

## ASSET PURCHASE AGREEMENT

THIS **ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is made as of May 30, 2019 by and between Marquee Broadcasting Colorado, Inc., a Colorado corporation (“**Seller**”), and TV-49, Inc., a Wisconsin corporation (“**Buyer**”) (each a “**Party**” and, collectively, the “**Parties**”).

### RECITALS

**WHEREAS**, Seller owns and operates digital full-power television broadcast station KREG, licensed to Glenwood Springs, CO, FCC Facility ID No. 70578, including its primary and all multicast streams (“**KREG**”), and serving the Denver, CO, Designated Market Area (the “**DMA**”), pursuant to licenses issued by the Federal Communications Commission (the “**FCC**”); and

**WHEREAS**, on the terms and conditions described herein, Seller desires to sell, and Buyer desires to purchase, the Station Assets (as defined below).

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

### AGREEMENT

#### **ARTICLE 1. SALE AND PURCHASE**

**Section 1.1    Station Assets.** On the terms and subject to the conditions hereof, at the Closing (defined below), Seller shall (or shall cause its applicable affiliates to) sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase and acquire from Seller (or its applicable affiliate), all right, title, and interest of Seller (or its applicable affiliate) with respect to KREG and to the following (collectively, the “**Station Assets**”), including any insurance proceeds related to damaged or destroyed Station Assets:

(a)    **FCC Licenses.** All licenses, permits, applications, and other authorizations issued to Seller by the FCC with respect to KREG (the “**FCC Licenses**”), including any renewals or modifications thereof between the date hereof and Closing, and, to the extent transferable by Seller to Buyer, all licenses, permits, and authorizations issued by any federal, state, or local governmental authority other than the FCC used or held for use in the operation of KREG, including those described on Schedule 1.1(a);

(b)    **Tangible Personal Property.** All currently existing machinery and equipment, Transmission Equipment (defined below), furniture, fixtures, computers, software, inventory, toolings, parts, tubes, microwaves, transponders, relays, office equipment and supplies and other tangible personal property (including associated manufacturer and vendor warranties) used or useful in connection with the conduct of the transmission of television broadcast signals and the operation of the Tower Structures (defined below), as listed and described on Schedule 1.1(b) attached hereto, and any replacements thereof, additions and improvements

thereto and substitutions therefor made between the date hereof and the Closing Date (collectively, the “**Tangible Personal Property**”). For purposes of this Agreement, “**Transmission Equipment**” shall mean all digital, analog or other equipment currently used (or used between the date hereof and the Closing Date) for the transmission of the Station’s broadcast signals over the air, including the antenna, transmitter and all associated transmission equipment, lines and facilities, in each case owned or leased by the Seller for use at the Station, including the Translator facilities and equipment. “**Tower Structures**” shall mean all antenna support structures (including any guy anchors and guy wires), transmitter buildings and other structures and improvements currently used or held for use (or used or held for use between the date hereof and the Closing Date) in connection with the operation of the Station, and owned or leased by Seller for use at the Station;

(c) **Real Property.** All right, title and interest in all real properties owned by Seller (the “**Owned Real Property**”) and all leases, subleases or other occupancies to which the Seller or the Station is a party as landlord or tenant for real property (the “**Real Property Leases**”), including any leasehold interests in real property related to the Tower Structures where Seller is the landlord (the “**Existing Tower Leases**”) or where Seller is the tenant, along with all of Seller’s and its affiliates rights (including leasehold rights) to the buildings, improvements and fixtures, rights of way, easements, privileges and appurtenances thereto and any additions or improvements thereto prior to the Closing Date, in each case as listed and described on Schedule 1.1(c) attached hereto;

(d) **Contracts.** All contracts and agreements that are listed and described on Schedule 1.1(d), and all contracts and agreements, including leases, that relate to the operation of KREG and the Tower Structures that are entered into by Seller after the date hereof but prior to the Closing in accordance with Section 4.1 (collectively, the “**Assumed Contracts**”);

(e) **Intangible Property.** All of Seller’s rights in and to the Station’s call letters (the “**Intangible Property**”);

(f) **Files and Records.** The Station’s public inspection file, all filings with the FCC relating to the Station, and such other technical information, engineering data, books and records that relate to the Station and Station Assets being conveyed hereunder, including all engineering evaluations, analyses, and other material related to the construction of digital facilities for the Station, manuals and data, and lists of present and former customers and suppliers to the Station and Station Assets;

(g) **Prepaid Items.** All deposits, reserves, prepaid expenses, and prepaid taxes relating to the Station Assets; and

(h) **Claims.** All rights, claims, credits, causes of action or rights of setoff against any person or entity other than the Parties and their respective affiliates (collectively, “**Third Parties**”) to the extent that they relate to the Station or Station Assets, including all rights under manufacturer and vendor warranties.

Subject to the terms of this Agreement, at the Closing, the Station Assets shall be transferred to Buyer free and clear of liens, mortgages, pledges, security interests or other encumbrances

(collectively, “**Liens**”), except for Permitted Liens. For purposes of this Agreement, “**Permitted Liens**” means Liens for taxes, assessments and similar governmental charges not yet due and payable and those Liens described on Schedule 1.1.

**Section 1.2 Excluded Assets.** Other than the Station Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller expressly understands and agrees that it is not selling or assigning, any cash or assets or properties of Seller or its affiliates (all such other assets and properties, the “**Excluded Assets**”).

**Section 1.3 Assumed Liabilities.** At the Closing, Buyer shall assume only those liabilities and obligations of Seller to the extent first arising out of the ownership or use of the Station Assets on or after the Closing Date, excepting any such liabilities or obligations relating to any breach or any violation of applicable law by Seller or any of its affiliates at or prior to the Closing (or with respect to any Assumed Contract for which a consent required to assign such Assumed Contract to Buyer is not obtained at or prior to Closing, at or prior to the date on which such consent is obtained and such Assumed Contract is assigned to Buyer) (such assumed liabilities and obligations, the “**Assumed Liabilities**”). For the avoidance of doubt, Buyer shall not assume any liability or obligations, including forfeiture expenses, arising from any complaints, investigations or proceedings by or before the FCC in respect of events that occurred prior to the Closing; and all liabilities and obligations arising with, or relating to, the operation of the Station, including the owning or holding of the Station Assets, prior to the Closing Date. Further, and for the avoidance of doubt, Buyer does not assume any liability for any obligations of Seller related to the Station’s or Seller’s use of any public performance of musical works, whether under a license from one or more performance rights organizations or otherwise.

**Section 1.4 Retained Liabilities.** Buyer shall not assume any liabilities or obligations of Seller or its affiliates (including liabilities and obligations to Third Parties) other than the Assumed Liabilities (all such other liabilities and obligations, the “**Retained Liabilities**”), and the Retained Liabilities shall remain the sole obligation and responsibility of Seller and its affiliates. For clarity, the Retained Liabilities shall include all liabilities and obligations under or related or with respect to the Excluded Assets, employees of Seller or the Station, or any contracts or agreements relating to the business and operations of the Station that are not Assumed Contracts. Seller shall timely pay, perform or otherwise satisfy all Retained Liabilities.

