

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (the "Agreement") is made this 5th day of August, 2009, by and between Equity Media Holdings Corporation ("Equity Media"), TV 34, Inc. and Ft. Smith 46, Inc., each as debtor and debtor-in-possession (collectively referred to as "Seller") and Pinnacle Media, LLC, or its assigns pursuant to Section 10.3 ("Buyer"). Capitalized terms that are used but are not otherwise defined in this Agreement shall have the meanings given to them in Article XI hereof.

WITNESSETH:

WHEREAS, on December 16, 2008, Seller filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101-1532 (as amended, the "Bankruptcy Code") with the United States Bankruptcy Court for the Eastern District of Arkansas (the "Bankruptcy Court"), and its chapter 11 case is being jointly administered with those of Equity Media and its Subsidiaries under Case No. 4:08-BK-17646 (the "Bankruptcy Cases");

WHEREAS, TV 34, Inc., Debtor In Possession, is the FCC-approved licensee or permittee of certain licenses and authorizations (the "Licenses") issued by the Federal Communications Commission (the "FCC") for the following television stations:

- (a) KPBI (Facility ID No. 81593), licensed to Eureka Springs, Arkansas; and
- (b) KWFT-LP (Facility ID No. 58282), licensed to Ft. Smith, Arkansas;

WHEREAS, Equity Media Holdings Corporation, Debtor In Possession, is the FCC-approved licensee or permittee of certain Licenses issued by the FCC for the following television station:

- (a) KLRA-LP (Facility ID No. 57548), licensed to Little Rock, Arkansas;

WHEREAS, Ft. Smith 46, Inc., Debtor In Possession, is the FCC-approved licensee or permittee of certain Licenses issued by the FCC for the following television stations (collectively, with KPBI-TV, KWFT-LP and KLRA--LP, the "Stations"):

- (a) KFDF-CA (Facility ID No. 52418), licensed to Fort Smith, Arkansas;
- (b) K33HE (Facility ID No. 58284), licensed to Fort Smith, Arkansas;
- (c) KFFS-CA (Facility ID No. 52430), licensed to Fayetteville, Arkansas;
- (d) KRAH-CA (Facility ID No. 52423), licensed to Paris, Arkansas;
- (e) KEGW-LP (Facility ID No. 48534), licensed to Fayetteville, Arkansas;

- (f) KUFS-LP (Facility ID No. 58281), licensed to Fort Smith, Arkansas;
- (g) KWNL-CA (Facility ID No. 52426), licensed to Winslow, Arkansas;
- (h) K48FL (Facility ID No. 14387), licensed to Fort Smith, Arkansas;
- (i) KSJF-CA (Facility ID No. 52425), licensed to Poteau, Oklahoma
- (j) KKAJ-CA (Facility ID No. 52432), licensed to Siloam Springs, Arkansas;
- (k) KHMF-CA (Facility ID No. 52420), licensed to Bentonville, Arkansas;
- (l) KXUN-LP (Facility ID No. 14386), licensed to Fort Smith, Arkansas; and
- (m) Low power digital companion stations KFDF-LD (Facility ID No. 168154), licensed to Ft. Smith, Arkansas, KRAH-LD (Facility ID No. 168152), licensed to Paris, Arkansas, and KWNL (Facility ID No. 168156), licensed to Winslow, Arkansas.

WHEREAS, Seller wishes to sell, transfer and assign, and Buyer wishes to purchase, acquire and assume, the Licenses and the other Station Assets (as defined below) and the Assumed Liabilities pursuant to the terms of this Agreement, applicable FCC requirements, and an order of the Bankruptcy Court authorizing and approving such sale pursuant to Sections 363 and 365 of the Bankruptcy Code.

