

# **ASSET PURCHASE AGREEMENT**

*Entered into Between*

**SHAWNEE BROADCASTING, INC.**  
[ AS SELLER ]

*and*

**TYLER BROADCASTING CORPORATION**  
[ AS BUYER ]

*FOR THE PURCHASE AND SALE OF ASSETS  
PERTAINING TO*

**TELEVISION STATION**

**KQOK (TV), Shawnee, Oklahoma**

April 14<sup>th</sup>, 2004

# ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, (this "**Agreement**") is made and entered as of April \_\_, 2004 between Shawnee Broadcasting, Inc., an Arkansas corporation (the "**Seller**"), and **Tyler Broadcasting Corporation**, a Oklahoma corporation (the "**Buyer**" and, together with the Seller, the "**Parties**").

Seller is the owner and operator of full service Television Station **KAOK (TV)**, Shawnee, Oklahoma, Facility ID 77480 (the "**Asset Station**"), and Seller is the licensee of the Asset Station pursuant to valid licenses, permits, and authorizations issued by the Federal Communications Commission (the "**Commission**" or "**FCC**").

In accordance with FCC requirements, the Seller desires to sell and assign the Asset Station to Buyer and Buyer desires to buy and acquire the Asset Station from the Seller. The Seller and the Buyer will not be able to consummate the transaction contemplated by this Agreement, and the FCC Licenses, Permits, and Authorizations may not be transferred to the Buyer, until the Commission has granted its approval of the same.

Now, **THEREFORE**, in consideration of the premises and the mutual agreements, promises, covenants and warranties set forth below, the Parties, intending to be legally bound, agree as follows:

## ARTICLE 1. DEFINITIONS.

Unless otherwise stated in this Agreement, the following terms will have the following meanings:

**"Acquired Assets"** means the assets to be sold and purchased pursuant to this Agreement, as further delineated in Article 2.

**"Agreement"** has the meaning set forth in the preamble to this Agreement.

**"Application"** means the application that the Parties will join in and file with the Commission requesting its written approval of the terms of this Agreement, the

assignment of the FCC Licenses, Permits, and Authorizations by the Seller to the Buyer.

**"Asset Station"** has the meaning set forth in the preamble to this Agreement.

**"Assumed Contracts"** has the meaning set forth in Section 2.6.

**"Assumed Leases"** has the meaning set forth in Section 2.3.

**"Assumed Liabilities"** has the meaning set forth in Section 3.1.

**"Business Day"** means any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the city of Oklahoma City, Oklahoma are regularly open for business.

**"Buyer"** has the meaning set forth in the preamble to this Agreement.

**"Buyer-Rep Damages"** has the meaning set forth in Section 12.3.1.

**"Closing"** means the consummation of the purchase and sale of the Asset Station and the Acquired Assets and the related transactions contemplated by this Agreement.

**"Closing Date"** means a date to be designated by the Buyer upon which the transactions contemplated by this Agreement will be consummated, which date will not be later than the fifth (5th), Business Day after the Commission's approval of the Application has become a Final Order; provided that the Buyer may waive such finality and, if so, designate an earlier Closing Date following the release of a Public Notice by the Commission that the Application has been approved (in which case, at the Closing, the Buyer and the Seller will execute a rescission and unwind agreement with respect to the transactions contemplated by this Agreement containing terms mutually satisfactory to the Parties).

**"Closing Place"** means the offices of Seller specified in Section 15.6.1, unless otherwise designated by the Parties.

**"Commission"** has the meaning set forth in the preamble to this Agreement.

**"Communications Act"** means the Communications Act of 1934, as amended.

**"Consent"** means any consent, grant, order, approval, authorization or other action of, or any filing with or notice to or other action with respect to, any governmental entity or any other Person that is required for the execution, delivery or performance of this Agreement or any other Transaction Document or the consummation of any of the transactions contemplated hereby or thereby, whether such requirement arises pursuant to any law, other legal requirement or contract, including any of the foregoing that is required in order to prevent a breach of or a default under or a termination or modification of, or acceleration or alteration of any obligation under, any Assumed Contract or any contract to which the Seller is a party or to which it or any of its assets is subject.

**"Construction Permit Application"** means the application for change in operating power for analog TV Service FCC File Number \_\_\_\_\_.

**"Continuing Permitted Liens"** has the meaning set forth in the definition of the term "Permitted Lien."

**"Damages"** has the meaning set forth in Section 12.2.

**"Effective Time"** means 12:01 a.m., Oklahoma time, on the Closing Date.

**"Environmental Condition"** has the meaning set forth in Section 7.10.1.

**"Environmental Compliance"** has the meaning set forth in Section 7.10.1.

**"Environmental Law"** has the meaning set forth in Section 7.10.1.

**"Environmental Lien"** has the meaning set forth in Section 7.10.1.

**"Excluded Assets"** means the following assets of the Seller: (a) except as provided in Section 11.1, cash on hand or in bank accounts, (b) the Seller Receivables, (c) contracts other than the Assumed Contracts, (d) except as provided in Section 11.1, contracts of insurance for the Asset Station or the Assets and the right to proceeds thereunder, and (e) corporate books and records (provided that the Seller will provide the Buyer with copies of any financial records that the Buyer may require in making Federal, State, or local tax filings, Commission filings or other filings or correspondence required by Federal, State or local governmental authorities); and (f) any assets based in or related to the Little Rock Master Control facility.

**"FCC"** has the meaning set forth in the preamble to this Agreement.

**"FCC Licenses"** means all licenses, construction permits, renewals, extensions, modifications, additions and other authorizations from the Commission for the operation of the Asset Station, including any auxiliary broadcast licenses or permits.

**"FCC Rules"** means the rules, regulations and policies of the Commission.

**"Final Order"** means an order of the Commission, or its staff pursuant to delegated authority, granting approval of the assignment of the FCC Licenses to the Buyer, which order is no longer subject to rehearing, reconsideration or review by the Commission, or to a request for stay, an appeal or review by any court under the Communications Act or the FCC Rules.

**"Financial Statements"** has the meaning set forth in Section 7.11.

**"GAAP"** means United States generally accepted accounting principles and, to the extent consistent therewith, the Seller's accounting policies and practices.

**"Material Adverse Change"** means (a) if any portion of the Station Assets exceeding \$50,000 in replacement value is lost, damaged or destroyed, sold or otherwise alienated, and such assets have not been replaced by assets having greater or equally value and utility to the operations of the Asset Station; or (b) any other material adverse change in the assets, operations or results of operations of the Asset

**"Longer-Term Reps"** has the meaning set forth in Section 12.1.

**"Lien"** means any lien at common law, or any statutory or judgment lien, including any tax lien or mechanic's lien, claim, charge, attachment, garnishment, security interest, encroachment, prescriptive easement or other encumbrance.

**"Knowledge"** means (a) with respect to any Seller, the actual knowledge of any director, manager, officer or management personnel of any Seller, as well as the knowledge that any such individual would have after reasonable inquiry into the matter in question, and (b) with respect to the Buyer, the actual knowledge of any director, manager, officer or management personnel of the Buyer as well as the knowledge that any such individual would have after reasonable inquiry into the matter in question; and the terms "know," "knows," and "known" and like terms will have correlative meanings.

**"Intellectual Property"** has the meaning set forth in Section 2.7.

**"Intangible Assets"** has the meaning set forth in Section 2.7.

**"Indemnifying Party"** has the meaning set forth in Section 12.4.1.

**"Indemnified Party"** has the meaning set forth in Section 12.4.1.

**"Immediately Available Funds"** means cash, a certified bank cashier's check, or funds immediately available by wire transfer, all in, or payable in, the valid currency and legal tender of the United States.

**"Hazardous Materials"** has the meaning set forth in Section 7.10.1.

Station or the Seller or in the right or ability of the Seller to perform its obligations under any Transaction Document.

**"Parties"** has the meaning set forth in the preamble to this Agreement.

**"Permitted Lien"** means (i) any Lien that secures the payment of taxes that does not in any material respect detract from, impair or interfere with the present use or the marketability of such property, (iv) a mechanics lien or other Lien arising by operation of law between the date hereof and the Closing Date, provided that the obligation underlying such Lien is paid or bonded to the Buyer's reasonable satisfaction by the Seller as of the time of the Closing, (v) the lessor's ownership interest in property leased by the Seller as lessee, (vi) any restriction on transfer pursuant to the Communications Act or the FCC Rules, (vii) any Lien in favor of the Buyer (the foregoing Liens being the **"Continuing Permitted Liens"**), or (viii) any other Lien described in the attached **Appendix B**.

**"Person"** means any individual, corporation, partnership, limited liability company, trust, association, joint venture or any other legal or similar entity or quasi-entity.

**"Post-Closing Escrow Agent"** means the initial escrow agent pursuant to the Post-Closing Escrow Agreement, or any successor thereto as the escrow agent pursuant to the Post-Closing Escrow Agreement.

**"Post-Closing Escrow Agreement"** means an agreement to be entered into as of the Closing Date by and between the Seller and the Buyer and the Post-Closing Escrow Agent in the form of the attached **Appendix C** as in effect from time to time.

**"Post-Closing Escrow Deposit"** has the meaning set forth in Section 4.4.

**"Pre-Closing Escrow Agent"** means Kalil & Co., Inc., or any successor thereto as the escrow agent pursuant to the Pre-Closing Escrow Agreement.

**"Pre-Closing Escrow Agreement"** means an agreement dated as of the date of this Agreement by and between the Seller, the Buyer, and the Pre-Closing Escrow Agent in the form of the attached **Appendix D** as in effect from time to time.

**"Pre-Closing Escrow Deposit"** has the meaning set forth in Section 4.3.

**"Real Property"** has the meaning set forth in Section 2.3.

**"Retained Liabilities"** has the meaning set forth in Section 3.2.

**"Seller Note"** has the meaning set forth in Section 4.4.

**"Seller-Rep Damages"** has the meaning set forth in Section 12.2.1.

**"Seller"** has the meaning set forth in the preamble to this Agreement.

**"Seller Receivables"** means the accounts receivable of the Seller relating to the Asset Station in each case as of the Effective Time, and in each case other than in respect of trade or barter arrangements.