**Section 1.5 Purchase Price.** The purchase price to be paid for the Station Assets shall be Two Million Dollars (\$2,000,000) (the “**Purchase Price**”). Seller and Buyer agree to use the Purchase Price as the basis for the filing of all returns and reports concerning the transaction contemplated herein, including all federal, state, and local tax returns.

**Section 1.6 Closing.** The consummation of the sale and purchase of the Station Assets, and assumption of the Assumed Liabilities, pursuant to this Agreement (the “**Closing**”) shall take place on a date (the “**Closing Date**”) that is not later than the later of the fifth (5th) Business Day after grant of the FCC Consent (as defined in Section 7.3) and the date on which the conditions required to be satisfied or waived pursuant to Article 6 and Article 7 below (other than those requiring a delivery of a certificate or other document, or the taking of other action, at the Closing) have been so satisfied or waived. Notwithstanding the foregoing, Buyer shall have

the right, in its sole discretion, to elect to delay the Closing Date for a period of up to forty-five (45) days upon written notice to Seller.

**Section 1.7 Further Assurances.** Each of Seller and Buyer shall, at any time or from time to time after the Closing, at the request and expense of the other, execute and deliver to the other all such instruments and documents or further assurances as the other may reasonably request in order to (i) vest in Buyer all of Seller's right, title and interest in and to the Station Assets as contemplated hereby and (ii) effectuate Buyer's assumption of the Assumed Liabilities; provided, however, that after the Closing, apart from such customary further assurances, neither Seller nor Buyer shall have any other obligations except as specifically set forth herein.

**Section 1.8 Prorations.** The operation of the Station and the income and operating expenses attributable thereto until 11:59 p.m. on the date preceding the Closing Date (the "**Adjustment Time**") shall be for the account of Seller and thereafter for the account of Buyer, and expenses shall be prorated between Seller and Buyer as of the Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly. Such prorations shall include all property taxes (except transfer taxes as provided by Section 5.4 and Section 11.1), music and other license fees, FCC regulatory fees, utility expenses, rent and other amounts under the Assumed Contracts and similar prepaid and deferred items.

## **ARTICLE 2.**

### **SELLER REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Buyer, as of the date hereof and as of the Closing Date, as follows. As used in this Agreement, the term "**Seller's Knowledge**" or "**Knowledge of Seller**" means the actual knowledge of the persons identified on Schedule 2 or the knowledge such persons would have after making a reasonable and due inquiry into the matters at issue.

**Section 2.1 Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite corporate power and authority to (i) hold FCC Licenses and enter into this Agreement and the agreements identified in Section 8.1(a) through Section 8.1(d) (the agreements identified in Section 8.1(a) through Section 8.1(d), the "**Ancillary Agreements**"), (ii) operate the Station and (iii) perform its obligations hereunder and under the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. Seller is duly qualified to do business in each jurisdiction in which the nature of the business conducted by Seller with respect to the Station requires such qualification.

**Section 2.2 Authorization.** The execution, delivery, and performance by Seller of this Agreement and the Ancillary Agreements have been duly and validly authorized and approved by all necessary corporate action of Seller. This Agreement constitutes, and the Ancillary Agreements, when executed and delivered by Seller, will constitute, the valid and legally binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general application affecting or relating to the enforcement of

creditors' rights generally, and subject to equitable principles of general applicability, whether considered in a proceeding at law or in equity (the "**Enforceability Exceptions**").

**Section 2.3    No Conflicts.** The execution, delivery, and performance by Seller of this Agreement and the Ancillary Agreements do not and will not (a) violate the organizational documents of Seller, (b) subject to obtaining the FCC Consent, violate any law or any judgment, order or decree of a governmental authority to which Seller or the Station Assets are subject, (c) result in the creation or imposition of any Lien on any of the Station Assets other than Permitted Liens, (d) violate, breach, constitute a default under or give rise to any acceleration or termination right under any contract to which Seller is a party or by which any of the Station Assets are subject or (e) other than as disclosed in Schedule 2.3, require the consent, approval, or authorization, or filing with (each, a "**Consent**"), any Third Party, including any court or other governmental authority, except for the FCC Consent.

**Section 2.4    FCC Licenses.** Schedule 1.1(a) contains a true, complete and correct list of the FCC Licenses held by Seller and the FCC Licenses constitute all of the authorizations required under the Communications Act of 1934, as amended (the "**Communications Act**"), or the rules, regulations and policies of the FCC for the present operation of the Station (collectively, the "**Communications Laws**"). Seller is legally, financially and otherwise qualified to hold and assign the FCC Licenses under the Communications Laws, and is not aware of any facts related to Seller or the Station that would, under existing law, disqualify Seller as an assignor of the FCC Licenses, or would reasonably be expected to delay or otherwise adversely affect the FCC approval process. The FCC Licenses are in full force and effect and are unimpaired by any act or omission of Seller, and are not subject to any Liens. The FCC Licenses have not been revoked, suspended, canceled, rescinded, modified or terminated and have not expired. There is not pending or, to Seller's Knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind, or modify any of the FCC Licenses (other than proceedings relating to FCC rules of general applicability), and there is no order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint pending or threatened against Seller or the Station by or before the FCC. Seller and the Station are and have been in compliance with the FCC Licenses and the Communications Laws. Neither Seller, nor the Station, has entered into a tolling agreement or otherwise waived any statute of limitations relating to the Station during which the FCC may assess any fine or forfeiture or take any other action or agreed to any extension of time with respect to any FCC investigation or proceeding as to which the statute of limitations time period so waived or tolled or the time period so extended remains open as of the date of this Agreement. All filings required to be filed with, and all regulatory fees required to be paid to, the FCC by Seller with respect to the Station have been timely filed and paid. All such reports and filings are materially accurate and complete. Seller maintains a public inspection file for the Station and, as of the date of filing of the FCC Application (as defined below), such file complies with the Communications Laws in all material respects.

**Section 2.5    Station Assets.** Seller has good and marketable title to, or in the case of leased properties and assets and the Real Property Leases, valid leasehold interests in, or in the case of Assumed Contracts, valid contract rights in, the Station Assets, free and clear of Liens other than Permitted Liens.

**Section 2.6 Tangible Personal Property, Transmission Equipment and Tower Structures.** The Tangible Personal Property, Transmission Equipment and Tower Structures are in good condition and repair, ordinary wear and tear excepted and are not in need of imminent repair or replacement, have been maintained in a manner consistent in all material respects with generally accepted standards of good engineering practice, and are operating in compliance in all material respects with the Communications Laws and the Federal Aviation Administration. To the Knowledge of Seller, all of the Tower Structures are located entirely on and wholly within the lot limits and metes and bounds of the property on which the Tower Structures are situated and do not encroach on any adjoining premises.