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants contained herein, the parties, intending to be legally bound, agree as follows:

#### ARTICLE I.

#### PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

1.1 **Purchase and Sale of Assets.** Subject to the terms and conditions set forth below, Seller agrees to assign, sell and transfer to Buyer, and Buyer agrees to purchase, acquire and assume from Seller, the following assets, properties and businesses of Seller (except for the Excluded Assets (as defined below)), whether real, personal, tangible or intangible, to the extent exclusively used or otherwise relating exclusively to the Stations (collectively the "Station Assets"):

(a) the Licenses and any and all other FCC authorizations pertaining to the Stations that are set forth and more fully described on Schedule 1.1(a) hereto;

(b) all of Seller's right, title and interest to any and all pending applications before the FCC which relate to the Stations that are set forth and more fully described on Schedule 1.1(b) hereto, to the extent assignable;

(c) all of Seller's land, leases, land purchase contracts, tower registrations, and tower permits relating to the Stations that are set forth and more fully described on Schedule

1.1(c) hereto, including but not limited to all rights, title and interest under same (the "Real Property");

(d) all of Seller's right, title and interests under those existing agreements, contracts, commitments and leases relating to the operation of the Stations that are set forth and more fully described on Schedule 1.1(d) hereto (the "Assumed Contracts");

(e) all of Seller's supplies, equipment, inventories and other property purchased but not installed;

(f) all intellectual property, including, without limitation, all call letters, trademarks, trade names, service marks, franchises, copyrights (including registrations and applications for registration of any of them), jingles and logos relating specifically and exclusively to the Stations and the "Lick TV" trademark; and

(g) from the corporate headquarters of Equity Media Holdings Corporation, (i) the office furniture located in the conference room adjacent to the reception area; (ii) three lateral filing cabinets and nine regular four-drawer filing cabinets; and (iii) the office furniture located in the offices used (or formerly used, with respect to such former employees) by the following current and former employees of Seller: Greg Fess, Larry Morton, James Hearnberger, Connie Vaughn and Neal Ardman; provided, that Buyer shall take possession of such furniture and remove it from Seller's premises solely through the services of a third-party moving company, and shall be entitled to do so at any time after it has paid the full amount of the Escrow Deposit, except that the furniture located in James Hearnberger's and Connie Vaughn's offices shall not be removed until the Closing.

1.2 **Excluded Assets.** Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests, and rights of Seller other than the Station Assets, and shall include, without limitation, each of the following assets:

(a) all cash, cash equivalents and cash items of any kind whatsoever, certificates of deposit, money market instruments, bank balances and rights in and to bank accounts, Treasury bills and marketable securities and other securities existing as of the Closing Date;

(b) all of Seller's deposits or prepaid charges and expenses paid in connection with or relating to any assets of Seller;

(c) all claims, rights or interests of Seller in or to any refund, rebate, abatement or other recovery for taxes, together with any interest due thereon or penalty rebate arising therefrom, for any tax period (or portion thereof) ending on or before the Closing;

(d) all rights, claims or causes of action of Seller against third parties relating to the Station Assets or any assets, properties, business or operations of Seller arising out of events occurring on or prior to the Closing;

(e) all rights, claims or causes of action of Seller under the Bankruptcy Code, including, without limitation, Chapter 5 thereof;

(f) all insurance policies, contracts or plans, promissory notes, amounts due from employees, bonds, letters of credit or other similar items relating to the Station Assets or the assets, properties, business or operations of Seller, and the assets thereof (including any cash surrender value) or any right to proceeds thereunder;

(g) all corporate records and other books and records that pertain to internal corporate matters of Seller;

(h) all equipment and services related to the master control facilities located in Little Rock, Arkansas;

(i) all rights of Seller as of the Closing Date to payment for the sale of advertising time and other goods and services by the Stations prior to the Closing Date; and

(j) all computer, telephone and television equipment at the headquarters of Equity Media Holdings Corporation.

1.3 **Assumption of Liabilities.** On the terms and subject to the conditions set forth in this Agreement, at the Closing Buyer shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, all debts, liabilities and obligations (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated) and including all costs and expenses relating thereto (the "Liabilities") of Seller arising out of, relating to or otherwise in respect of the Station Assets on or after the Closing Date, other than the Excluded Liabilities (collectively, the "Assumed Liabilities"), including, without limitation, the following:

(a) all Liabilities of Seller under the Licenses;

(b) all Liabilities of Seller under the Real Property;

(c) all Liabilities of Seller under the Assumed Contracts;

(d) all other Liabilities with respect to the Stations and the Station Assets arising on or after the Closing Date;

(e) all Transfer Taxes;

(f) all Taxes related to the Station Assets that are required to be paid on or after the Closing Date, other than net income Taxes of Seller or Taxes imposed in lieu thereof; and

(g) all Liabilities relating to amounts required to be paid by Buyer hereunder.