**"Station Assets"** means the Acquired Assets.

**"Station"** has the meaning set forth in the preamble to this Agreement.

**"Tangible Personal Assets"** has the meaning set forth in Section 2.4.

**"Transaction Document"** means this Agreement, the Pre-Closing Escrow Agreement, the Post-Closing Escrow Agreement, the Seller Note and each other agreement, instrument or other document entered into or delivered by one or more of the Parties pursuant to or in connection with this Agreement.

## **ARTICLE 2. PURCHASE AND SALE OF ASSETS.**



On the Closing Date at the Closing Place, the Seller will sell, assign, transfer, convey, and deliver to the Buyer, by instruments in form satisfactory to the Buyer, all of the assets and properties of the Seller, real and personal, tangible and intangible, of every kind and description owned or used by the Seller, that are used, useful, or intended for use, in the business and operation of the Asset Station, including real and personal property, plant and equipment, rights under contracts and leases, inventories, intangibles and goodwill, but excluding the Excluded Assets (the "**Acquired Assets**"). Without limiting the generality of the foregoing, the Acquired Assets will include:

**2.1 FCC Licenses.** The FCC Licenses and all related applications, and all right, title and interest in and to the Asset Station call letters KQOK (TV). A list of the FCC Licenses are set forth in the attached **Appendix E**.

**2.2 Other Licenses.** Other licenses, permits and authorizations issued or granted by any other governmental or regulatory agency or authority.

**2.3 Real Property Interests.** All land, leasehold and other interests of every kind and description in real property, buildings, structures, towers and improvements, including all easements, rights of way, permits and consents, if any, relating to or used in connection therewith, that are owned or leased by the Seller as of the date of this Agreement (descriptions of which are set forth in the attached **Appendix F**, including each of the Seller's rights under any lease (an "**Assumed Lease**") pursuant to which Seller holds or uses any real property (each of which is described in the attached **Appendix F**, and those interests acquired between the date of this Agreement and the Closing as permitted by this Agreement (the "**Real Property**").

**2.4 Tangible Personal Assets.** All tangible personal property, physical assets, fixtures, leasehold improvements, furniture and equipment, including transmitting and studio equipment, tubes, remote equipment, supplies, record, compact disc and tape libraries, computers and software and data files, vehicles, tools and spare parts, if any, whether now owned or subsequently acquired by the Seller, that are used, useful, or intended for use in the operation of the Asset Station, wherever situated, except the Master Control facility located in Little Rock, Arkansas, including all items listed in the attached **Appendix G** together with any replacements or additions made between the date of this Agreement and the Closing, less any retirements made in the ordinary and usual course of business in connection with the acquisition of similar property or assets (the "**Tangible Personal Assets**").

**2.5 Advertising Contracts** The Buyer may at its discretion agree in writing to assume certain advertising contracts of the Seller. The Seller will furnish the Buyer a complete schedule of all such contracts on the Closing Date, and at that time the Buyer will identify the contracts it desires to assume, if any.

**2.6 Other Assumed Contracts.** The contracts listed in the attached *Appendix H* and any other contract to which the Seller is a party with respect to the Asset Station and that the Buyer may expressly agree in writing to assume at the Closing, in each case as in effect on the Closing Date (collectively with the Assumed Leases and the contracts described in Section 2.6, the "*Assumed Contracts*").

**2.7 Intangible Assets.** All intangible property now owned or held by the Seller and used or held or intended for use by the Seller in connection with the operation of the Asset Station, including the property listed in the attached *Appendix I* and that acquired between this date and the Closing (the "*Intangible Assets*"), including an unrestricted right to the use of any copyrights, program rights (including all programs and programming materials and elements of whatever form or nature owned or held by the Seller, whether recorded on tape or other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights owned by or licensed to the Seller, or used by the Seller in connection with the business and operations of the Asset Station, together with all such programs, materials, elements, and copyrights acquired through the Closing Date), service marks, trademarks, tradenames, logos, promotions, jingles, slogans, original copy, trade secrets, proprietary technical information, all other intellectual property rights, computer programs and software (the "*Intellectual Property*").

**2.8 Public Inspection File.** A complete set of all documents maintained in the Asset Station's public inspection file pursuant to the FCC Rules.

**2.9 Station Logs and Business Records.** The program, operating and maintenance logs of the Asset Station, together with such files and records pertaining to the operation of the Asset Station, if available, as the Buyer may reasonably request, including advertiser lists, advertising studies, sales correspondence, analyses, reports and studies by consultants, promotional materials, credit and sales reports, copies of Assumed Contracts, programming information and studies, engineering studies or reports, technical information, and engineering data, if available.

**2.10 Goodwill.** All of the Seller's goodwill in and going concern value of, the Asset Station.

### ARTICLE 3. LIABILITIES OF THE SELLER.

**3.1 Assumed Liabilities.** The Acquired Assets will be sold and conveyed to Buyer free and clear of all Liens (other than Continuing Permitted Liens) and liabilities, except that on the Closing Date, the Buyer will assume and agree to pay and perform those obligations of the Seller that arise after the Effective Time under the Assumed Contracts (other than any Assumed Contract that is not validly assigned to the Buyer at the Closing or as to which any Consent has not been obtained) and other liabilities of the Seller in respect of which the Buyer receives a credit pursuant to Section 4.5 (the "**Assumed Liabilities**").

**3.2 Retained Liabilities.** Except as expressly set forth in Section 3.1, the Buyer will not assume and will not be obligated to pay, perform or discharge any obligation, liability, contract or commitment of the Seller. In accordance with Article 12, the Seller will indemnify and hold the Buyer harmless from, any loss, liability, damage or expense (including reasonable attorney's fees) arising out of the Seller's failure to pay, perform or discharge any of its obligations, liabilities, contracts or commitments that are not Assumed Liabilities (the "**Retained Liabilities**"). Without limiting the generality of the foregoing, the Retained Liabilities will include, and the Buyer will not assume or be liable for:

3.2.1 any liability, claim or obligation, contingent or otherwise, arising out of the business or operation of the Asset Station or any Acquired Asset through the Effective Time (except to the extent of any credit in the Buyer's favor pursuant to Section 4.5);

3.2.2 any liability or obligation under any contract that is not an Assumed Contract or relating to a breach prior to the Closing of any Assumed Contract (except to the extent of any credit in the Buyer's favor pursuant to Section 4.5);

3.2.3 any liability or obligation for any federal, state or local income or other taxes (except to the extent of any credit in the Buyer's favor pursuant to Section 4.5), which accrued prior to the Closing Date;

3.2.4 any liability or obligation with respect to any Excluded Asset;

3.2.5 any liability or obligation to any employee or former employee of the Seller or the Asset Station attributable to any period of time on or before the Closing Date, including any liability for accrued vacation and holiday pay and allowances (except to the extent of any credit in the Buyer's favor pursuant to Section 4.5);

3.2.6 any severance or other liability arising out of the termination of any employee's employment with the Seller;

3.2.7 any duty, obligation or liability relating to any employee benefit, pension, 401(k) or other similar plan, agreement or arrangement provided to employees of the Seller (none of which plans will be assumed by the Buyer); or

3.2.8 any liability or obligation of the Seller arising out of any litigation, proceeding, or claim by any Person relating to the business or operation of the Asset Station prior to the Closing Date, whether or not such litigation, proceeding, or claim is pending, threatened, or asserted before, on, or after the Closing Date.

#### **ARTICLE 4. CONSIDERATION.**

**4.1 Purchase Price.** The aggregate Purchase Price to be paid by the Buyer for the Acquired Assets, subject to the adjustments provided for in Section 4.5 of this Agreement or elsewhere in this Agreement, will be TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00), payable in the manner set forth below.

**4.2 Allocation.** By mutual agreement of the Parties, the Purchase Price will be allocated among the various classes of property, assets and rights that comprise the Acquired Assets, in the manner to be determined by the Buyer in good faith prior to the Closing and set forth in the attached **Appendix J**. The Buyer and the Seller agree to be bound by such allocation for all purposes, including reporting and disclosure requirements of the Internal Revenue Service, and will file returns and reports (including income tax returns) on the basis of such allocation.

**4.3 Pre-Closing Escrow.** The Buyer will deposit Six Hundred TWENTY-FIVE THOUSAND DOLLARS (\$625,000.00) in immediately Available Funds (together with interest and other earnings thereon from time to time, the "**Pre-Escrow Deposit**") into an escrow account with the Pre-Closing Escrow Agent on the date of this Agreement. The Pre-Closing Escrow Deposit will be governed by the terms of the Pre-Closing Escrow Agreement. In the event Closing has not occurred by September 15, 2004, and that said delay was not caused solely by the Seller, Buyer will be required to post an additional \$625,000 in the Pre-Closing Escrow ("**Additional Escrow Deposit**").

**4.4 Payment of Purchase Price and Funding of Post-Closing Escrow.** At the Closing, in order to pay the Purchase Price and provide for the initial funding of the Post-Closing Escrow Deposit: (a) the Parties will instruct the Pre-Closing Escrow Agent to disburse the Pre-Closing Escrow Deposit, (b) the Buyer will deposit with the Post-Closing Escrow Agent the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) (the "**Post-Closing Escrow Deposit**"), to be governed by the terms of the Post-Closing Escrow Agreement, the terms of which shall include that the Post-

Closing Escrow Agreement is for a period of nine months from the Closing Date or June 15, 2005, whichever is earlier and that the money must be used to buy new line for the RFS and/or SWR antenna and/or returning the RFS and/or SWR antenna (this shall include, but not be limited to, tower contractors, professionals, engineering services, equipment and labor) or the money will be disbursed to Seller, (c) the Buyer will issue to the Seller, a promissory note in which the principal and interest total ONE MILLION DOLLARS (\$1,000,000) and in form of the attached **Appendix K** (the "**Seller Note**"), and (d) subject to Section 4.5.2, the Buyer will pay to Seller Immediately Available Funds in the amount of ELEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$11,500,000), less each of the amount of the Pre-Closing Escrow Deposit which will be paid to Seller and the amount of the initial funding of the Post-Closing Escrow Deposit described in clause (b) above.

#### **4.5 Proration of Income and Expenses.**

4.5.1 Except as otherwise provided herein, all income and expenses arising from the conduct of the business and operation of the Asset Station will be prorated between the Buyer and the Seller in accordance with generally accepted accounting principles as of the Effective Time. Such prorated items will include all ad valorem, real estate and other property taxes (but excluding taxes arising by reason of the transfer of the Acquired Assets as contemplated hereby, which will be paid as set forth in Section 14.2 of this Agreement), business and license fees, music and other license fees, utility expenses, and rents.