**Section 2.7 Real Property.** Schedule 1.1(c) lists all leased real property used or held for use in the operation of the Station (the “**Leased Real Property**”), and all Real Property Leases to which the Leased Real Property is subject. Other than as disclosed in Schedule 1.1(c) Seller does not own any real property used in operation of the Station. Neither Seller, nor to Seller’s Knowledge, any other person, has granted any oral or written right to any third party to lease, sublease, license or otherwise use or occupy any of the Leased Real Property, except for the Existing Tower Leases, provided in Schedule 1.1(c). Seller has peaceful and undisturbed possession under all Real Property Leases under which Seller is a tenant with respect to the Leased Real Property. All permanent certificates of occupancy and other consents and approvals required to be obtained by Seller for use of the Leased Real Property from any governmental authority, association or board with jurisdiction over the Leased Real Property have been issued and are in full force and effect.

**Section 2.8 Assumed Contracts and Real Property Leases.** Each of the Assumed Contracts and Real Property Leases is in full force and effect and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms and, to Seller’s Knowledge, constitutes a legal, valid and binding obligation of the other parties thereto, enforceable against the other parties thereto in accordance with its terms (in each case, subject to the Enforceability Exceptions). The Assumed Contracts include (i) any network affiliation contract (or similar contract) with any national broadcast television programming network, (ii) any contract relating to cable or satellite transmission or retransmission of the Station by any multichannel video programming distributor (“MVPD”) that has subscribers in the DMA, and (iii) all fiber contracts with a fiber provider that provides connectivity to KREG transmission facilities or to an MVPD. Seller has fully and timely performed its obligations under each of the Assumed Contracts and the Real Property Leases in all material respects, and is not in default thereunder, and to Seller’s Knowledge, no other party to any of the Assumed Contracts or the Real Property Leases is in default thereunder in any material respect. True, complete and correct copies of each Assumed Contract and Real Property Lease, together with all amendments thereto and waivers granted thereunder, have been delivered to Buyer by Seller. Seller has not received notice from any party to any Assumed Contract or Real Property Lease that such party contends that the Seller is in default or breach under any Assumed Contract or Real Property Lease, nor has Seller given any notice to any party to an Assumed Contract or Real Property Lease that such party is in default or breach thereunder. Seller has not been notified by any other party to any Assumed Contract or Real Property Lease that such party has a present intent to terminate or not to renew any Assumed Contract or Real Property Lease. None of the Assumed Contracts or Real Property Leases included in the Station Assets has as the other party an entity controlled by any of Seller’s owners or affiliates.

**Section 2.9 MVPD Matters.** Seller has made a valid must-carry election with DISH NETWORK L.L.C. (“DISH”) and DIRECTV, LLC (“DIRECTV”) and has made a valid must-carry election or entered into a retransmission consent agreement with all other MVPDs serving subscribers in the DMA. Since January 1, 2018 and until the date hereof, (a) no MVPD has provided written notice to Seller or the Station of any material signal quality issue or has failed to respond to a request for carriage or, to the Knowledge of Seller, sought any form of relief from carriage of the Station from the FCC, (b) neither Seller nor the Station has received any written notice from any MVPD of such MVPD’s intention to delete the Station from carriage, and (c) neither Seller nor the Station has received written notice of a petition seeking FCC modification of the DMA. The Station is carried by DISH and DIRECTV to all subscribers of their respective Direct Broadcast Satellite services in the DMA.

**Section 2.10 Taxes.** Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid, in each case, with respect to the Station or its operations. No event has occurred which could impose upon Buyer any liability for any taxes, penalties, or interest due or to become due from Seller or in relation to any Station Assets from any taxing authority. No Station Assets are subject to any Lien as a result of the nonpayment of any amounts referred to in the first sentence of this Section 2.10.

**Section 2.11 Compliance with Law.** To Seller’s Knowledge, Seller is and has been in material compliance with all applicable laws with respect to the operation of the Station and the ownership and use of the Station Assets. To Seller’s Knowledge, there are no facts or circumstances which would reasonably be expected to give rise to any violation of applicable laws.

**Section 2.12 Litigation.** There is no (a) action, suit, or proceeding pending or, to Seller’s Knowledge, threatened against, Seller in respect of the Station or the Station Assets or (b) order, injunction or decree of a governmental authority outstanding to which Seller, with respect to the Station, or any Station Asset is subject. To Seller’s Knowledge, there are no facts or circumstances which would reasonably be expected to give rise to any action, suit or proceeding against Seller in respect of the Station or the Station Assets.

**Section 2.13 No Finder.** No broker, finder, or other person or entity is entitled to a commission, brokerage fee, or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller’s behalf.

### **ARTICLE 3.**

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

Buyer represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

**Section 3.1 Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin. Buyer has the requisite corporate

power and authority to execute, deliver, and perform its obligations under this Agreement and the Ancillary Agreements to which it will be a party and to consummate the transactions contemplated hereby and thereby.

**Section 3.2 Authorization.** The execution, delivery, and performance by Buyer of this Agreement and the Ancillary Agreements to which Buyer will be a party have been duly and validly authorized and approved by all necessary corporate action of Buyer. This Agreement constitutes, and Ancillary Agreements to which Buyer will be a party, when executed and delivered by Buyer (and assuming the due authorization, execution and delivery by Seller), will constitute, the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to the Enforceability Exceptions.

**Section 3.3 No Conflicts.** The execution, delivery, and performance by Buyer of this Agreement and the Ancillary Agreements to which Buyer will be a party do not and will not (a) violate the organizational documents of Buyer, (b) subject to obtaining the FCC Consent, violate any law or any judgment, order or decree of a governmental authority to which Buyer is subject, or (c) require the Consent of any Third Party, including any court or other governmental authority, except for the FCC Consent.

**Section 3.4 Qualifications.** Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Laws.

**Section 3.5 No Finder.** No broker, finder, or other person or entity is entitled to a commission, brokerage fee, or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

## **ARTICLE 4. PRE-CLOSING COVENANTS**

**Section 4.1 Conduct of Business Prior to Closing.** From the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with Section 10.1 (the “Pre-Closing Period”), Seller shall:

(a) operate the Station in the ordinary course of business consistent with past practices and in accordance with the terms of the FCC Licenses and in material compliance with the Communications Laws, and all other applicable laws, rules and regulations, including maintenance of (i) the Station's FCC Licenses, which shall be kept in full force and effect, (ii) the physical and online inspection files, (iii) all Tangible Personal Property, which shall be kept in the same condition and repair as of the date of this Agreement, ordinary wear and tear excepted, and (iv) current insurance policies with respect to the Station and the Station Assets;

(b) promptly deliver to Buyer (i) after filing, copies of any material reports, applications, or responses to the FCC in connection with the Station filed after the date of this Agreement and (ii) copies of any material communications from the FCC, or directed to the FCC by a Third Party, in connection with the Station that are received by Seller or of which Seller becomes aware after the date of this Agreement;

(c) not, without the prior written consent of Buyer: (i) except as expressly permitted or required herein, file any application with the FCC requesting authority to modify the Station's facilities; (ii) sell, lease, transfer or otherwise dispose of, or agree to sell, lease, transfer or otherwise dispose of, any of the Station Assets, or incur, create or assume any new Lien on the Station Assets other than Permitted Liens; (iii) modify, renew or terminate any Assumed Contract or Real Property Lease or enter into any contract, lease or agreement with respect to the Station or the Station Assets which would be binding upon Buyer after the Closing Date; (iv) make or change any material tax election with respect to the Station Assets; (v) terminate or cancel any insurance coverage maintained by Seller with respect to the Station Assets without replacing such coverage with a comparable amount of insurance coverage; (vi) modify the FCC Licenses; (vii) permit any representation or warranty set forth in Article 2 to become untrue or inaccurate in any material respect; or (viii) agree or commit to do any of the foregoing.