1.4 **Excluded Liabilities.** Buyer will not assume or be liable for any Excluded Liabilities. "Excluded Liabilities" shall mean all Liabilities of Seller arising out of, relating to or otherwise in respect of the Station Assets before the Closing Date (provided, that Excluded Liabilities shall not include any Taxes that are included among the Assumed Liabilities) and the following Liabilities:

- (a) all Liabilities arising out of Excluded Assets; and
- (b) all Liabilities for taxes of Seller relating to the Station Assets (other than Transfer Taxes) for any tax period (or portion thereof) ending on or before the Closing.

1.5 **Cure Amounts.** At Closing and pursuant to Section 365 of the Bankruptcy Code, Seller shall assume and assign to Buyer and Buyer shall assume from Seller, the Assumed Contracts and the leases of Real Property, if any, that are set forth and more fully described on Schedule 1(c) (the "Real Property Leases"). The cure amounts (if any) determined by the Bankruptcy Court as necessary to cure all defaults (if any) and to pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts and Real Property Leases (collectively, the "Cure Costs"), shall be paid by Buyer, and not by Seller and Seller shall have no liability therefor; provided, however, that if the Bankruptcy Court shall determine that, with respect to any Assumed Contract or Real Property Lease, the Cure Cost exceeds by more than five percent (5%) the amount set forth in Schedule 1.5, Seller shall not be required to assume and assign such contract or lease, and provided, further, that Buyer shall, at Closing as set forth in Section 6.3(a), reimburse Seller for the aggregate amount of the Cure Costs, if any, paid by Seller prior to Closing (the "Cure Cost Reimbursement Amount"). Buyer shall not have the right to terminate this Agreement as a result of the failure by Seller to assume and assign to Buyer any Assumed Contract, unless such failure results in a Material Adverse Effect. Notwithstanding any other provision in this Agreement, within 5 business days of the date hereof, Buyer will provide written notice to Seller for each Real Property Lease whether Buyer requests that Seller (i) reject such Real Property Lease or (ii) assume such Real Property Lease. Buyer will pay any related Cure Costs upon such Cure Costs becoming due. It shall not be a default under this Agreement should any Real Property Lease not be assumed

## **ARTICLE II. CONSIDERATION**

### **2.1 Purchase Price and Payment.**

(a) **Purchase Price.** The purchase price for the Station Assets shall be an amount of cash equal to \$400,000 (the "Purchase Price") and the assumption of the Assumed Liabilities, payable in federally available funds at Closing.

(b) **Escrow Deposit.** Buyer shall deliver to Neligan Foley LLP ("Escrow Agent") cash in the amount of One Hundred Thousand Dollars (\$100,000) (the "Escrow Deposit"), which shall be governed by the terms of an escrow agreement to be entered into by Buyer, Seller and the Escrow Agent in substantially the form attached hereto as Exhibit A (the "Escrow Agreement"), and which shall be payable as follows: (i) Seventy-Five Thousand

Dollars (\$75,000) within two days of the execution of this Agreement plus (ii) Twenty-Five Thousand Dollars (\$25,000) upon the first to occur of August 15, 2009 and Buyer's commencing operations pursuant to a local programming and marketing agreement with Seller. The Escrow Deposit (together with all accrued investment income thereon, net of expenses) will be released by the Escrow Agent and delivered to either Buyer or Seller, in accordance with the provisions of the Escrow Agreement. Pursuant to the Escrow Agreement, the Escrowed Funds (together with all accrued investment income thereon) shall be distributed, as follows:

(i) if the Closing shall occur, the Escrow Deposit shall be applied towards the Purchase Price payable by Buyer to Seller under Section 2.1(a) and all accrued investment income thereon shall be delivered to Buyer at the Closing;

(ii) if this Agreement is terminated by Buyer pursuant to Section 7.1(b), the Escrow Deposit, together with all accrued investment income thereon, shall be returned to Buyer; and

(iii) if this Agreement is terminated for any reason other than by Buyer pursuant to Section 7.1(b), the Escrow Deposit, together with all accrued investment income thereon, shall in each case be delivered to Seller.

(c) Payment of Purchase Price. On the Closing Date, Buyer shall pay the Purchase Price (less the Escrow Deposit) to Seller, which shall be paid by wire transfer of immediately available funds into an account designated by Seller.