4.5.2 To the extent practicable, the prorrations and adjustments contemplated by this Section 4.5 will be estimated and paid on the Closing Date. To the extent not made and paid on the Closing Date, such prorrations and adjustments will be made, and an appropriate adjustment will be paid, within sixty (60) days after the Closing Date. In the event of any disputes among the Parties as to such adjustments, the amounts not in dispute will nonetheless be paid at such time and such disputes will be resolved by an independent certified public accountant mutually acceptable to the Parties, and the fees and expenses of such accountant will be paid one-half by the Seller and one-half by the Buyer. The decision of such accountant will be conclusive and binding on the Parties. All prorrations and adjustments made on the Closing Date will be paid in the form of an increase or decrease in the amount payable by the Buyer at the Closing pursuant to Section 4.4(d). All prorrations and adjustments made after the Closing will be paid within five (5) Business Days of the determination thereof.

## **ARTICLE 5. GOVERNMENTAL CONSENTS.**

**5.5 FCC Consent.** It is specifically understood and agreed that the consummation of the transactions contemplated by this Agreement will be subject to the prior approval of the Commission of the assignment of the FCC Licenses without any condition or qualification materially adverse in the Buyer's judgment to the Buyer or to the operation of the Asset Station.

**5.6 Filing and Prosecution of Application.** Upon the execution of this Agreement, the Seller and the Buyer will, each at its own expense, proceed expeditiously to prepare and, within five (5) days after the date of this Agreement, file with the Commission the requisite Application and Construction Permit Application to secure the approval described in Section 6.1, together with such other instruments and documents as may be required. Any filing fee or application processing fee charged by the Commission in connection with the Application will be shared equally by the Buyer, on the one hand, and the Seller, on the other hand. The Parties agree to tender the Application to the Commission within five (5) days after the execution of this Agreement, to thereafter prosecute the Application with diligence, to cooperate with each other in good faith, to use their best efforts to obtain the requisite consent and approval promptly and to carry out the provisions of this Agreement. Each Party will promptly provide the other Party with a copy of any pleading, order or other document served on it relating to the Application.

**5.7 Legal Notice of Application.** Upon the filing of the Application, the Seller will be responsible for providing, and will take the necessary steps to provide, such legal notice concerning such filing in a timely fashion as required by the FCC Rules. The Seller will provide the Buyer with evidence of the Seller's compliance with the Commission's legal notice requirements.

**5.8 Possession and Control.** Between the date of this Agreement and the Closing Date, the Buyer will not control the operation of the Asset Station, and the Seller will remain responsible for such control. Effective on the Closing Date and thereafter, the Seller will have no control over, and no right to intervene or participate in, the operation of the Asset Station.

## **ARTICLE 6. TERMINATION RIGHTS.**

**6.1 Failure to Receive FCC Approval.** Any Party may terminate this Agreement by giving the other Party written notice to that effect at any time (a) after the first anniversary of the date of this Agreement if, at the time such notice is given, either

## **6.5 Seller's Rights Upon Default By Buyer.**

to the Closing Date any event occurs that prevents the regular broadcast transmission of the Asset Station in the normal and usual manner in which the Asset Station had been operating for a period of forty-eight (48) continuous hours or more, then the Seller will give prompt written notice to the Buyer. Whether or not the Seller gives the Buyer such notice, if such facilities are not restored so that normal and usual transmissions are resumed within five (5) Business Days after such event and said transmission thereafter is not continuous for thirty (30) days, then the Buyer will have the right to terminate this Agreement by giving the Seller written notice to that effect, unless the failure of such facilities to be so restored has not had, and is not reasonably likely to have, an adverse effect on the financial condition, assets, business, obligations, prospects, operations or results of operations of such Asset Station.

**6.4 Broadcast Transmission of Stations Prior to Closing Date.** If prior to the Closing Date any event occurs that prevents the regular broadcast transmission of the Asset Station in the normal and usual manner in which the Asset Station had been operating for a period of forty-eight (48) continuous hours or more, then the Seller will give prompt written notice to the Buyer. Whether or not the Seller gives the Buyer such notice, if such facilities are not restored so that normal and usual transmissions are resumed within five (5) Business Days after such event and said transmission thereafter is not continuous for thirty (30) days, then the Buyer will have the right to terminate this Agreement by giving the Seller written notice to that effect.

**6.3 Material Adverse Change.** If a Material Adverse Change occurs between the date of this Agreement and the Closing Date, then the Buyer may terminate this Agreement by giving the Seller written notice to that effect.

**6.2 Termination on Designation for Hearing.** Any Party may terminate this Agreement by giving the other Party notice to that effect if, for any reason, the Application is designated for hearing by the Commission, so long as such notice is given within fifteen (15) days after release of the related Hearing Designation Order; provided that the Buyer may not give such notice at any time when the Buyer is, but the Seller is not, in default of any provision of this Agreement in any material respect, and the Seller may not give such notice at any time when the Seller is, but the Buyer is not, in default of any provision of this Agreement in any material respect.

entitled to keep the Pre-Closing Escrow Deposit and Additional Escrow Deposit.

occurred. In the event Seller terminates pursuant to this provision, Seller shall be from the date of filing the Application with the Commission and Closing has not if the Commission has not approved the Construction Permit Application within one year respect. Seller may terminate this Agreement immediately upon written notice to Buyer but the Buyer is not, in default of any provision of this Agreement in any material material respect, and the Seller may not give such notice at any time when the Seller is, Buyer is, but the Seller is not, in default of any provision of this Agreement in any Application; provided that the Buyer may not give such notice at any time when the become a Final Order, or (b) if the Commission has denied its approval of the the Commission has not granted its approval of the Application or such grant has not

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF THE SELLER.**

Agreement.

6.5.2, the Buyer will have the right to receive and retain the Pre-Closing Escrow Deposit. Upon any termination of this Agreement pursuant to this Article 6, other than under the circumstances described in Section 6.7 **Return of Escrow Deposit.** Upon any termination of this Agreement

any material respect.

6.6 **Buyer's Termination Upon Default By Seller.** Without limiting the Buyer's right to specific performance of the Seller's obligations under this Agreement, at any time when the Seller is, but the Buyer is not, in default of any provision of this Agreement in any material respect, the Buyer may give the Seller written notice of its election to terminate this Agreement based on such default, so long as such notice describes such default in reasonable detail. Such termination will become effective on the tenth (10<sup>th</sup>) Business Day after such notice is given, unless such default has been remedied or cured or the Buyer is then in default of any provision of this Agreement in

the event of any breach of this Agreement by the Buyer.

6.5.2 **Right to Receive Pre-Closing Escrow Deposit.** The Parties recognize that it would be extremely difficult and impractical to ascertain the actual damages sustained by the Seller as a result of the Buyer's default under this Agreement that prevents the Closing from occurring. Accordingly, if the Seller terminates this Agreement pursuant to Section 6.5.1, then the Buyer will forfeit to the Seller the Pre-Closing Escrow Deposit, as liquidated damages. The Parties agree that such forfeiture is not in the nature of a penalty; that no penalty will be payable by the Buyer; and that such sum will constitute full payment for any and all damages suffered by the Seller or any related Person, and the sole remedy available to the Seller or any such Person, in the event of any breach of this Agreement by the Buyer.

any material respect.

6.5.1 **Right to Terminate.** At any time when the Buyer is, but the Seller is not in material default of this Agreement, in default of any provision of this Agreement in any material respect, the Seller may give the Buyer written notice of their election to terminate this Agreement based on such default, so long as such notice describes such default in reasonable detail. Such termination will become effective on the tenth (10<sup>th</sup>) Business Day after such notice is given, unless such default as been remedied or cured or the Seller is then in default of any provision of this Agreement in



As an inducement to the Buyer to enter into each of this Agreement, the Seller hereby represents and warrants to the Buyer as follows:

**7.1 Organization and Standing.** The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arkansas. The Seller is duly qualified and authorized to carry on the business of the Asset Station as presently conducted under the laws of the State of Oklahoma; and the Seller is duly qualified and authorized to do business in each jurisdiction in which the conduct of its business, the ownership of its assets, or its execution, delivery or performance of this Agreement or any other Transaction Document requires it to be so qualified.

**7.2 Authority.** The Seller has full power and authority to enter into, and to consummate the transactions contemplated by, this Agreement and the other Transaction Documents to which it is or will be a party; the Seller's execution, delivery and performance of this Agreement and such other Transaction Documents have been or will be duly approved by the Seller's directors and stockholders; and this Agreement and each such other Transaction Document constitutes a valid and binding obligation of the Seller that is enforceable in accordance with its terms.

**7.3 No Conflicts.** Neither the execution nor the delivery by the Seller of this Agreement or any other Transaction Document to which it is or will be a party, nor the performance by the Seller of its obligations under this Agreement or any such other Transaction Document, nor the consummation by the Seller of the transactions contemplated in this Agreement or any such other Transaction Document, either immediately or upon the giving of notice or the lapse of time or both, does or will:

7.3.1 Violate, conflict with, or constitute a default or an event giving a right to terminate or to accelerate obligations under, or require any notice to or filing with any governmental entity or other Person pursuant to, the certificate or articles or incorporation or formation, bylaws, or other governing or constitutional document with respect to such the Seller, or any law, statute, rule, regulation, ordinance, judgment, decree, order, contract, lease, commitment, agreement, license, permit, franchise, or indenture to which the Seller is a party or by which the Seller or any Acquired Asset is bound or to which any of the foregoing is subject;

7.3.2 Result in the creation or imposition of any Lien, or give any Person (other than the Buyer) any interest in, or rights to, any Acquired Asset.

7.4.1 The attached **Appendix E** sets forth a correct and complete description of the FCC Licenses. The Seller is the holder of the FCC Licenses. The FCC Licenses constitute all of the licenses and authorizations required for and/or presently used in the operation of the Asset Station as normally operated, and the FCC Licenses are in full force and effect unimpaired by any act or omission of the Seller, its officers, directors, stockholders, employees or agents.

7.4.2 Except as set forth in the attached **Appendix E**:

(a) There is not pending or threatened any action by the Commission to revoke, cancel, rescind, modify or refuse to renew in the ordinary course the FCC Licenses.