**Section 4.2 Access to Information.** During the Pre-Closing Period, Seller shall (a) provide, upon reasonable advance notice to Seller, Buyer full access during normal business hours to all Station Assets and all facilities, books, records and personnel of Seller related to the Station, and (b) provide Buyer all other information concerning the Station or the Station Assets as Buyer may reasonably request.

**Section 4.3 Efforts.** Subject to the terms and conditions of this Agreement, Seller and Buyer will each use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary or desirable under applicable law to consummate the transactions contemplated by this Agreement.

**Section 4.4 FCC Application.**

(a) In furtherance and not in limitation of Section 4.3, Seller and Buyer shall each prepare and jointly file with the FCC as soon as practicable but in no event later than ten (10) Business Days after the date hereof (or the first Business Day thereafter on which the FCC is accepting applications for filing) the requisite application (the "**FCC Application**") and other necessary instruments or documents requesting the FCC's written consent to the assignment of the FCC Licenses from Seller to Buyer (such consent, the "**FCC Consent**") and thereupon diligently prosecute such applications to obtain the requisite FCC Consent as expeditiously as possible; provided, however, except as provided in the following sentence, neither Buyer nor Seller shall be required to pay consideration to any Third Party to obtain the FCC Consent. Buyer and Seller shall each pay one-half (1/2) of the FCC filing fees relating to the transactions contemplated hereby, irrespective of whether the transactions contemplated by this Agreement are consummated.

(b) Neither Seller nor Buyer shall take any intentional action that would, or intentionally fail to take any action the failure of which to take would, reasonably be expected to have the effect of materially delaying the receipt of the FCC Consent, provided that Buyer shall not be obligated to accept any condition that is materially adverse to the other business operations of Buyer or any of its affiliates, or would require Buyer or any of its affiliates to divest any business operation, alter the channel upon which any station owned by Buyer or any of its affiliates broadcasts, require any station owned by Buyer or any of its affiliates to provide a

different class of service than currently licensed as of the date of this Agreement, or alter the contour of any station's coverage area.

(c) In connection with the efforts referenced in Section 4.4(a) and Section 4.4(b) to obtain the FCC Consent, Seller and Buyer shall (i) reasonably cooperate with each other in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, (ii) make available to the other Party, promptly after the filing thereof, copies of all reports filed by it or its affiliates on or prior to the Closing Date with the FCC in respect of the transactions contemplated by this Agreement; (iii) keep the other Party informed of any material communication received by such Party from, or given by such Party to, the FCC or any other governmental authority and of any material non-confidential portions of any communication received or given in connection with any proceeding by a private party; (iv) permit the other Party to review any material non-confidential portions of any communication given by it to, and consult with each other in advance of and be permitted to attend any meeting or conference with, the FCC or any such other governmental authority or, in connection with any proceeding by a private party, with any other person, in each case regarding any of the transactions contemplated by this Agreement; (v) promptly provide the other with a copy of any pleading, order, or other document served on it relating to the FCC Applications, and shall furnish all information required by the FCC; and (vi) notify the other Party hereto in the event it is or becomes aware of any facts or circumstances that would reasonably be expected to delay or otherwise adversely affect the FCC approval process or the transactions contemplated by this Agreement.

**Section 4.5 Control; Risk of Loss.** Consistent with the Communications Laws, control, supervision, and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses. The risk of loss of or damage to any of the Station Assets, and the risk of any interruption in the Station's normal broadcast transmissions, shall remain with Seller at all times until Closing.

**Section 4.6 No Shop.** During the Pre-Closing Period, Seller shall not, and shall cause its affiliates and representatives not to, initiate or encourage the initiation by any person (other than Buyer and its affiliates) of, or engage in or continue discussions or negotiations with any person (other than Buyer or its affiliates) or respond to a solicitation by any such other person relating to any merger involving Seller, or any direct or indirect sale or other disposition of all or any substantial part of the equity ownership of Seller or of all or any material portion of the Station Assets (any such transaction, a "**Competing Transaction**"). Seller shall promptly notify Buyer if any such other person attempts to initiate any such solicitation, discussion or negotiation with Seller or any of its affiliates, or if any of them becomes aware that any such other person has attempted to initiate any such solicitation, discussion or negotiation, and Seller shall not, and Seller shall cause its affiliates not to, enter into any agreement with respect to a Competing Transaction.

**Section 4.7 Consents.** Prior to Closing, Seller shall obtain the Required Consents (defined below) and shall use commercially reasonable efforts to obtain the other consents noted on Schedule 1.1(d) and Schedule 2.3. To the extent that any Assumed Contract may not be assigned without the consent of any Third Party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed at Closing pursuant hereto shall not

constitute an assignment thereof, but to the extent permitted by law shall constitute an equitable assignment by Seller and assumption by Buyer of Seller's rights and obligations under the applicable Assumed Contract, with Seller making available to Buyer the benefits thereof and Buyer performing the obligations thereunder on Seller's behalf. Schedule 4.7 identifies those consents the receipt of which is a condition precedent to Buyer's obligation to close under this Agreement (the "**Required Consents**"). For clarity, consents and lien releases from any person holding a security interest in any or all of the Station Assets shall be deemed a Required Consent.

## ARTICLE 5. ADDITIONAL COVENANTS

**Section 5.1 Confidentiality.** Subject to the requirements of applicable law or as otherwise agreed upon by the Parties, all non-public information regarding Buyer or Seller or their respective businesses or properties that is disclosed by or on behalf of Buyer or Seller (in such capacity, the "**Disclosing Party**") to the other Party (in such capacity, the "**Recipient**") or its Representatives (as defined below) in connection with the negotiation, execution or performance of this Agreement or the Ancillary Agreements, including any financial information, ("**Confidential Information**") shall be (1) confidential and shall not be disclosed by the Recipient to any other person or entity or (2) used by the Recipient or any of its Representatives (other than, in the case of this clause (2), to perform its obligations or exercise or enforce its rights and remedies under this Agreement or any Ancillary Agreement or comply with applicable law or its or its affiliates' respective regulatory, stock exchange, tax or financing reporting requirements (each, a "**Permitted Use**"), in each case, until the third anniversary of the Closing Date. Notwithstanding the foregoing, (x) from and after the Closing, all Confidential Information related to the operation of the Station and Station Assets shall be deemed Confidential Information of Buyer and (y) Confidential Information shall not include any information: (i) was already known to the Recipient or its Representatives other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party, (ii) became generally available to the public or otherwise part of the public domain after its disclosure to the Recipient or its Representatives other than through any act or omission of the Recipient in breach of this Agreement, (iii) is subsequently disclosed to the Recipient or its Representatives by a Third Party without obligations of confidentiality with respect thereto, or (iv) is subsequently independently discovered or developed by the Recipient or its Representatives without the use of Confidential Information. This Section 5.1 shall survive any termination or expiration of this Agreement. Notwithstanding the foregoing, the Recipient may disclose or use, as applicable, Confidential Information of the Disclosing Party:

(a) to the Recipient's own directors, officers, employees, lenders, agents and advisors (the "**Representatives**") who need to know such information in connection with a Permitted Use, provided that Party informs such Representatives of the confidential nature of the Confidential Information, and such Representatives agree to act in accordance with the terms and conditions of this provision;

(b) to one or more prospective investors, lenders and their advisors, provided such prospective investor or lender agrees to be bound by a non-disclosure agreement with respect to such Confidential Information; or

(c) in the event the Recipient or any of its Representatives is requested or required by law, regulation, interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or other process to disclose any Confidential Information; provided, that in such case, the Recipient will, to the extent practicable, notify the other Party in writing in a timely manner so that such Party may seek a protective order or other appropriate remedy or, in such Party's sole discretion, waive compliance with the confidentiality provisions of this Agreement.

**Section 5.2 Announcements.** Prior to Closing, Seller shall not (and shall cause its affiliates not to), without the prior written consent of the Buyer, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that Seller is so obligated by law, in which case Seller shall give advance notice to Buyer, and the Parties shall cooperate to make a mutually agreeable announcement, and provided that Seller may communicate with governmental authorities and, with customers, suppliers, distributors or other Third Parties engaged in the operation of the Station, regarding this Agreement or the Ancillary Agreements and the transactions contemplated hereby or thereby, including in order to obtain consents of or from any such Third Parties necessary or desirable to effect the consummation of the transactions contemplated hereby or by the Ancillary Agreements.

**Section 5.3 Access Following the Closing.** On and after the Closing Date, upon reasonable advance notice, Seller and Buyer will afford promptly to the other and its agents reasonable access to its books of account, financial and other records (including accountant's work papers), information, employees and auditors, to the extent reasonably required by the requesting Party, provided, however, that any such access by the requesting Party shall not unreasonably interfere with the conduct of the business or operations of the Party providing such access. Notwithstanding anything to the contrary in this Agreement, no Party shall be required to disclose any information to any other Party pursuant to this Section 5.3 if such disclosure would, in the disclosing Party's sole discretion: (x) jeopardize any attorney-client or other privilege; or (y) contravene any applicable law, fiduciary duty or binding agreement entered into by the disclosing Party. No information provided by a Party to any other Party pursuant to this Section may be used by the requesting Party in any action, suit or proceeding against any other Party or any of such other Party's affiliates.

**Section 5.4 Certain Tax Matters.**

(a) **Withholding Taxes.** The amounts payable by one Party (the "**Payer**") to another Party (the "**Payee**") pursuant to this Agreement ("**Payments**") shall not be reduced on account of any taxes unless required by applicable law. The Payee alone shall be responsible for paying any and all taxes (other than withholding taxes required to be paid by the Payer) levied on account of, or measured in whole or in part by reference to, any Payments it receives. The Payer shall deduct or withhold from the Payments any taxes that it is required by applicable law to deduct or withhold. If, in accordance with the foregoing, the Payer withholds any amount, it shall make timely payment to the proper taxing authority of the withheld amount, and send to the Payee proof of such payment as soon as reasonably practicable. Within thirty (30) days after the date the Payee is eligible to apply any such withheld amounts to reduce a tax payment otherwise due (whether by credit, offset or other mechanism) or accepts a refund attributable to such

withheld amounts, the Payee shall pay the Payer the amount of such reduction or refund, plus the actual tax benefit realized resulting from such payment.

(b) **Transfer Taxes and Apportioned Obligations.**

(i) All amounts payable hereunder are exclusive of all recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar taxes imposed or levied by reason of, in connection with or attributable to this Agreement or the transactions contemplated hereby (collectively, “**Transfer Taxes**”). Buyer and Seller shall each be responsible for the payment of fifty percent (50%) all Transfer Taxes, and shall pay all amounts due and owing in respect of any Transfer Taxes, these amounts in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as is stipulated under applicable law.

(ii) All personal property and similar ad valorem obligations levied with respect to the Station Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between Seller, on the one hand, and Buyer, on the other hand, based on the number of days of such taxable period ending on the day prior to the Closing Date (such portion of such taxable period, the “**Pre-Closing Tax Period**”) and the number of days of such taxable period on and after the Closing Date (such portion of such taxable period, the “**Post-Closing Tax Period**”). Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period.

(iii) Apportioned Obligations and Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by applicable law. The paying Party shall be entitled to reimbursement from the non-paying Party in accordance with Section 5.4(b)(i) or Section 5.4(b)(ii), as the case may be. Upon payment of any such Apportioned Obligation or Transfer Tax, the paying Party shall present a statement to the non-paying Party setting forth the amount of reimbursement to which the paying Party is entitled under Section 5.4(b)(i) or Section 5.4(b)(ii), as the case may be, together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying Party shall make such reimbursement promptly but in no event later than ten (10) days after the presentation of such statement.

(c) **Cooperation and Exchange of Information.** Each of Seller and Buyer shall (i) provide the other with such assistance as may reasonably be requested by the other (subject to reimbursement of reasonable out-of-pocket expenses) in connection with the preparation of any tax Return, audit or other examination by any taxing authority or judicial or administrative proceeding relating to liability for taxes in connection with the Station or the Station Assets, (ii) retain and provide the other with any records or other information that may be relevant to such tax return, audit or examination, proceeding or determination and (iii) inform the other of any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any tax return of the other for any period.

(d) **Survival of Covenants.** The covenants contained in this Section 5.4 shall survive until 30 days after the expiration of the applicable statute of limitations (including extensions thereof).

**Section 5.5 1031 Exchange.** Buyer or Seller may conduct an I.R.S. Section 1031 like-kind exchange from or into the assets that are the subject of this Agreement to the fullest extent permitted by law. Each Party agrees to cooperate with the other to execute such consents to assignment of this Agreement as are reasonably necessary or helpful to conduct such exchange. The liabilities of the Parties under this Agreement will not be affected by this cooperation, and each Party will be responsible for its own expenses incurred in connection with such exchange.

**Section 5.6 Marketing Agreement.** Upon the Closing, Buyer and Seller will enter into a marketing agreement (the “Marketing Agreement”), substantially in the form attached hereto as Exhibit A.

**Section 5.7 Letter Agreement.** Upon the Closing, the parties will enter into a letter agreement (the “Letter Agreement”) substantially in the form attached hereto as Exhibit B.

## ARTICLE 6. SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing is subject to satisfaction, or waiver by Seller (to the extent permitted by applicable law), of the following conditions at or prior to Closing:

### **Section 6.1 Bringdown and Closing Certificate.**

(a) The representations and warranties of Buyer made in Article 3 shall be true and correct in all respects as of the date hereof and as of the Closing Date (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date).