(d) Broker Commission. Seller shall bear sole responsibility for payment of the broker fee payable to Patrick Communications LLC pursuant to the Agreement between Equity Media Holdings Corporation and Patrick Communications LLC, and shall not be responsible for the payment of any other broker's or finder's fees payable to any Person in connection with this Agreement or the transactions contemplated hereby.

(e) Allocation of Revenues and Expenses. All revenues and all expenses arising from the Station Assets shall be allocated between Buyer and Seller in accordance with GAAP, consistently applied, and to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and liabilities related to the period prior to the Closing Date and Buyer shall receive all revenue and shall be responsible for all expenses, costs and liabilities related to the period on and subsequent to the Closing Date.

(f) Allocation of Purchase Price. Buyer shall prepare an allocation of the Purchase Price (and all other capitalized costs) among the Station Assets in accordance with Internal Revenue Code section 1060 and Treasury regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate). Buyer shall deliver such allocation to Seller in writing within 30 days after the Closing, for Seller's review and comment. The parties shall use commercially reasonable efforts to resolve any issues raised by Seller's comments (if any), and if Buyer and Seller are unable to reach agreement on an allocation within 90 days after the Closing, Seller and Buyer (and, as necessary, their Affiliates) shall each be free to allocate the Purchase Price (and all other capitalized costs) in their own discretion; provided, that if Seller

does not provide comments to Buyer, in writing, within 30 days after Buyer's delivery of its allocation hereunder, then such allocation shall be deemed final.

### **ARTICLE III.**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as follows:

3.1 **Organization.** TV 34, Inc. and Ft. Smith 46, Inc. are corporations organized under the laws of the State of Arkansas, and Equity Media Holdings Corporation is a corporation organized under the laws of the State of Delaware, and each is subject to the provisions and approvals set forth herein, has all requisite power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Seller and to carry out the transactions contemplated hereby and thereby.

3.2 **Authorization and Binding Obligation.** Except for such authorization as is required by the Bankruptcy Court, the execution, delivery and performance of this Agreement and the other Transaction Documents (as defined below) by Seller have been and will be duly and validly authorized by all necessary action on the part of Seller. This Agreement has been duly signed and delivered by Seller and constitutes the legal, valid and binding obligations of Seller; enforceable in accordance with its terms, except as the enforceability may be affected by the Bankruptcy Cases, other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

3.3 **Real Property.** Each Real Property Lease listed on Schedule 1.1(c) is legal, valid, binding, enforceable and as of Closing will be in full force and effect (subject to expiration or termination in accordance with their terms). Except as set forth on Schedule 3.3, Seller's interests under the Real Property Leases will, as of the Closing Date, be free and clear of all Liens other than Permitted Encumbrances. Except as disclosed in Schedule 3.3(a), and except for such authorization as is required by the Bankruptcy Court, Seller will use commercially reasonable efforts to assign its rights under the Real Property Leases to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuity of any such lease.

3.4 **FCC and Governmental Matters.**

(a) Seller is the FCC-approved holder of the Licenses listed on Schedule 1.1(a), which at Closing (as defined below), and with the exception of Stations KFDF-LD, KRAH-LD and KWNL-LD, will be in full force and effect and will not have been revoked, suspended, canceled, rescinded or terminated. Seller has no other authorizations, construction permits or licenses issued by the FCC that authorize operation of the Station. Except as set forth on Schedule 1.1(a) hereto, (i) there are not any pending actions before the FCC to revoke, suspend, cancel or rescind the Licenses (other than proceedings to amend FCC rules of general applicability), (ii) there are not now issued, pending or outstanding, by or before the FCC, any orders to show cause, notices of violation, notices of apparent liability, or notices of forfeiture, and (iii) Seller has not received any written communication from the FCC indicating that Seller is not in substantial compliance in all material respects with all applicable requirements of the

FCC. Notwithstanding any other provision of this Agreement, Buyer and Seller, however, understand and acknowledge that Stations KFDF-LD, KRAH-LD, and KWNL-LD, which are not on the air, will lose their authorizations if not operational by October 2009, and that Seller makes no warranty as to their ability to return to the air, or the effect thereof on their authorizations. It shall not be a default under this Agreement should these Stations lose their authorizations because of their on-air status.