(b) There is not pending at the Commission any issued or outstanding, or to the knowledge of the Seller threatened, any complaint, notice of violation, notice of apparent liability or of forfeiture.

(c) To the best of Seller's knowledge the Asset Station is operating in material compliance with the FCC Licenses, the Communications Act and the FCC Rules and the Seller has filed all reports, forms and statements required to be filed by the Seller with the Commission.

(d) There is no other Commission, or other licenses, permits or authorizations from governmental or regulatory authorities that are required for the lawful conduct of the business and operation of the Asset Station as currently conducted.

**7.5 FCC Qualifications.** The Seller is qualified under the Communications Act to assign the FCC Licenses to the Buyer. The Seller does not know of any fact that could cause the Commission to withhold its approval of the assignment of the FCC Licenses to the Buyer.

**7.6 Public Inspection File.** To the best of Seller's knowledge the Public Inspection File of the Asset Station is in material order and has been maintained by the Seller in material accordance with FCC Rules.

**7.7 Tangible Personal Assets.**

7.7.1 The attached **Appendix G** contains a true and complete list of the Tangible Personal Assets. Those of the Tangible Personal Assets that the Seller leases as lessee, or licenses as licensee, are identified as such on **Appendix G**. The Tangible Personal Assets are all of the tangible personal property necessary to operate the Asset Station. The Seller has delivered to the Buyer a true, accurate and complete

copy of each lease or license regarding any Tangible Personal Assets leased or

licensed by the Seller.

7.7.2 The Seller (i) is the lawful owner of all of the Tangible Personal Assets that it purports to own, (ii) has valid leasehold interests in the Tangible Personal Assets that it purports to lease, and (iii) has valid license rights (whether as a licensor or licensee) in the Tangible Personal Assets that it purports to license, in all cases free and clear of any Liens, other than Permitted Liens.

**7.8 Intellectual Property.** The attached *Appendix I* sets forth a true and complete list of all Intellectual Property and all material other Intangible Assets. None of the Intellectual Property was granted to the Seller pursuant to any licensing or sublicensing agreement under which the Seller is the licensee. The Intellectual Property is all of the intellectual property necessary to operate the Asset Station. No Person has a right to receive a royalty or similar payment in respect of any Intellectual Property pursuant to any contractual arrangements entered into by the Seller. The Seller has not granted to any other Person any right to use any Intellectual Property pursuant to any licensing agreement. The Seller's use of any intellectual property has not infringed, is not infringing upon or is not otherwise violating the rights of any Person in or to any intellectual property or any asserted proprietary rights of any Person, and the Seller has not received notice alleging that the Seller's use of any intellectual property infringes upon or otherwise violates any rights of any Person in or to any intellectual property or any asserted proprietary rights of any Person. To the Seller's knowledge, no Person is infringing on any Intellectual Property. The Seller's rights with respect to the Intellectual Property is free and clear of any Liens, other than Permitted Liens.

## **7.9 Real Property.**

7.9.1 The attached *Appendix F* contains true and complete descriptions of all the Real Property (including leasehold and other interests), including all buildings, structures and other improvements thereon or therein. The representations and warranties set forth in this Section 7.9 apply to all real property interests owned or held by the Seller, whether land and buildings or leasehold interests and improvements.

7.9.2 The attached *Appendix F* also contains a true and complete description of all leases to which the Seller is, with respect to the Asset Station, a party as a tenant or landlord. The Assumed Leases are valid, binding and enforceable in accordance with their terms. Neither the Seller nor any other party to any Assumed Lease is in default under any Assumed Lease and no condition or event exists which

with the giving of notice, passage of time, or both would give rise to any such default, except, in the case of any Assumed Lease under which the Seller is the lessee, for immaterial defaults that would not permit (with the giving of notice or the passage of time, or both) the other party to terminate such Assumed Lease or any rights of the Seller thereunder. There are no offsets or defenses by the Seller or, to the Seller's knowledge, any other party under any Assumed Lease. The assignment to the Buyer of each Assumed Lease to which the Seller is a party as tenant will not permit the landlord to accelerate the rent or cause such Assumed Lease terms to be renegotiated, or constitute a default under such Assumed Lease, and will not require the consent of any such landlord. There are no amendments or changes to any Assumed Lease that could affect the full use and enjoyment of the leasehold premises, access, parking and use of common areas as provided in such Assumed Lease. All improvements, roads, parking facilities and other construction, if any, contemplated by the Assumed Leases have been fully constructed, paid for and accepted and approved by the requisite parties.

7.9.3 Except as disclosed in the attached **Appendix F or Appendix H**, there are no leases, rental agreements, employment contracts, concession contracts, or contracts for service or maintenance existing and relating to or connected with the occupancy or operation of any Real Property, and the Seller covenants to hold the Buyer harmless from any claim, demand or cause of action which may be asserted against the Buyer arising from any lease, rental agreement, employment contract, or contract for service or maintenance to the contrary.

7.9.4 There are no variances or special use permits relating to any Real Property which are outstanding or which are required for the operation of the Seller's business on any Real Property.

7.9.5 No condemnation of any Real Property has occurred; there is no existing notice covering future such condemnation; and the Seller has no reason to believe that any Real Property will be condemned. The Seller has not received notice or has no knowledge of any pending improvements or special assessments to be made against any Real Property by any governmental authority.

7.9.6 No Real Property violates any provision of any applicable building code, fire regulation, zoning ordinance or regulation, building restriction, or other governmental ordinance, order or regulation, and the Seller will convey the Real Property free of any such violations. The zoning of the Real Property permits the commercial uses of such property intended by the Buyer; that is, for the location of a

television tower, transmitter building, studios and offices, together with all activities related to or incidental to the operation of the Asset Station.

7.9.7 The transmitting facilities of the Asset Station and all other related buildings, fixtures, structures and appurtenances are located entirely within the Real Property listed on **Appendix F** and related easements.

7.9.8 All utilities required for the operation of any Real Property either enter such property through adjoining public streets, or if they pass through adjoining private land they do so in accordance with valid public easements. All necessary utilities (including water, sewer, electricity and telephone facilities) are available to the Real Property and there exists no threatened limitation or reduction on the quality or quantity, to the knowledge of the Seller, of utility services to be furnished to such Real Property. Permanent adequate sewage systems and connections are available to service all Real Property.

7.9.9 There have been issued no notices of violations of law or ordinances, orders or requirements noted in or issued by any department of the State of Oklahoma, or any local governmental agency or authority, affecting any Real Property.

## **7.10 Environmental Matters.**

### **7.10.1 Definitions.**

(a) **"Hazardous Materials"** means any substance, material, liquid or gas defined or designated as hazardous or toxic (or by any similar term) under any Environmental Law, including petroleum or petroleum products and friable materials containing more than one percent (1.0%) asbestos by weight.

(b) **"Environmental Law"** means any federal, state, or local law, statute, ordinance, order, rule, or regulation relating to contamination, pollution, protection of workers, the public, or the environment, or relating to actual or threatened releases, discharges, or emissions into the environment.

(c) **"Environmental Condition"** means any contamination or damage to the environment caused by or relating to the use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injection, escaping, leaching, disposal, dumping or threatened release of Hazardous Materials by the Seller or its predecessors in interest. With respect to claims by employees, Environmental Condition also includes the exposure of persons to Hazardous Materials at a work place of the Seller.

**7.14 Litigation.** Except as disclosed in Appendix S, there are no judgments outstanding, nor any claim, litigation, proceeding or investigation pending, or to the knowledge of the Seller, threatened that might result in any material adverse change in the business, value, condition or earnings of the Asset Station, or any of the Tangible Personal Assets or Real Property, or that could affect the ownership or use by the Buyer, and the Seller has no knowledge of any fact that could form the basis for such claim, litigation, proceeding or investigation. Neither the Asset Station nor the Seller has been operating under or subject to, or in default of, any order, writ, injunction, or decree of any court or federal, state, municipal, or other governmental department, commission, board, agency, or instrumentality, foreign or domestic, and the Seller does not know of any fact that would give rise to such an order, writ, injunction or decree. The Seller has not received any inquiry, written or oral, from any federal, state or local agency concerning the operation or business of the Asset Station that could have a material adverse effect on the operation of the Asset Station, and the Seller has no knowledge of any fact that could form the basis for such an inquiry. There is no

and other insurance with respect to the Acquired Assets.

**7.13 Insurance.** The Seller has in force adequate property damage, liability

presently used.

the purpose for which they are intended and for the purpose for which they are Real Property are in operating condition and repair and are adequate and suitable for date of this Agreement, all of the Tangible Personal Assets and improvements on the of this Agreement, all of the Tangible Personal Assets and improvements on the **7.12 Adequacy, Condition and Maintenance of Equipment.** As of the

financial statements for the same years ("Financial Statements").

the consolidating balance sheets of the Seller as of December 31, 2003, including days of the execution of this Agreement, to the Buyer correct and complete copies of **7.11 Financial Information.** The Seller has, or will delivered within fifteen

compliance with Environmental Laws.

Asset Station, the Real Property and the Tangible Personal Property) are in full material (a) To the best of Seller's knowledge, Seller and the Acquired Assets (including the

**7.10.2 Seller's Compliance with Environmental Laws.**

any Environmental Law.

(e) "Environmental Noncompliance" means any violation of

body, pursuant to any Environmental Law.

attaching to any Acquired Asset by Federal, State, or local court, agency, or regulatory (d) "Environmental Lien" means any Lien imposed on or

litigation or proceeding, or, to the Seller's Knowledge, investigation of any nature pending or threatened against or affecting the Seller, nor is there any fact that could form the basis of such litigation, proceeding or investigation, that could affect the Seller's ability fully to carry out the transactions contemplated by this Agreement and the other Transaction Documents to which it is or will be a party.

#### **7.15 Contracts and Agreements.**

**7.15.1 Assumed Contracts.** The Seller is not in material default under any Assumed Contract, and all payments, services or other consideration due by the Seller under any Assumed Contract have been made or provided by the Seller. The attached **Appendix H** is a true and complete list of all of the Assumed Contracts, except contracts for the sale of time that have less than a thirteen (13) week term, and the Assumed Leases. The Seller has provided the Buyer with copies of all the Assumed Contracts. The Seller is not a party to any contract that is material to, or required for the operation of, the Asset Station that is not an Assumed Contract.