(b) Buyer shall have performed the obligations to be performed by it under this Agreement at or prior to Closing in all material respects.

(c) Seller shall have received a certificate (the “**Buyer Closing Certificate**”) dated as of the Closing Date, executed by a duly authorized officer of Buyer, certifying that the conditions set forth in Section 6.1(a) and Section 6.1(b) have been satisfied.

**Section 6.2 Proceedings.** Neither Seller nor Buyer shall be subject to any law or any court or governmental order or injunction restraining, prohibiting or making illegal the consummation of the transactions contemplated hereby.

**Section 6.3 FCC Consent.** The FCC Consent shall have been granted by the FCC.

**Section 6.4 Deliveries.** Buyer shall have made the deliveries required to be made by it under Section 8.2.

**ARTICLE 7.**  
**BUYER CLOSING CONDITIONS**

The obligation of Buyer to consummate the Closing is subject to satisfaction, or waiver by Buyer (to the extent permitted by applicable law), of the following conditions at or prior to the Closing:

**Section 7.1    Bringdown and Closing Certificate.**

(a) Each of the representations and warranties of Seller made in Article 2 shall be true and correct in all respects as of the date hereof and as of the Closing Date (except that those representations and warranties that address matters only as of a particular date need only be true and correct as of such date).

(b) Seller shall have performed the obligations to be performed by it under this Agreement at or prior to Closing in all material respects.

(c) Buyer shall have received a certificate (the “**Seller Closing Certificate**”) dated as of the Closing Date, executed by a duly authorized officer of Seller, certifying that the conditions set forth in Section 7.1(a), Section 7.1(b) and Section 7.4 have been satisfied and attached thereto are (i) true, correct and complete copies of the resolutions or comparable actions duly adopted by the board of directors of the Seller, as applicable, approving and authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (ii) evidence that the FCC’s records show that the FCC Licenses are current, valid and in good standing.

**Section 7.2    Proceedings.** Neither Seller nor Buyer shall be subject to any law or any court or governmental order or injunction restraining, prohibiting or making illegal the consummation of the transactions contemplated hereby.

**Section 7.3    FCC Consent.** The FCC Consent shall have been granted by the FCC and shall have become a Final Order. For purposes of this Agreement, the term “**Final Order**” shall mean that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

**Section 7.4    Absence of Any Material Adverse Effect.** There shall not have been any effect, fact, event, circumstance or change that, individually or in the aggregate, has, or would reasonably be expected to have, a material adverse effect on (i) the business, condition (financial or otherwise), assets or results of operations of the Station taken as a whole or (ii) the ability of Seller to perform its obligations under this Agreement.

**Section 7.5    Deliveries.** Seller shall have made the deliveries required to be made by it under Section 8.1.

With respect to the conditions to Buyer's and Seller's respective obligations to consummate the Closing as provided hereunder and each such Party's right to terminate this Agreement as provided in Section 10.1, neither Seller nor Buyer may rely on the failure of any condition set forth in Article 6 or Article 7, as applicable, to be satisfied if such failure was caused by such Party's failure to act in good faith or to use reasonable best efforts to cause the condition to be satisfied to the extent required by Section 4.3.

## ARTICLE 8. CLOSING DELIVERIES

**Section 8.1 Seller Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Buyer, duly executed by Seller or such other signatory as may be required by the nature of the document (if applicable), the following:

(a) an assignment of the FCC Licenses from Seller, in substantially the form of Exhibit C (the "**Assignment of the FCC Licenses**"), assigning to Buyer the FCC Licenses (including the Station's call letters);

(b) an assignment and assumption agreement from Seller, in substantially the form of Exhibit D (the "**Assignment and Assumption Agreement**"), assigning to Buyer the Station Assets other than the FCC Licenses and the Real Property Leases and transferring to Buyer the Assumed Liabilities;

(c) with respect to each Real Property Lease, either (i) an Assignment and Assumption of Lease in substantially the form attached hereto as Exhibit E (each, a "**Lease Assignment and Assumption Agreement**"), duly executed by Seller and, if necessary, Seller's signature shall be witnessed or notarized or (ii) such other documents as may be required by the applicable landlord to give effect to the assignment and assumption of such Real Property Lease;

(d) the Letter Agreement;

(e) the Seller Closing Certificate;

(f) the Required Consents;

(g) a statement generated by the Sunlight Peak User's Association (the "**Association**") indicating that, as of the date of Closing, Seller has paid any and all membership dues and is a member in good standing of the Association;

(h) a bill of sale, in substantially the form of Exhibit F;

(i) releases, in suitable form for filing (as applicable) and otherwise in form and substance reasonably satisfactory to Buyer, (i) of any security interests granted in the Station Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens) and (ii) releasing Buyer from any post-Closing liability to Seller in connection with the Station and Station Assets, except for liability under this Agreement or the Ancillary Agreements;

(j) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to consummate the transactions contemplated by this Agreement.

**Section 8.2 Buyer Deliveries.** At the Closing, Buyer shall deliver to Seller the Purchase Price and the following, duly executed by Buyer or such other signatory as may be required by the nature of the document (if applicable):

- (a) the Assignment and Assumption Agreement;
- (b) the Lease Assignment and Assumption Agreements;
- (c) the Buyer Closing Certificate; and

(d) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to consummate the transactions contemplated by this Agreement.

## **ARTICLE 9. SURVIVAL AND INDEMNIFICATION**

**Section 9.1 Survival.** Notwithstanding any right of any Party to fully investigate the affairs of the other Party and not withstanding any knowledge of facts determined or determinable by such Party pursuant to such investigation or right of investigation, each Party has the right to rely fully upon the representations and warranties, covenants and agreements of each other Party contained in this Agreement. All representations and warranties and all pre-Closing covenants and agreements contained in this Agreement, or in any document made pursuant hereto, shall survive the Closing until 5:00 p.m., Central time, on the second anniversary of the Closing Date; provided that the representations and warranties of Seller set forth in Section 2.1 [*Organization*], Section 2.2 [*Authorization*], Section 2.5 [*Station Assets*], Section 2.10 [*Taxes*], and Section 2.14 [*No Finder*] and the representations and warranties of Buyer set forth in Section 3.1 [*Organization*], Section 3.2 [*Authorization*] and Section 3.5 [*No Finder*], shall each survive the Closing indefinitely, or, if shorter, until sixty (60) days following the expiration of the applicable statute of limitations (including all applicable periods of extension). Any obligation of a Party to indemnify any other person or entity entitled to indemnification under this Article 9 in respect of any breach of any covenant or agreement shall survive until the earlier of performance of the covenant or agreement and the applicable statute of limitations, except as otherwise specified herein. Notwithstanding the foregoing, a Party's right to indemnification under this Article 9 shall continue to survive until the claim for indemnification has been satisfied or otherwise resolved as provided in this Article 9 if an Indemnification Certificate or Claim Notice (each as defined below) with respect to such claim shall have been given prior to the expiration of the applicable survival period under this Section 9.1.

