, or operated.

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

(d) 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 Stations are 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 any predecessor to Seller in or

about the 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, except for Permitted Liens. The Tangible Personal Property is, in all material respects, in good working order 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, licenses, patents, logos, jingles, and slogans used in the operation of each Station. Seller owns or otherwise has the lawful right to use, free and clear of any Liens, all such intellectual property identified in Schedule 1.1(e). No Station is 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. To Seller’s knowledge 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 the review report balance sheet and related statements of operations of the Stations as of 12/31/03 and 12/31/04, and the related statements of revenues and operating expenses of the Stations as of the years and periods then ended, and the Stations’ review report balance sheets and monthly statements of revenues and operating expenses from operations for each month of fiscal year 2004 up to the month preceding the effective date of this Agreement. Except as set forth in Schedule 3.9, all such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, and fairly present in all material respects to 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, 2004 (the “Balance Sheet Date”), there has been no material adverse change in the financial condition, results of operations, properties, assets, or liabilities of Seller or the Stations, 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 December 31, 2004 balance sheet for the Stations reflects all properties and assets, real, personal, or mixed, which are currently used in connection with the business of the Stations and all liabilities and obligations of each related to or connected with such business or the Purchased Assets (except for those assets acquired and liabilities incurred since the Balance Sheet Date in the ordinary course of business).

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. There is no claim, litigation, proceeding, or governmental investigation pending, or to Seller's or Shareholder'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) adversely effect the operations of the Stations, (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 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, and no notice has been received alleging any such violation.

3.12. Personnel.

(a) Schedule 3.12(a) contains with respect to each Station a complete list of all employment and consulting agreements between any Station personnel and Seller. There are no written contracts of employment or other agreements with any Station employees.

(b) 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) No employee of any of the Stations 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 employees of the Stations together with their respective salaries or wages and 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 Property and Leased Property 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 term “Environmental Law(s)” 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) 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) 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 its business and the Real Estate has been maintained in compliance with all applicable laws, regulations, and ordinances, including, but not limited to, Environmental Laws; 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 have there 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) 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) There has been no, nor are there now pending 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 retained Richard F. Blackburn of Blackburn & Company Incorporated as its broker for the transactions contemplated by this Agreement (“Seller’s Broker”) and shall be responsible for payment of any fees incurred in connection therewith. Other than Seller’s Broker neither Seller nor any Shareholder has retained any other 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 or Shareholder’s knowledge, threatened with respect to Seller’s taxes for which 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. “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 or Shareholder 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 its 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 each Station) 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 and contain all documents required to be maintained therein by the FCC rules. To Seller's knowledge 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.

3.18. No Material Changes. Since December 31, 2004, 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 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) 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/or

(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 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.

#### **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 laws, rules, and regulations of the FCC, 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 their 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 of the FCC, and all other applicable laws;

5.3 Use its reasonable best efforts to preserve its businesses intact, to maintain the Stations and Purchased Assets in good condition, reasonable wear and tear excepted, to keep the services of present employees, and to 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, which will have a material adverse effect upon the Stations, Purchased Assets, or 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 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 with all reasonable diligence and otherwise use their best efforts to obtain a grant of the applications as expeditiously as practicable, (b) oppose any petition to deny or informal objection that may be filed against the applications for the FCC License Consent, and (c) oppose any requests for reconsideration or judicial review of the FCC License Consent. Buyer and Seller each agree to pay one-half of any and all filing fees or charges required by the FCC in connection with the FCC License Consent, and Buyer and Seller each agree to pay the fees and expenses of their respective FCC counsel to the transactions contemplated by this Agreement.

6.2. Control of Stations. 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. All employees employed at the Stations or with regard to the Stations shall remain so employed 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 the Closing Date with respect to each employee of Seller and arising thereafter with respect to any such employee not hired by Buyer.

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. The parties hereto 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 negligent or willful act or omission of Seller, 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 commences such restoration or repair within the initial thirty (30) day period. 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 Buyer shall be entitled to the insurance proceeds payable with respect to such loss or a reduction in the Purchase Price by the value of such Purchased Assets as established by the Appraisal (to the extent not fully covered by applicable insurance proceeds), 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 the Stations in the manner they have heretofore been operating, 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 have heretofore been operating within five (5) days 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 five (5) 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.

6.7. Buyer's Due Diligence; Access to Records.

(a) Seller shall allow, from time to time and at any time, Buyer's access to the Stations, the Purchased Assets, 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 Randall B. Hopper. 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 fully cooperate with such individuals in connection with such review, who shall be employees or agents of and paid by Buyer.