**7.16 Insolvency.** No insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, under Title 11 of the United States Code or any applicable bankruptcy, insolvency or other similar law, affecting the Seller or any of its assets or properties are pending. The Seller has made no assignment for the benefit of creditors, nor has the Seller taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings. No consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a material portion of the Seller's property has occurred.

#### **7.17 Taxes.**

**7.17.1** The Seller has filed all federal, state and local tax returns and state franchise tax returns that they are required to file, and has paid in full when due all taxes, interest, penalties, assessments and deficiencies that have been assessed or levied against the Seller or the Asset Station or Acquired Asset.

**7.17.2** All federal, state, county and local tax returns, reports and declarations of estimated tax, or estimated tax deposit forms, required to be filed by the Seller in connection with the Station's operations, real estate, assets or payroll have been duly and timely filed.

**7.17.3** There is no pending or, to the Knowledge of the Seller, threatened, investigation or claims against the Seller for or relating to any liability in respect of taxes and, to the Knowledge of the Seller, no facts or circumstances exist

The Buyer represents and warrants to the Seller the following:

## **ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF THE BUYER.**

uncontested.

Intellectual Property owned or used by the Seller with respect to the Asset Station, is set forth in the attached **Appendix I**. All Intangible Assets are valid, in good standing and

**7.191 Intangibles.** A complete list of all Intangible Assets, including any

Material Adverse Change.  
acquisition or taking of property by any governmental authority; (iv) or suffered any material damage, destruction or loss (whether or not covered by insurance) or the payable to the Station's employees, former employees or agents; (iii) suffered any ordinary course of business; (ii) increased the compensation payable or to become or transferred any asset or cancelled any debt or claim except in each case in the or transferred any asset or cancelled any debt or claim except in each case in the **7.20 No Material Change.** Since March 1, 2004, the Seller has not (i) sold

on or before the Closing Date.

Appendix B. The parties agree and understand that all encumbrances will be eliminated Agreement is subject to Seller procuring a release from Seller's lender as set forth in or subjected to any Lien, other than any Permitted Lien. Buyer acknowledges that this **7.19 Encumbrances.** None of the Acquired Assets is mortgaged, pledged

other Transaction Documents.

Seller's ability to consummate the transactions contemplated by this Agreement and the Acquired Assets, the Asset Station and their operations, the Assumed Liabilities and the Documents provide the Buyer with complete and accurate information as to the delivered to the Buyer pursuant to this Agreement and the other Transaction representations, warranties, written statements, schedules and certifications made or necessary to make the statements set forth therein not misleading. The Seller's any untrue statement of a material fact or omits or will omit to state a material fact other Transaction Document, or in connection with the Closing, contains or will contain covenant, representation or warranty of the Seller set forth in this Agreement or any diligence review of the Asset Station and the Acquired Assets or pursuant to any negotiation of this Agreement or any other Transaction Document, the Buyer's due written statement, schedule or certificate furnished by it in connection with the **7.18 Disclosure.** No representation or warranty by the Seller and no

brought or are under discussion with any governmental authorities.

which indicate that any such, investigations or claims in respect of taxes may be



## **8.1 Organization and Standing.**

The Buyer is a corporation existing under the laws of the State of Oklahoma and will be at the time of closing entitled and qualified to do business in the State of Oklahoma, and any other jurisdiction in which such qualification is required for the operation of the Asset Station, the ownership of the Acquired Assets or its execution, delivery or performance of this Agreement or any other Transaction Document to which it is or will be a party.

## **8.2**

**Authorization.** The Buyer has full power and authority to enter into this Agreement and the other Transaction Documents to which it is or will be a party, and this Agreement and such other Transaction Documents constitute valid and binding obligations of the Buyer that are enforceable in accordance with their terms. The execution, delivery, and performance of this Agreement have been duly and validly authorized by the Buyer's Board of Directors.

## **8.3**

**No Conflicts.** Neither the execution nor the delivery by the Buyer of this Agreement or any other Transaction Document to which it is or will be a party, nor the performance by the Buyer of its obligations under this Agreement or any such other Transaction Document, nor the consummation by the Buyer of the transactions contemplated in this Agreement or any such other Transaction Document, either immediately or upon the giving of notice or the lapse of time or both, does or will violate, conflict with, or constitute a default or an event giving a right to terminate or to accelerate obligations under, or require any notice to or filing with any governmental entity or other Person pursuant to, the articles of formation or operating agreement or other governing or constitutional document with respect to the Buyer, or any law, statute, rule, regulation, ordinance, judgment, decree, order, contract, lease, commitment, agreement, license, permit, franchise, or indenture to which the Buyer is a party or by which the Buyer is bound.

## **8.4**

### **FCC Qualifications.**

8.4.1 The Buyer is qualified under the Communications Act and the FCC Rules to be and become the licensee of the Asset Station.

8.4.2 The Buyer knows of no fact and with exercise of reasonable diligence could know of no fact, that could cause the Commission to withhold its approval of the assignment of the FCC Licenses to the Buyer.

## **8.5**

### **Litigation.**

There is not outstanding any judgment or any claim, litigation, proceeding, or to the knowledge of the Buyer, any investigation or claim threatened against the Buyer that might adversely affect the Buyer's ability to carry out fully the transactions contemplated by this Agreement or the other Transaction

Documents to which it is or will be a party, and the Buyer knows of no fact that would form the basis for any such claim, litigation, proceeding or investigation.

**8.6 Insolvency.** No insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, under Title 11 of the United States Code or any applicable bankruptcy, insolvency or other similar law, affecting the Buyer or any of its assets or properties are pending. The Buyer has not made any assignment for the benefit of creditors or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings. No consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a material portion of the Buyer's property has occurred.

**8.7 Disclosure.** No representation or warranty by the Buyer and no statement, schedule or certificate furnished by it in connection with the negotiation of this Agreement and the other Transaction Documents or pursuant to any covenant, representation or warranty of the Buyer set forth in this Agreement or any other Transaction Document, or in connection with the Closing, 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 set forth therein not misleading. The Buyer's representations, warranties, written statements, schedules and certifications made or delivered to the Seller pursuant to this Agreement and the other Transaction Documents provide the Seller with complete and accurate information as to the Buyer's ability to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

## ARTICLE 9. COVENANTS.

**9.1 Affirmative Covenants of Seller.** The Seller will, through the Closing Date:

**9.1.1 Representations and Warranties.** Take such steps as are necessary to ensure that all representations and warranties of the Seller set forth in this Agreement remain true and correct up to and including the Closing Date.

**9.1.2 Continued Operation.** Continue to carry on its business and operations, maintain its facilities and equipment, maintain its inventory of supplies, parts and other materials and keep its books of account, records, and files in the ordinary and usual course of business. The Seller will continue to keep and maintain the public inspection file of the Asset Station in accordance with FCC Rules. The Seller will continue to operate the Asset Station in all material respects in accordance with the terms of the applicable FCC Licenses and in compliance in all material respects with the

Communications Act, the FCC Rules, other applicable laws and Standards of Good Engineering Practice. The Seller will promptly execute any necessary application for renewal of the FCC Licenses. The Seller will deliver to the Buyer, within ten days after filing, copies of any reports, applications or responses to the Commission related to the Asset Station that are filed between the date of this Agreement and the Closing Date. The Seller agrees that they will cure, prior to Closing, and at the Seller's sole expense, any violations, deficiencies or conditions of which they are aware or are made aware.

**9.1.3 Maintenance of Equipment.** Maintain all of the Tangible Personal Assets and improvements on the Real Property in their present good operating condition and will, at Seller's expense, keep in a good state of repair and operating efficiency, all of the property and assets to be assigned, transferred and conveyed pursuant to this Agreement.

**9.1.4 Maintenance of Business.**

(a) Use its best efforts to preserve the business organization of the Asset Station intact, retain substantially as at the present the Asset Station's employees, and preserve the goodwill of the Asset Station's suppliers, customers, and others having business relations with it.

(b) Make capital expenditures and expenditures for promotion of the Asset Station consistent with its past practice, and

(c) Continue to maintain the quality of the Asset Station's programming consistent with its past practices.

**9.1.5 Insurance.** Maintain in full force and effect through the Closing Date adequate property damage, liability, and other insurance with respect to the Acquired Assets providing coverage against such risks in at least the amounts provided for by the insurance policies currently maintained by the Seller.

**9.1.6 Bulk Sales Law.** Comply with any applicable bulk sales law or provide the Buyer with an opinion of the Seller's legal counsel to the effect that no Bulk Sales Law applies to the transactions contemplated by this Agreement.

**9.1.7 Notification.**

(a) Give the Buyer written notice in reasonable detail promptly upon the occurrence of, or upon becoming aware of the impending or threatened occurrence of, any event that would cause or constitute a breach of the Seller's representations or warranties contained in this Agreement or any other Transaction Document.

(b) Promptly notify the Buyer in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of the transactions contemplated by this Agreement or any

other Transaction Document, or upon receiving any notice from any governmental department, court, agency, or commission of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of any such transactions, or to nullify or render ineffective any Transaction Document or such transactions if consummated.

(c) Disclose to the Buyer any unusual and significant problems or developments or any competing offers with respect to the Asset Station or Acquired Asset, and give prompt written notice to the Buyer (i) if any Acquired Asset suffers any damage on account of fire, explosion or other cause of any nature which is sufficient to prevent or adversely affect the operation of the Asset Station or (ii) if the regular broadcast transmission of the Asset Station in the normal and usual manner in which it has been operating is interrupted for a period of four (4) continuous hours or more.

**9.1.8 Fulfill Conditions.** Use best efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and the other Transaction Documents and to cause the transactions contemplated by this Agreement and the other Transaction Documents to be fully carried out.

**9.1.9 Provide Access.** Allow the Buyer, its prospective financing sources, and its and their respective advisors and representatives, upon reasonable notice and during normal business hours, to inspect the titles, contracts, books of account, records and affairs of the Asset Station necessary for the purchase of Station by Buyer. Such Persons be entitled to all such other information concerning the affairs of the Asset Station as any of them may reasonably request.

**9.1.10 Consents and Approvals.** Use its best efforts to obtain any and all consents, transfers, authorizations, or approvals required for the consummation of the transactions contemplated hereby. This does not include the consent required under Appendix B or Paragraph 7.19.