### **Section 9.2 Indemnification.**

(a) Subject to this Article 9, from and after Closing, Seller shall defend, indemnify, and hold harmless Buyer and its affiliates, and their respective officers, directors,

employees and agents (collectively, “**Buyer Indemnitees**”) from and against, and compensate and reimburse the Buyer Indemnitees for, any and all losses, damages, assessments, judgments, fines, penalties, amounts paid in settlement and reasonable costs and expenses incurred in connection therewith, including reasonable costs and expenses of suits and proceedings, and reasonable fees and disbursements of counsel (collectively, “**Losses**”), suffered or incurred by any Buyer Indemnatee arising out of or resulting from: (i) any breach of any representations or warranties of Seller contained in this Agreement or in the Seller Closing Certificate; (ii) any breach or nonfulfillment of any agreement or covenant of Seller under this Agreement; (iii) the Retained Liabilities; and (iv) the Transfer Taxes and Apportioned Obligations allocated to Seller pursuant to Section 5.4.

(b) Subject to this Article 9, from and after Closing, Buyer shall defend, indemnify, and hold harmless Seller and its affiliates, and their respective officers, directors, employees and agents (collectively, “**Seller Indemnitees**”) from and against, and compensate and reimburse the Seller Indemnitees for, any and all Losses suffered or incurred by any Seller Indemnatee arising out of or resulting from: (i) any breach of any representations or warranties of Buyer contained in this Agreement or in the Buyer Closing Certificate; (ii) any breach or nonfulfillment of any agreement or covenant of Buyer under this Agreement; (iii) the Assumed Liabilities; and (iv) the Transfer Taxes and Apportioned Obligations allocated to Buyer pursuant to Section 5.4.

### **Section 9.3    Procedures.**

(a) Except as provided in Section 9.3(b) through Section 9.3(d) with respect to Third Party Claims (as defined below), in the event of a claim made by a Buyer Indemnatee or a Seller Indemnatee (the “**Indemnified Party**”), the Indemnified Party shall give reasonably prompt written notice to Seller (in the case of a Buyer Indemnatee) or Buyer (in the case of a Seller Indemnatee) (the “**Indemnifying Party**”), which notice (an “**Indemnification Certificate**”) shall: (i) state that the Indemnified Party has paid or accrued or reasonably anticipates that it will have to pay or accrue Losses that are subject to indemnification by the Indemnifying Party pursuant to Section 9.2(a) or Section 9.2(b), as applicable, and (ii) specify in reasonable detail the individual items and amounts of such Losses (if known), the date each such item was paid or accrued, or the basis for such anticipated Loss (if known), and a description of the basis of such Indemnified Party’s claim for indemnification; provided, however, that the failure to give reasonably prompt notice shall not relieve the applicable Indemnifying Party of its indemnification obligations under this Agreement except to the extent that the Indemnifying Party is materially prejudiced by any delay in receiving such notice. In the event that the Indemnifying Party agrees to or is determined to have an obligation to reimburse the Indemnified Party for Losses as provided in this Article 9, the Indemnifying Party shall promptly (but, in any event, within thirty (30) days) pay such amount to the Indemnified Party by wire transfer of immediately available funds to the account specified in writing by the Indemnified Party.

(b) An Indemnified Party shall give prompt written notice (such notice, a “**Claim Notice**”) to the Indemnifying Party of any demand, suit, claim, or assertion of liability by a Third Party that is subject to indemnification hereunder (a “**Third Party Claim**”), but a failure to give such notice or delaying such notice shall not affect the Indemnified Party’s rights or the Indemnifying Party’s obligations, except to the extent the Indemnifying Party’s ability to

remedy, contest, defend, or settle with respect to such Third Party Claim is thereby prejudiced. The Claim Notice shall be accompanied by reasonable supporting documentation submitted by the third party making such Third Party Claim and shall describe in reasonable detail (to the extent known by the Indemnified Party) the facts constituting the basis for such Third Party Claim and the amount of the claimed damages.

(c) The Indemnifying Party shall have the right, exercisable by delivering written notice to the Indemnified Party within thirty (30) days following receipt of a Claim Notice, to undertake the defense or opposition to such Third Party Claim with counsel reasonably satisfactory to the Parties; provided, however, that the Indemnifying Party shall not be entitled to undertake the defense or opposition of such Third Party Claim if (i) such Third Party Claim seeks the Indemnified Party becoming subject to injunctive or other equitable relief, (ii) such Third Party Claim has been brought by or on behalf of any governmental authority or in connection with taxes or any criminal or regulatory enforcement action, or (iii) such Third Party Claim is reasonably likely to result in a regulatory enforcement action by a Governmental Authority against the Indemnified Party. In the event that the Indemnifying Party does not undertake such defense or opposition in a timely manner, the Indemnified Party may undertake the defense, opposition, compromise, or settlement of such Third Party Claim with counsel selected by it at the Indemnifying Party's cost.

(d) Notwithstanding anything herein to the contrary:

(i) the Party not controlling the defense, opposition, compromise, or settlement of a Third Party Claim (the "**Non-Controlling Party**") shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise, or settlement of such Third Party Claim, and shall have the right to reasonably consult with the Party controlling the defense, opposition, compromise, or settlement of a Third Party Claim (the "**Controlling Party**") and its counsel concerning such Third Party Claim, and the Controlling Party and the Non-Controlling Party and the indemnified Party shall cooperate in good faith with respect to any such Third Party Claim;

(ii) the Controlling Party shall keep the Non-Controlling Party reasonably advised of the status of such Third Party Claim and the defense, opposition, compromise or settlement thereof; and

(iii) The Controlling Party shall not, without the Non-Controlling Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), settle or compromise any Third Party Claim or consent to entry of any judgment with respect to any Third Party Claim which (A) does not include a release of the Non-Controlling Party from all liability in respect of such Third Party Claim and (B) includes any remedy other than the payment of money.

**Section 9.4 Exclusive Remedy.** Subject to Section 11.11, each Party acknowledges and agrees that, following the Closing, the remedies provided for in this Article 9 shall be the sole and exclusive monetary remedies for claims and damages available to the Parties and their respective affiliates arising out of or relating to this Agreement and the transactions contemplated hereby, except that nothing herein shall limit the liability of either Party for

intentional misrepresentation, willful misconduct or fraud. This Section 9.4 shall not affect either Party's ability to exercise any rights or remedies available to such Party under any Ancillary Agreement with respect to Ancillary Agreements which have remedies that are not addressed specifically in this Agreement.