(b) Seller, at Seller's expense, shall provide Buyer, not more than thirty (30) days following the effective date of this Agreement, with title commitments, on acceptable ALTA forms (the "Title Commitments"), for all Leased Properties from a Wisconsin licensed title insurance company (the "Title Company") in an amount equal to the value of such properties as reasonably specified by Buyer, showing good and marketable title to leasehold interests in the Leased Properties to be in Seller, all free and clear of all liens and encumbrances, which Title Commitments shall be updated by Seller as of the Closing Date. 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 cost of title searches and base coverage premiums for the Title Commitments.

(c) Buyer may further obtain, at Buyer's expense, in the format meeting the requirements of Exhibit 6.7(c), eight (8) copies of a survey of each of the Leased Properties (the "Surveys"), which Surveys shall (i) be prepared by a registered land surveyor approved by Buyer, (ii) be certified to Buyer and such others as Buyer may reasonably request, (iii) not reflect any matters that impair Buyer's use or enjoyment of the Leased Properties, and (iv) be prepared in form satisfactory to Title Company for the issuance to Buyer of a title policy pursuant to the Title Commitments (the "Title Policy") with no exceptions for matters of survey.

6.8 Cooperation. Buyer and Seller shall cooperate fully 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 shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement, and otherwise use their best 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 date of such notice 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 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 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, and (ii) to remit directly to Seller any payments with respect to any of the Pre-Closing Accounts Receivable that Buyer subsequently receives.

(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 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.

(f) To the extent that any obligations arise with respect to Seller's employees as a result of the collection by Buyer of the Pre-Closing Accounts Receivable, Buyer will have no obligation or responsibility thereby and Seller will use its best efforts to satisfy those obligations.

6.10 Change of Control. Upon Closing, the parties agree that Buyer shall have ultimate control over and use of all necessary physical property of the Stations without

reservation and Buyer shall have ultimate control over the Stations' programming without reservation.

6.11 Sale of Additional Station. Seller is also the owner of WCLB (950 AM) Sheboygan, Wisconsin (the "Retained Station"). Following the effective date of this Agreement, Seller will use commercially reasonable best efforts to divest itself of the Retained Station. This obligation shall be ongoing and survive the Closing.

6.12 Post Closing Access. Following the Closing, Seller shall allow Buyer and Buyer's employees access to the existing office and studio facilities of the Stations and Retained Station from time to time and at any time for purposes of removing the Purchased Assets therefrom, and, if deemed necessary by Buyer, to operate the Purchased Assets therein until such removal is complete. Such access rights shall continue for thirty (30) days following Closing; and, if requested by Buyer, such time period shall be extended for an additional thirty (30) days if Buyer's removal is hindered due to causes outside of Buyer's control. Buyer shall provide Seller reasonable advance written notice of such access. Buyer's access rights shall not unreasonably interfere with Seller's business operations on the Premises. Buyer shall promptly repair any damage caused to such premises by the removal of the Purchased Assets from the premises and shall indemnify, defend, and hold Seller harmless from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees and costs) arising from the negligent acts or omissions of Buyer and Buyer's agents utilization of such access rights.

## **ARTICLE 7.**

### **CONDITIONS TO BUYER'S OBLIGATION TO CLOSE.**

7.1 FCC Consent. All obligations of the parties to this Agreement are subject to the prior approval of the FCC. Buyer's obligations 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 Buyer's breach of this Agreement. 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, 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 hereof.

(b) Representations True and Correct. The representations and warranties made by Seller 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 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 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 (the "Appraisal").

(f) Environmental Phase I. Buyer shall have obtained ASTM-compliant environmental site assessment reports from an environmental consultant chosen by Buyer confirming that there are no Recognized Environmental Conditions or Historic Recognized Environmental Conditions with respect to the Real Properties or Leased Properties (as those terms are defined by ASTM), and that the representations and warranties of Seller contained in Section 3.13 are true and correct, and which is otherwise reasonably satisfactory to Buyer. The cost of such reports shall be paid for by Buyer. In the event a report issued pursuant to any environmental investigation of the Real Properties and Leased Properties determines that there are Recognized Environmental Conditions, Historic Recognized Environmental Conditions, or other conditions of such property unsatisfactory to Buyer, Buyer shall notify Seller that Buyer requests a Phase II Environmental Site Investigation ("Phase II") be made of such property as recommended in the reports received by Buyer or otherwise by Buyer's chosen environmental consultant at Seller's expense. Seller shall have five (5) days following receipt of such request to elect to conduct such Phase II or to terminate this Agreement (and the Escrow Money Deposit shall be immediately returned to Buyer). If Seller elects to conduct the Phase II, such work shall be done expeditiously and in accordance with all laws. In the event that there is any remedial work to be done as a result of the said examinations, Seller shall perform such work at the cost of the Seller; provided, however, that nothing contained in the preceding provisions of this section shall obligate Buyer to close this transaction in the event one or more Phase II Environmental Site Investigations are undertaken.