**9.1.11 Removal of Liens.** Take such steps as may be necessary to ensure that any and all Liens against the Acquired Assets, other than Continuing Permitted Liens, are removed on or before the Closing Date, or as soon thereafter as possible and that all documents required to be filed with governmental authorities to record such removal are filed on or before the Closing Date, or as soon thereafter as possible. This does not include the lien disclosed under Appendix B or Paragraph 7.20.

**9.2 Negative Covenants of Seller.** Prior to the Closing Date, the Seller will not, without the prior written consent of the Buyer:

**9.2.1 No Alienation of Station Assets.** Sell, lease, transfer, or agree to sell, lease, or transfer any item that, if it were held by the Seller on the Closing Date, would be an Acquired Asset, without prior notice to the Buyer and without replacement

of such asset with a substantially equivalent asset of substantially equivalent kind, condition, and value.

9.2.2 *No Adverse Permits.* Apply to the Commission for any construction permit or modification of license that would materially restrict the Asset Station's operation, or make any material change in the Asset Station's buildings, leasehold improvements or fixtures, except for the necessary filings required to keep Asset Station in compliance with the Commission. However, nothing shall prevent Buyer from filing the necessary forms and filings with the Commission to comply with the antenna change of the Asset Station, agreed upon by the Buyer and Seller.

9.2.3 *No Negotiations for Sale.* Hold out the Asset Station or Acquired Asset for sale, entertain an offer to purchase the assets of the Asset Station through September 15, 2004.

9.2.4 *No Trade or Barter Agreements.* Enter into any material trade or barter agreement, or materially modify or amend any existing such agreement or understandings, except upon consultation with the Buyer.

9.2.5 *No Omission of FCC Obligations.* By any act or omission of it, its officers, directors, managers, members, stockholders, employees or agents, surrender, modify, forfeit or fail to seek timely renewal of any FCC License from the Commission or cause the Commission to institute any proceedings for revocation, cancellation or modification of any FCC License, or fail to prosecute with due diligence, or participate in the prosecution of, the Application, including all amendments thereto, as necessitated by FCC Rules, or as requested by the Commission's staff.

9.2.6 *No Voluntary Bankruptcy.* From the time of execution of this Agreement through the ninetieth (90<sup>th</sup>) day after the Closing Date, commence a voluntary case under any provision of the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or take any action to assist in or consent to the entry of an order for relief in an involuntary case under any such law or consent to the appointment of or taking possession by a receiver, or trustee or other custodian for all or a substantial part of its property.

9.2.7 *No Breach of Assumed Contracts.* Commit any act or omit to do any act which will cause a breach of any Assumed Contract.

9.2.8 *No Violation of Law.* Violate, or remain in violation of any law, statute, rule, governmental regulation or order of any court or governmental regulatory authority (whether Federal, State or Local).

9.2.9 *Termination of Contracts.* Terminate or cancel any Assumed Contract.

to take such action that would be inconsistent with its obligations under this Agreement.  
9.2.10 *No Inconsistent Actions or Omissions.* Take any action or omit  
9.2.12 *Certain Expenditures.* Fail to make capital expenditures with  
respect to the Asset Station in accordance with past practices for the Asset Station, or  
fail to make such expenditures in amounts that are at least as great as the amounts  
budgeted for the Asset Station prior to discussions leading to the execution of this  
Agreement.

**9.3 Buyer's Covenants.** Between the date of this Agreement and the  
Closing Date, the Buyer will:

9.3.1 *Fulfill Conditions.* Use best efforts to fulfill and perform all  
conditions and obligations on its part to be fulfilled and performed under this Agreement  
and the other Transaction Documents and to cause the transactions contemplated by  
this Agreement and the other Transaction Documents to be fully carried out.

9.3.2 *Notification.*

(a) Give detailed written notice to the Seller promptly upon the  
occurrence of, or upon becoming aware of the impending or threatened occurrence of,  
any event that would cause or constitute a breach of any of the Buyer's representations  
or warranties contained in this Agreement or any other Transaction Document.  
(b) Promptly notify the Seller in writing upon becoming aware  
of any decree or any complaint praying for an order or decree restraining or enjoining  
the consummation of the transactions contemplated by this Agreement or any other  
Transaction Document, or upon receiving any notice from any governmental  
department, court, agency, or commission of its intention to institute an investigation  
into, or institute a suit or proceeding to restrain or enjoin the consummation of such  
transactions, or to nullify or render ineffective any Transaction Document or such  
transactions if consummated.

9.3.3 *Third Party Consents.* Cooperate with the Seller in providing  
such information and taking such actions as are commercially reasonable to obtain any  
necessary Consents required under the Assumed Contracts.

## ARTICLE 10. CONDITIONS.

**10.1 The Buyer's Conditions Precedent.** The obligation of the Buyer to  
consummate the transactions contemplated by this Agreement at the Closing is subject  
to the fulfillment prior to or at the Closing Date of each of the following conditions:

10.1.1 *Commission Approval.* The Commission will have approved  
the Application without any condition or qualification materially adverse (in the Buyer's

good faith judgment) to the Buyer or the operation of the Asset Station and, unless the Buyer waives such finality as described in the definition of the term "Closing Date" in Article 1, such approval will have become a Final Order, and each other Consent will have been obtained or made. 10.1.2 *Representations, Warranties and Covenants.* The representations and warranties of the Seller contained in this Agreement and the other Transaction Documents will be true and correct as of the date(s) thereof, and as of the Closing Date as though such representations and warranties were made at and as of such time, except in such respects as are not material to the Asset Station or any material Station Asset, and the Seller will have performed and complied with all covenants, agreements and conditions required by this Agreement or any other Transaction Document to be performed or complied with by it prior to or at the Closing Date. The Buyer will be entitled to set off, against any obligation to the Seller which is or may become due, all reasonable amounts necessary to restore the Buyer's position to that which would exist if all such representations and warranties were true and correct in all respects and all such covenants, agreements and conditions were fully performed or satisfied.

10.1.3 *Proceedings.* Other than as set for in Appendix S, no action or proceeding will have been instituted before any court or governmental body to restrain or prohibit, or to obtain substantial damages in respect of, the consummation of the transactions contemplated by this Agreement or the other Transaction Documents that, in the Buyer's reasonable judgment, may be expected to result in an injunction against such consummation or, if consummated, an order to nullify or render ineffective any Transaction Document or such consummation or to recover against the Buyer substantial damages; and no Party will have received written notice from any governmental body of its intention to institute any action or proceeding to restrain or enjoin or nullify any Transaction Document or the transactions contemplated by it, or to commence any investigation (other than a routine letter of inquiry) into the consummation of such transactions.

10.1.4 *Opinion of Counsel.* The Seller will have delivered to the Buyer an opinion of the Seller's legal counsel dated as of the Closing Date substantially in the form of the attached **Appendix P.**

10.1.5 *Closing Deliveries.* The Seller will have made all deliveries to the Buyer at the Closing required by Section 13.1.

10.1.6 *Lease Agreement.* Buyer and Seller shall execute a Lease Agreement, as set forth in Appendix R whereby Buyer provides free rent on the tower being purchased pursuant to the agreement to Seller for a period of ten (10) years.

## ARTICLE 11. RIGHTS AND REMEDIES OF PARTIES.

**10.2 The Seller's Conditions Precedent.** The Seller's obligations to consummate the transactions contemplated by this Agreement at the Closing are subject to the fulfillment prior to or at the Closing Date of each of the following conditions:

**10.2.1 Commission Approval.** The Commission will have consented to the Application without any condition or qualification materially adverse (in the Seller's good faith judgment) to the Seller.

**10.2.2 Representations and Warranties.** The representations and warranties of the Buyer contained in this Agreement and the other Transaction Documents will be true and correct as of the date(s) thereof, and as of the Closing Date as though such representations and warranties were made at and as of such time.

**10.2.3 Performance.** The Buyer will have performed and complied with all covenants, agreements and conditions required by this Agreement and the other Transaction Documents to be performed or complied with by it prior to or at the Closing Date.

**10.2.4 Opinion of Counsel.** The Buyer will have delivered to the Seller an opinion of the Buyer's legal counsel dated as of the Closing Date substantially in the form of the attached **Appendix Q**.

**10.2.5 Proceedings.** No action or proceeding will have been instituted before any court or governmental body to restrain or prohibit, or to obtain substantial damages in respect of, the consummation of the transactions contemplated by this Agreement and the other Transaction Documents that, in the Seller's good faith judgment, may be expected to result in an injunction against such consummation or, if consummated, an order to nullify or render ineffective any Transaction Document or such consummation or to recover against the Seller substantial damages; and no Party will have received written notice from any governmental body of its intention to institute any action or proceeding to restrain or enjoin or nullify any Transaction Document or the transactions contemplated by it, or to commence any investigation (other than a routine letter of inquiry) into the consummation of such transactions.

**10.2.6 Closing Deliveries.** The Buyer will have made all deliveries to the Seller at the Closing required by Section 13.2.

**10.2.7 Lease Agreement.** Buyer and Seller shall execute a Lease Agreement, as set forth in Appendix R whereby Buyer provides free rent on the tower being purchased pursuant to the agreement to Seller for a period of ten (10) years.



**11.1 Risk of Loss.** The risk of loss, damage or destruction to any of the

property or assets to be transferred to the Buyer from fire or other casualty or cause will be borne by the Seller at all times up to the close of business on the Closing Date, and it will be the responsibility of the Seller to repair or cause to be repaired and to restore the property to its condition prior to any such loss, damage, or destruction. In the event of any such loss, damage, or destruction, the proceeds of any claim for any loss, payable under any insurance policy, will be used to repair, replace, or restore any such property to its former condition subject to the conditions stated below. In the event of any loss or damage to any of the property or assets to be transferred from fire, casualty or other causes prior to the close of business on the Closing Date, the Seller will notify the Buyer of the same in writing immediately. Such notice will specify with particularity the loss or damage incurred, the cause (if known or reasonably ascertainable), and the insurance coverage. If the property is not completely repaired, replaced or restored on or before the Closing Date then the Buyer, at its sole option, may (a) elect to postpone the Closing until such time as the property has been completely repaired, replaced or restored to the Buyer's reasonable satisfaction and, if necessary, the Seller will join the Buyer in requesting any Commission or other extensions that may be required in order to complete such repairs; or (b) elect to consummate the transactions contemplated by this Agreement and accept such property in its then condition, in which event the Seller will assign to the Buyer all proceeds of insurance covering the property involved; or (c) elect to consummate such transactions and accept such property in its then condition and make a deduction from the purchase price as may be necessary to restore the Acquired Assets to their prior condition; or (d) if permitted by Section 6.4, terminate this Agreement and declare them to be of no further effect, whereupon the Pre-Closing Escrow Deposit will be returned to the Buyer.