## **ARTICLE 10. TERMINATION AND REMEDIES**

**Section 10.1 Termination.** This Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice from Buyer to Seller if (i) there has been a breach by Seller of a representation or warranty of Seller contained in this Agreement or (ii) there shall be a breach by Seller of any covenant, agreement or obligation of Seller in this Agreement, and such breach described in clause (i) or (ii) would result in the failure of a condition set forth in Section 7.1 that has not been waived by Buyer, or in the case of a breach of any covenant, agreement or obligation, is not cured within the Cure Period (as defined below); provided, that Buyer may not terminate this Agreement pursuant to this Section 10.1(b) if Buyer is in material breach of this Agreement;
- (c) by written notice from Seller to Buyer if (i) there has been a breach by Buyer of a representation or warranty of Buyer contained in this Agreement or (ii) there shall be a breach by Buyer of any covenant, agreement or obligation of Buyer in this Agreement, and such breach described in clause (i) or (ii) would result in the failure of a condition set forth in Section 6.1 that has not been waived by Seller, or in the case of a breach of any covenant, agreement or obligation, is not cured within the Cure Period; provided, that Seller may not terminate this Agreement pursuant to this Section 10.1(c) if Seller is in material breach of this Agreement; or
- (d) by written notice of Buyer to Seller, or by Seller to Buyer, if (i) the FCC denies or dismisses the FCC Application or (ii) the FCC Application is designated for an evidentiary hearing; or
- (e) by written notice of Buyer to Seller, if the Closing does not occur by the first anniversary of the release date of the FCC public notice accepting the FCC Application for filing (the "**End Date**").

The term "**Cure Period**" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach hereunder and continuing until the earlier of (i) 5:00 p.m., Eastern time, on the fifteenth (15th) calendar day thereafter and (ii) the fifth (5th) Business Day prior to the Closing Date.

**Section 10.2 Effect of Termination.** Any notice of termination given pursuant to Section 10.1 shall state the termination provision in this Agreement that such terminating Party is claiming provides a basis for termination of this Agreement. Termination of this Agreement pursuant to the provisions of Section 10.1 shall be effective upon and as of the date of delivery of

such written notice as determined pursuant to Section 11.3. In the event of the termination of this Agreement pursuant to Section 10.1 by Buyer or Seller, this Agreement shall be terminated and have no further effect, except that Section 5.1 (Confidentiality), Section 5.2 (Announcements), this Section 10.2 (Effect of Termination), Section 10.3 (Withdrawal of Certain Filings) and Article 11 (Miscellaneous) shall survive any termination of this Agreement. Nothing in this Section 10.2 shall relieve either Party of liability for breach of this Agreement or fraud prior to the termination hereof.

**Section 10.3 Withdrawal of Certain Filings.** As soon as practicable following a termination of this Agreement for any reason, but in no event more than thirty (30) days after such termination, Buyer or Seller shall, to the extent practicable, withdraw all filings, applications and other submissions relating to the transactions contemplated by this Agreement filed or submitted by or on behalf of such Party, to or with any governmental authority or other person or entity.

## **ARTICLE 11. MISCELLANEOUS.**

**Section 11.1 Expenses.** Whether or not the Closing occurs, each Party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement, except as provided in Section 4.3.

**Section 11.2 Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns. Notwithstanding the foregoing, no Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which such consent shall not be unreasonably withheld, conditioned or delayed, except any Party may, without such consent, assign its rights and obligations under this Agreement to an entity under common control with such Party (i.e., an entity to which such Party could assign or transfer a FCC broadcast television station authorization using FCC Form 316).

**Section 11.3 Notices.** Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement (each, a “**Notice**”) shall be in writing and shall be sent and deemed delivered on the date of personal delivery or e-mail transmission confirmed by the named recipient or confirmed delivery by a nationally recognized overnight courier service, or on the third day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any Party may request by written notice):

if to Buyer, then to:

TV-49, Inc.  
26 North Halsted Street  
Chicago, IL 60661  
Attention: Evan Fieldman  
Fax:  
Email: efieldman@metv.com

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

Covington & Burling LLP  
One City Center  
850 Tenth Street NW  
Washington, DC 20001  
Attention: Mace Rosenstein  
Fax: (202) 778-5024  
Email: mrosenstein@cov.com

if to Seller, then to:

Marquee Broadcasting Colorado  
P.O. Box 4009  
Salisbury, MD 21803  
Attention: Lindsay Adkins  
Email: brian\_lane@wmdt.com

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

Dan Kirkpatrick  
Fletcher Heald & Hildreth  
1300 17<sup>th</sup> Street N #1100  
Arlington, VA 22209  
kirkpatrick@fhhlaw.com

**Section 11.4 Severability.** If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no Party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal, or unenforceable provision deleted and the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**Section 11.5 Entire Agreement; Amendment.** This Agreement, the Schedules and Exhibits hereto and the Ancillary Agreements constitute the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and supersede all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the Party against whom enforcement of such amendment or waiver or consent is sought. The waiver by a Party of any right hereunder or of the failure to perform or of a breach by any other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise.

**Section 11.6 No Third Party Beneficiary.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the Parties hereto, their respective successors and permitted assigns and the Seller Indemnitees and Buyer Indemnitees (to the extent of their respective rights under Article 9).

**Section 11.7 Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by

.pdf attachment to an e-mail, facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of this Agreement.

**Section 11.8 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) except where the context otherwise requires, (i) the word “or” is not exclusive, (ii) wherever used, the singular includes the plural, the plural the singular, and (iii) “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase does not mean simply “if”; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole, and (d) the term “Business Day” means any day other than Saturday, Sunday or a day on which banking institutions in New York, New York are permitted or obligated by law to remain closed. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. References in this Agreement to monetary amounts are denominated in United States Dollars.

**Section 11.9 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 11.10 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of New York, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction. Subject to Section 11.11, the Parties hereby irrevocably and unconditionally (a) consent to the exclusive jurisdiction of the courts of the State of New York and the United States District Court for the Southern District of New York (the “**Chosen Courts**”) for any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement, and agree not to commence any action, suit or proceeding (other than appeals therefrom) related thereto except in such courts; and (b) waive any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Chosen Courts, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE.

**Section 11.11 Equitable Relief.** The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that a Party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which it is entitled at law or in equity. Each Party hereby waives (a) any requirement that any other Party post a bond or other security as a condition for obtaining any such relief, and (b) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

SELLER:

MARQUEE BROADCASTING COLORADO, INC.

By: 

Name:

Brian J. Lane

Title:

CFO

BUYER:

TV-49, INC.

By: 

Name:

EVAN FIELDMAN

Title:

VICE PRESIDENT

**LIST OF SCHEDULES AND EXHIBITS**

|                 |   |
|-----------------|---|
| Schedule 1.1(a) | FCC Licenses                                      |
| Schedule 1.1(b) | Tangible Personal Property                        |
| Schedule 1.1(c) | Real Property Leases                              |
| Schedule 1.1(d) | Assumed Contracts                                 |
| Schedule 2      | Knowledge of Seller                               |
| Schedule 2.3    | Conflicts   |
| Schedule 4.7    | Required Consents                                 |
|                 |   |
| Exhibit A       | Form Marketing Agreement                          |
| Exhibit B       | Form of Letter Agreement                          |
| Exhibit C       | Form of Assignment of FCC Licenses                |
| Exhibit D       | Form of Assignment and Assumption Agreement       |
| Exhibit E       | Form of Lease Assignment and Assumption Agreement |
| Exhibit F       | Bill of Sale                                      |