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

(h) Title Policy. The Title Company shall issue (or commit unconditionally to issue) the Title Policy subject only to the Permitted Exceptions. For purposes of this Section 7.2(h), the term "Permitted Exceptions" shall mean all exceptions contained in the Title Commitments or Surveys (i) to which Buyer has not objected or (ii) as to which Buyer has

waived; provided, however, that the term Permitted Exceptions shall not include (A) any taxes or assessments other than general real estate taxes for the year of Closing; (B) any monetary judgments, liens or encumbrances; (C) any standard printed exceptions; or (D) any matters that Seller causes the Title Company to delete from the Title Commitment or the surveyor to delete from the Surveys.

(i) Consents. Seller shall have delivered Consents with respect to the assignment of the Leases by the landlords thereof.

## **ARTICLE 8.**

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

8.1 FCC Action. 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, Seller'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. Buyer shall deliver the instruments required to be delivered by Buyer pursuant to Section 9.3(a) hereof.

(b) Representations True and Correct. The representations and warranties made by Buyer 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.

(c) 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.

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

## **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 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 2.3 shall have been completed (the "Closing Date"). Buyer and Seller shall use reasonable efforts to accomplish the Closing on or before November 10, 2005.

(b) Closing Place. The Closing shall be held at the offices of Ruder Ware, L.L.S.C., 500 Third Street, Suite 700, Wausau, Wisconsin, commencing at 10:00 A.M. Wisconsin time, or such other place and time as may be agreed upon in writing by the parties.

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

(a) Transfer Documents. Duly executed warranty bills of sale, warranty deeds, motor vehicle titles, assignments, real estate transfer tax returns or valuation 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.

(b) Consents. A copy of any instrument evidencing receipt of any consent that has been obtained pursuant to this Agreement.

(c) Estoppel Certificates. Landlord consent and estoppel certificates for each Lease equivalent in all material respects to the form attached hereto as Exhibit 9.2(c).

(d) Opinion of Counsel. An opinion of Seller's counsel dated as of the Closing Date, in form and substance reasonably satisfactory to Buyer.

(e) 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.

(f) Non-compete Agreements. Executed non-compete agreements between Buyer, Seller, and Randal B. Hopper in the form set forth in Exhibit 9.2(f).

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

(a) Purchase Price. The Purchase Price as provided herein.

(b) Assumption Agreements. Assumption agreements reasonably acceptable to Seller pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Contracts and Licenses as specified in Section 1.3.



(c) Opinion of Counsel. An opinion of Buyer's counsel dated as of the Closing Date, in form and substance reasonably satisfactory to Seller.

(d) Payment of Non-compete Amounts. Buyer shall pay to the Seller and Randal B. Hopper as consideration for the non-compete agreements the total amount of Fifty Thousand and No/100ths Dollars (\$50,000.00) allocated as set forth in Exhibit 9.3 (d).

## **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 by written notice to Buyer, upon the occurrence of any of the following:

(a) Breach. If Buyer has committed a breach under 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 that would prevent or make unlawful the Closing.

(c) Upset Date. If the Closing shall not have occurred on or before one hundred eighty (180) days from the date of filing this Agreement with the FCC.

(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 Business 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 under this Agreement that has not been remedied within thirty (30) days of Buyer's written notice of the same.

(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 hundred eighty (180) days from the date of filing this Agreement with the FCC.

(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.

10.3. Rights on Termination; Specific Performance. If this Agreement expires or is terminated pursuant to Section 10.1 or Section 10.2 and neither 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. In the event this Agreement is terminated as a result of Buyer's breach of any provision of this Agreement or Seller's breach of any provision of this Agreement, the non-breaching party shall have all rights of specific performance, or its remedies at law or equity, and reimbursement for actual expenses incurred in connection with this Agreement and the transactions contemplated hereby including reasonable attorneys' fees, accountants' fees, consulting fees, banking fees, and other similar fees and expenses. 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 survive the Closing Date for a period of twenty-four (24) months, except for those representations set forth in Sections 3.1 and 3.2, which shall be ongoing (the "Surviving Representations and Warranties") and Section 3.15 which shall survive for time period equivalent to the applicable statute of limitations period for any such matters contemplated therein, including, but not limited to claims for forfeitures, interest and penalties by the United States Treasury Department (including, but not limited to the Internal Revenue Service) and United States Attorney or any similar state based organization.