**11.2 Buyer's Rights Upon Default By Seller.**

**11.2.1 Specific Performance.** The Parties mutually agree that the assets and property to be assigned and conveyed pursuant to this Agreement are unique and cannot readily be purchased on the open market. For that reason, among others, the Buyer will be irreparably damaged in the absence of the consummation of the transactions contemplated by this Agreement. In the event of a default by the Seller under this Agreement, the Buyer's rights, and the obligations of the Seller, will, at the Buyer's election, be enforceable by decree of specific performance, subject to the requisite approval of the Commission. Buyer's sole recourse shall be specific performance.

**11.3.1 Seller's Rights Upon Default by Buyer.** In the event of a default by the Buyer under this Agreement, the Seller is entitled to the Pre-Closing Escrow Deposit and the Additional Escrow Deposit. In the event this occurs prior to September, 15, 2004, Seller shall be entitled to the Pre-Closing Escrow Deposit only.

## ARTICLE 12. INDEMNIFICATION.

**12.1 Survival of Representations and Warranties.** All representations, warranties and certifications made in this Agreement or any other Transaction Document will survive the Closing Date until the first (1<sup>st</sup>) anniversary of the Closing Date.

**12.2 Indemnification of the Buyer by the Seller.** The Seller will indemnify and hold the Buyer and its attorneys, affiliates, representatives, agents, officers, directors, successors or assigns harmless from and against any and all liabilities, losses, costs, expenses, judgments, orders, settlements, obligations, deficiencies, claims, suits, proceedings (whether formal or informal), investigations, liens or other damages of any nature, absolute, contingent or otherwise, including costs of suit, attorneys' fees and expenses (all of the foregoing items for purposes of this Agreement are referred to as "**Damages**"), resulting from, arising out of or incurred with respect to: 12.2.1 Any breach of any representation, warranty, covenant, agreement or obligation of the Seller contained in this Agreement or any other Transaction Document, or any misrepresentation in, or material omission from, any certificate or other Transaction Document furnished to the Buyer by the Seller, subject to notice of a claim being given before the expiration of any applicable period specified in Section 12.1 in the case of any such representation, warranty or certification (any Damages arising out of relating to any breach, misrepresentation or material omission relating to any such representation, warranty or certification being "**Seller-Rep Damages**"), subject to Section 12.6;

12.2.2 Any and all claims, liabilities or obligations of any nature, absolute, contingent, or otherwise relating to the business or operation of the Asset Station or the ownership of the Station Asset through the Effective Time, including any Damages arising from or obligations to be performed by the Seller under any Assumed Contract;

12.2.3 Non-compliance with any bulk sale or similar law in connection with the transactions contemplated by this Agreement; or

12.2.4 Except for the consent necessary under Appendix B, the absence of any Consent, due to the fault of Seller.

The term "**Damages**" is not limited to matters asserted by third-parties against a Party, but includes Damages incurred or sustained by a Party in the absence of third-party claims, but excludes incidental and punitive damages and lost profits.

**12.3 Indemnification of the Seller by the Buyer.** The Buyer will indemnify and hold the Seller and its respective attorneys, affiliates, representatives, agents, officers, directors, successors or assigns, harmless from and against any Damages resulting from, arising out of, or incurred with respect to:

12.3.1 Any breach of any representation, warranty, covenant, agreement or obligation of the Buyer contained in this Agreement or any other Transaction Document, or any misrepresentation in, or material omission from, any certificate or other Transaction Document furnished to the Seller by the Buyer, subject to notice of a claim being given before the expiration of any applicable period specified in Section 12.1 in the case of any such representation, warranty or certification (any Damages arising out of relating to any breach, misrepresentation or material omission relating to any such representation, warranty or certification being "**Buyer-Rep Damages**"), subject to Section 12.6;

12.3.2 Any and all claims, liabilities or obligations of any nature, absolute, contingent, or otherwise relating to the business or operation of the Asset Station or ownership of any Station Asset after the Closing Date, including any Damages arising from or obligations to be performed by the Buyer under any of the Assumed Contracts after the Closing Date.

#### **12.4 Procedures.**

12.4.1 Promptly after the receipt by any Party (the "**Indemnified Party**") of notice of any claim by a third party, or the commencement of any action or proceeding, that may entitle such Party to indemnification under this Article 12, such the Indemnified Party will give the other Party or Parties (the "**Indemnifying Party**") written notice of such claim or the commencement of such action or proceeding and, subject to Section 12.4.4, will permit the Indemnifying Party to assume the defense of any such claim (including any third-party litigation or other proceeding resulting from such claim) or such action or proceeding using legal counsel reasonably acceptable to the Indemnified Party. The failure to give the Indemnifying Party timely notice under this Section 12.4.1 will not preclude the Indemnified Party from seeking indemnification from the Indemnifying Party unless, and then only to the extent, such failure has materially prejudiced the Indemnifying Party's ability to defend the matter in question.

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1 i.e., the Buyer, if the Seller is the Indemnified Party, or the Seller, if the Buyer is the Indemnified Party

12.5 **Indemnity Payments.** The parties agree that any indemnity payments made pursuant to this Article 12 will be treated by the parties on all applicable tax returns as an adjustment to the purchase price for the Station Assets.

12.4.4 The Indemnifying Party will not be entitled to assume the defense or settlement of any matter pursuant to Section 12.4.1: (a) if the conduct of such defense or settlement by legal counsel for the Indemnifying Party would be inconsistent with ethical rules applicable to attorneys at law; (b) if the remedy sought or asserted in connection with such matter is not limited solely to the payment of money damages; (c) if such matter concerns, or could result in the loss or the placement of any restriction, any FCC License; (d) if such matter, if determined or concluded in a matter adverse to the Indemnified Party, could have a material adverse effect on the Indemnified Party; and/or (e) unless the Indemnifying Party agrees in writing that, as between the Parties, the Indemnifying Party is solely responsible for all Damages that may arise from or relate to such matter notwithstanding any provision of this Article 12 to the contrary and demonstrates to the reasonable satisfaction of the Indemnified Party that it has the financial resources to conduct such defense and settlement and pay all such Damages.

12.4.3 If the Indemnifying Party does not or is not permitted to assume the defense of any such matter, the Indemnified Party may, but will have no obligation to, defend against such matter in such manner as it may deem appropriate, and the Indemnified Party may compromise or settle such matter without the Indemnifying Party's consent.

12.4.2 If the Indemnifying Party assumes the defense of any such matter, the Indemnifying Party will take all steps necessary in the defense or settlement of such matter and will hold the Indemnified Party harmless from and against any Damages caused by or arising out of any settlement approved by the Indemnifying Party or any judgment in connection with such matter; however, the Indemnified Party may participate, at its expense, in the defense of such claim or litigation. The Indemnified Party will use reasonable efforts to cooperate and make available to the Indemnifying Party all books and records reasonably necessary and useful in connection with such defense. Except with the prior written consent of the Indemnified Party, the Indemnifying Party will not, in the defense of such matter, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost), or enter into any settlement, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Damages in respect of such matter.

**12.6 Minimum Indemnity Payments** The Seller will have no liability for Seller-Rep Damages unless the aggregate amount of Seller-Rep Damages exceeds \$50,000 (the "**Minimum Loss Amount**"), in which event the Seller will be liable for all Seller-Rep Damages, including the Minimum Loss Amount.

### **ARTICLE 13. CLOSING DELIVERIES.**

**13.1 Seller's Deliveries at Closing.** On the Closing Date at the Closing Place, the Seller will duly execute (where applicable) and deliver to the Buyer the following:

13.1.1 An Assignment to the Buyer of the FCC Licenses, together with any and all other related authorizations, including all of the Seller's right, title and interest in and to all call letters of the Asset Station, and other governmental licenses and authorizations, executed by the Seller.

13.1.2 One or more Bills of Sale assigning, transferring and conveying to the Buyer free and clear title (subject only to Continuing Permitted Liens) to all of the Tangible Personal Assets, executed by the Seller.

13.1.3 An Assignment and Assumption Agreement assigning to the Buyer the Assumed Contracts, executed by the Seller, together with all consents to the assignment that are required under the terms of any Assumed Contract and originals or true copies of the Assumed Contracts.

13.1.4 The Post-Closing Escrow Agreement, executed by the Seller and an escrow agent reasonably acceptable to the Buyer.

13.1.5 Instructions to the Pre-Closing Escrow Agent to take the actions described in Section 4.4, executed by the Seller.

13.1.6 Evidence satisfactory to the Buyer that each Lien on any Acquired Asset that is not a Permitted Lien, and each Lien described on the attached **Appendix B**, has been extinguished or released, together with any documents required to remove any record of any such Lien.

13.1.7 An Assignment of the Intellectual Property and the other Intangible Assets, executed by the Seller.

13.1.8 The files, records, logs and books of account of the Asset Station, together with a certification by the Seller that the public file of the Asset Station is complete and up to date.

13.1.9 A Certificate of Good Standing from the Seller's jurisdiction of incorporation or formation and each other jurisdiction in which the conduct of its business, the ownership of its assets and/or the execution, deliver and performance of

any Transaction Document by the Seller requires the Seller to be qualified or otherwise authorized.

13.1.10 A copy of a resolution of the Seller's directors and stockholders certified by the Seller, authorizing or ratifying the Seller's execution, delivery and performance of the Transaction Documents to which it is a party.

13.1.11 A certificate signed by the Seller that the conditions set forth in each of Sections 10.1.2, 10.1.3, and 10.1.6 are satisfied as of the Closing Date.

13.1.12 Such other assignments, bills of sale or other instruments of transfer, assignment or conveyance as may be required by the Buyer to effectuate the assignment, transfer and conveyance to the Buyer of all the assets, property, rights, privileges and immunities of the Seller that are to be sold, transferred, conveyed and assigned to the Buyer.

13.1.13 Lease Agreement attached as Appendix R.

**13.2 Buyer's Deliveries at Closing.** On the Closing Date at the Closing Place, the Buyer will, upon receipt of the releases, assurances and other documentation provided for by this Agreement execute and deliver to the Seller the following:

13.2.1 The Post-Closing Escrow Agreement.

13.2.2 A certificate to the effect that the conditions set forth in Sections 10.2.2 and 10.2.3 are satisfied.

13.2.3 A certified copy of the Buyer's enabling resolutions approving or ratifying the execution, performance and delivery of this Agreement.

13.2.4 Instructions to the Pre-Closing Escrow Agent to take the actions described in Section 4.4.

13.2.5 The Seller Note.

13.2.6 The Assignment and Assumption Agreement for the Assumed Contracts.

13.2.7 The Purchase Price.

13.2.8 Lease Agreement attached as Appendix —.

## **ARTICLE 14. TAXES, FEES AND EXPENSES.**

**14.1 Expenses.** Except as otherwise expressly set forth in this Agreement, each Party will be solely responsible for all costs and expense incurred by it in connection with the negotiation and preparation of the Transaction Documents and the transactions contemplated hereby.

## ARTICLE 15. MISCELLANEOUS.

**14.2 Transfer Taxes and Similar Charges.** Recordation, transfer and documentary taxes and fees, and any excise, sales or use taxes imposed by reason of the transfer of the Station Assets pursuant to this Agreement will be borne by the Seller.

**14.3 Governmental Filing or Grant Fees.** All filing or grant fees imposed by any governmental authority the consent of which is required to the transactions contemplated hereby (other than amounts described in Section 14.2) will be borne one-half by the Buyer and one half by the Seller.

**15.1 Finders, Consultants and Brokers.** Each Seller and the Buyer, each as to itself, represents and warrants that there are no finders, consultants or brokers involved in this transaction other than Kalil & Co., Inc., and that it has not agreed to pay any other brokers commission or finders fee in connection with this transaction, except to Kalil & Co., Inc., who has been retained by the Buyer. Buyer is responsible for all fees due Kalil & Co., Inc.

**15.2 Confidentiality.** The Seller and the Buyer each promise, represent and warrant to the others that they will not reveal or disclose to any Unauthorized Person any financial information, account lists, trade secrets, plans of operation (including those relating to format), marketing or sales information, details of their negotiations or information regarding the agreements reached in connection with the proposed purchase and sale of the Asset Station. The term "**Unauthorized Person**" means any Person other than the Parties and their respective officers, directors, stockholders, members, key employees, agents or other representatives (including legal counsel, accountants, consultants and financiers) who require such information in connection with their employment or professional responsibilities and obligations. Nothing in this Section 15.2 will restrict a Party from complying with any legal filing or disclosure requirement, including any requirement to maintain information in the Station's public file, or disclosing information in response to any subpoena or other legal process.

**15.3 Press Release.** Except for compliance with legal notice requirements, the Seller and the Buyer will jointly prepare and release any press release or announcement to the public relating to this Agreement or the proposed sale and purchase of the Asset Station.

## **15.4 Assignment.**

**15.4.1 By a Seller.** The Seller may not assign its rights under this Agreement without the express written consent of the Buyer, and any purported assignment of any such rights by the Seller without such consent will be void *ab initio*.

**15.4.2 By the Buyer.** The Buyer may not assign its rights under this Agreement without the express written consent of the Seller, except that Buyer may assign its rights under this agreement if the assignment is a *pro forma* assignment, and any purported assignment of any such rights by the Buyer may assign any or all of its rights under this Agreement to any Person.

**15.5 No Third Party Beneficiaries.** Nothing herein expressed or implied is intended or will be construed to confer upon or give to any Person, other than the Parties and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

**15.6 Notices.**

**15.6.1** Any notice required or permitted to be given under this Agreement by any Party will be given by certified mail, postage prepaid with return receipt requested, or by USPS Express air service, overnight air courier service or same day delivery service, and addressed as follows:

**IF TO A SELLER:**

Larry Morton  
Shawnee Broadcasting, Inc.  
#1 Shackelford Drive, Suite 400  
Little Rock, AR 72211  
Ph.: (501) 219-2400  
Fax: (501) 221-1101

**with copy to:**

Lori Withrow, Esq.  
Shawnee Broadcasting, Inc.  
#1 Shackelford Drive, Suite 400  
Little Rock, AR 72211  
Ph.: (501) 219-2400  
Fax: (501) 221-1101

**IF TO THE BUYER:**

Ty Tyler, President  
Tyler Broadcasting Corporation  
5101 South Shields Blvd.  
Oklahoma City, OK 73129  
Ph.: (405) 616-5500  
Fax: (405) 616-5554

**with copy to:**

John C. Trent, Esquire  
Putrese Hunsaker & Trent, P.C.  
100 Carpenter Dr., Ste. 100  
Sterling VA 20164  
Ph.: 703-437-8400  
Fax: 703-437-8483

**15.6.2** Notices will be addressed to the Parties at the addresses given above, but a Party may change its address by written notice to the other Parties in accordance with this Section 15.6.



15.6.3 Notice will be deemed to have been given on the third Business Day after mailing, if sent by registered or certified mail, or on the next Business Day, if sent by USPS express mail, overnight air courier, or same day delivery service. The provision of notice by telephone facsimile or to counsel will not constitute notice under this Agreement.

**15.7 Benefit.** This Agreement will be binding upon and inure to the benefit of the Parties, their successors and their permitted assigns.

**15.8 Other Documents.** The Parties will execute such other documents as any of them may reasonably deem necessary or desirable to the implementation and consummation of the transactions contemplated by this Agreement.

**15.9 Further Assurances.** The Parties agree that they will take whatever steps are reasonably necessary, in good faith, and use their best efforts to carry out their obligations under this Agreement in order that the transactions contemplated by this Agreement may be consummated in a complete and expeditious manner.

**15.10 Separate Counsel.** The Parties have retained independent legal counsel in connection with the negotiation and preparation of this Agreement, and have consulted with and sought advice from their respective counsel, prior to execution, concerning their respective rights and duties under this Agreement. This document was drafted by Buyer's counsel.

**15.11 Appendices.** The Appendices attached to this Agreement will be deemed to be part of this Agreement and incorporated in it, where applicable, as if fully set forth in the body of this Agreement. If any provision in any Appendix conflicts with or is not consistent with the provisions of this Agreement, the terms of this Agreement will govern.

**15.12 Counterparts.** This Agreement may be signed by any number of counterparts with the same effect as if the signature of each Party were upon the same instrument.

**15.13 Headings.** The headings of the Articles and Sections of this Agreement are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope of this Agreement nor the intent of any such Article or Section.

**15.14 Time of the Essence.** Time is deemed to be of the essence with respect to the performance of this Agreement.

**15.15 Entire Agreement.** This Agreement and the attached Appendices and ancillary documents provided for herein constitute the entire agreement and

understanding of the Parties relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein.

**15.16 Amendment.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

**15.17 Waivers.** No waiver of any right under this Agreement or waiver of a breach of it will be effective unless in it is writing and signed by the Party or Parties waiving such right or breach. No waiver of any right or waiver of any breach will constitute a waiver of any other or similar right or breach and no failure to enforce any right under this Agreement will preclude or affect the later enforcement of such right.

**15.18 Severability.** If one or more of the provisions contained in this Agreement or in any other instrument referred to herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement or any other such instrument, and this Agreement will be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein.

**15.19 Interpretation.** Whenever required by the context, the singular number will include the plural and the masculine, feminine, or neuter gender will include all genders. Neither the term "including" nor any derivative thereof is used in this Agreement to signify any limitation to any item or items specified in connection therewith. Terms such as lessee, lessor, lease, landlord, tenant, licensor, licensee and license will be interpreted broadly to include sub-leasing or sub-licensing arrangements and/or the parties thereto.

**15.20 Governing Law.** This Agreement will be construed and enforced in accordance with the internal laws, and not the principles of conflicts or choice of laws, of the State of Oklahoma.

**15.21 Choice of Forum.** Any action, suit or other proceeding with respect to this Agreement may be brought in the Federal or State courts of Oklahoma. Each Party irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any such action, suit or other proceeding in those jurisdictions.

**15.22 Attorneys' Fees.** Should any Party institute any action or proceeding at law or in equity to enforce any provision of this Agreement or any other Transaction Document, including an action for declaratory relief, or for damages by reason of an

alleged breach of any provision of any Transaction Document, or otherwise in connection with any Transaction Document, or any provision thereof, the prevailing Party will be entitled to recover from the non-prevailing Party or Parties its costs and expenses, including reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

**15.23 Schedules.** Buyer and Seller shall have fourteen days to jointly prepare and attach Schedules to this Agreement, which have been agreed upon by both parties.

[ THE NEXT PAGE IS THE SIGNATURE PAGE ONLY ]

[ SIGNATURE PAGE ]

In Witness Whereof, the parties have duly executed this Agreement as of the date and year first above written.

SELLER:

By: [Signature]  
BHAWE BROADCASTING, INC.  
Its: [Signature]

BUYER:

By: [Signature]  
TYLER BROADCASTING CORPORATION  
Its: [Signature]

[ SIGNATURE PAGE ]

In Witness Whereof, the parties have duly executed this Agreement as of the date and year first above written.

SELLER:

SHAWNEE BROADCASTING, INC.

By:

Its:

Secretary

BUYER:

TYLER BROADCASTING CORPORATION

By:

Its:

## APPENDICES

Appendix A	Intentionally Left Blank
Appendix B	List of Encumbrances
Appendix C	Form of Post-Closing Escrow Agreement
Appendix D	Form of Pre-Closing Escrow Agreement
Appendix E	FCC Licenses
Appendix F	Real Property
Appendix G	Tangible Personal Assets
Appendix H	Other Assumed Contracts
Appendix I	Intangible Assets
Appendix J	Allocation of Purchase Price
Appendix K	Form of Seller Note
Appendix L	Form of Seller-Group Agreement
Appendix M	List of Other Permits and Licenses
Appendix N	Environmental Exceptions
Appendix O	Intentionally Left Blank
Appendix P	Opinion of Seller Counsel
Appendix Q	Opinion of Buyer's Counsel
Appendix R	Lease Agreement
Appendix S	Litigation