11.2 Indemnification by Seller. From and after the Closing, Seller and Shareholder jointly and severally agree 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 and costs:

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

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

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

(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; or

(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.

As used in this Section 11.2, “damages” shall mean actual, out-of-pocket damages, and shall not include punitive, incidental or consequential damages; provided, however, that damages shall include punitive, incidental and consequential damages resulting from claims asserted against Buyer by third parties.

11.3. Indemnification by Buyer. Except as otherwise provided below, from and after the Closing, Buyer agrees to indemnify, defend, and hold Seller and Shareholder harmless from and against and with respect to, and shall reimburse Seller and Shareholder 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;

(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; or

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

As used in this Section 11.3, “damages” shall mean actual, out-of-pocket damages, and shall not include punitive, incidental or consequential damages; provided, however, that damages shall

include punitive, incidental and consequential damages resulting from claims asserted against Seller by third parties.

11.4. Limitations on Indemnification.

(a) Expiration of Indemnification Obligations. No claim or action for indemnification shall be brought for a breach of a representation, warranty, or covenant after the lapse of two (2) years following the Closing Date (the “Expiration Period”), except for a claim or action for indemnification due to a breach of any of the Surviving Representations and Warranties which shall not be subject to the Expiration Period and shall be ongoing.

(b) Limitation on Liability. No Seller Indemnifying Party (as defined herein) shall be liable to a Buyer Claimant (as defined herein) as set forth herein unless the aggregate amount of all such demands, claims, causes of action, suits, proceedings, losses, damages, installments, liabilities, costs, and expenses, including reasonable attorneys' fees and costs required hereby from an Indemnifying party exceeds the sum of Ten Thousand One and No/100ths Dollars (\$10,001.00) (the “Basket”); provided, however, that upon exceeding the amount of the Basket, the Indemnifying Party shall be responsible for the full amount of such demands, claims, causes of action, suits, proceedings, losses, damages, installments, liabilities, costs, and expenses, including reasonable attorneys’ fees and costs; provided, further, however that notwithstanding the preceding provisions of this Section 11.4(b), no Seller Indemnifying Party shall be required to incur liability for indemnification obligations as required herein in excess of Five Hundred Thousand and No/100ths Dollars (\$500,000.00) (the “Cap”), except for breaches of the Surviving Indemnification Obligations by Seller or Shareholder, for which there shall be no Basket or Cap limitation. For purposes of this Section 11.4(b) a “Buyer Claimant” shall mean a party affiliated with Buyer claiming indemnification pursuant to this Agreement, and a “Seller Indemnifying Party” shall mean a Seller affiliated party from which indemnification is claimed pursuant to this Agreement.

11.5. 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 ten (10) 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 ten (10) 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.

## **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, 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 (a) in writing, (b) delivered by personal delivery, or sent by commercial overnight courier service or certified mail, return receipt requested, and fees prepaid, (c) 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 (d) addressed as follows:

If to Seller, to:

RBH Enterprises, Inc.  
254 Winnebago Drive  
P.O. Box 1450  
Fond du Lac, WI 54936

With a copy to:

John A. Dickens, Esq.  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, WI 53202-3590

If to Buyer, to:

Midwest Communications, Inc.  
904 Grand Avenue  
Wausau, WI 54403  
Attn: Gary E. Tesch

With a copy to:

Ruder, Ware & Michler,  
A Limited Liability S.C.  
500 Third Street, Suite 700  
Wausau, WI 54403  
Attn: Joseph M. Mella, Esq.

or to any other or additional person and addresses as the parties may from time to time designate in a writing delivered in accordance with this section.

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, however that in the event of such an assignment, Buyer shall continue to remain liable for all obligations of Buyer contained herein. 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 Wisconsin (without regard to the choice of law provisions thereof).

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.

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.

**(Document Continues on Following Page)**

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

BUYER:

SELLER:

MIDWEST COMMUNICATIONS, INC.

RBH ENTERPRISES, INC.

By: \_\_\_\_\_  
Gary E. Tesch  
Executive Vice President

By: \_\_\_\_\_  
Randal B. Hopper, President

\_\_\_\_\_  
Randal B. Hopper



## EXECUTION COPY

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

BUYER:

SELLER:

MIDWEST COMMUNICATIONS, INC.

RBH ENTERPRISES, INC.

By: 

Gary E. Tesch  
Executive Vice President

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

Randal B. Hopper, President

\_\_\_\_\_  
Randal B. Hopper

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MIDWEST COMMUNICATIONS, INC.

RBH ENTERPRISES, INC.

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

Gary E. Tesch  
Executive Vice President

By: 

Randal B. Hopper, President

  
Randal B. Hopper