(b) To the Knowledge of Seller, all regulatory fees required to be paid to the FCC by Seller have been paid.

3.5 **Absence of Litigation.** Except for matters pending before the Bankruptcy Court or any other court, and except as otherwise set forth on Schedule 3.5, there is no suit, action, proceeding or investigation now pending or, to the Knowledge of Seller, threatened, before any federal, state or local court, grand jury, administrative or regulatory body, arbitration or mediation panel or similar body, against Seller or in any way involving or relating to the Station Assets, which could reasonably be expected to result in any judgment, order, decree, liability, award or other determination which, in each case, will have or could reasonably be expected to have, a Material Adverse Effect. There is no Order enjoining Seller from selling and transferring the Licenses or any of the Station Assets to Buyer pursuant to this Agreement.

3.6 **Brokers and Financial Advisors.** Except as set forth on Schedule 3.6, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement.

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

Buyer represents and warrants to Seller as follows:

4.1 **Organization and Standing.** Buyer is an Arkansas Limited Liability Company and has all requisite power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Buyer and to carry out the transactions contemplated hereby and thereby.

4.2 **Authorization and Binding Obligation.** The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary actions on the part of Buyer. This Agreement has been duly signed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer, enforceable against it in accordance with its terms, except as the enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

4.3 **Absence of Violation, Conflicting Agreements.** Buyer's execution, delivery and performance of this Agreement (with or without the giving of notice, lapse of time, or both): (i) do not require the consent of any third party other than the FCC; (ii) will not violate any provision of its certificate of incorporation or by-laws (or equivalent organizational documents); (iii) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation,



ordinance or ruling of any court or governmental authority; and (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Station Assets.

4.4 **Absence of Litigation.** There is no suit, action, proceeding or investigation pending or, to the knowledge of Buyer, threatened, before any federal, state or local court, grand jury, administrative or regulatory body, arbitration, or mediation panel or similar body, to which Buyer is a party, which seeks to enjoin or prohibit or otherwise to question the validity of any action taken or to be taken by Buyer pursuant to or in connection with this agreement.

4.5 **Financial Ability.** Buyer, or Buyer's Members (i) have, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses to be incurred by Buyer in connection with the transactions contemplated by this Agreement, (ii) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and under the Assumed Contracts and Real Property Leases, and to provide adequate assurance of future performance under the Bankruptcy Code with respect to the Assumed Contracts and Real Property Leases, and (iii) has not incurred any obligation, commitment, restriction or liability of any kind, which would impair or adversely affect such resources and capabilities. In the event that Buyer will finance any amount of the Purchase Price or any of the expenses to be incurred by Buyer in connection with the transactions contemplated by this Agreement, Schedule 4.5 lists such amount and the Person who will provide such financing, and Buyer shall provide any supporting documentation that Seller reasonably requests with respect to such financing.

4.6 **Brokers and Financial Advisors.** Except as set forth on Schedule 4.6, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement.

4.7 **Condition of the Station Assets.** Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in Article III hereof (as modified by the Schedules hereto as supplemented or amended), and Buyer acknowledges and agrees that, except for the representations and warranties contained therein, the Station Assets are being sold on a "where is" and, as to condition, "as is" basis. Buyer acknowledges that it has conducted to its satisfaction its own independent investigation of the Station Assets and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation and is not relying on any statements or representations of Seller, or any of its employees or agents, other than those representations or warranties expressly set forth in Article III hereof. Buyer acknowledges and agrees that none of Seller, any of its Affiliates or any other Person will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer or its representatives or Buyer's use of, any such information, including any confidential memoranda distributed on behalf of Seller relating to the Stations or the Station Assets or other publications or data room information provided to Buyer or its

representatives, or any other document or information in any form provided to Buyer or its representatives in connection with the sale of the Station Assets and the transactions contemplated hereby. In addition, Buyer shall be fully responsible for all costs associated with the buildout of the Station's digital transmission facilities, if any, and Seller makes no representation or warranty regarding the effect, if any, upon the Licenses under the rules and regulations of the FCC of any failure to have the Station's digital facilities constructed in accordance with time periods set by the FCC. Seller agrees to cooperate with Buyer in the filing of any applications to modify the Station facilities with the FCC, provided, however, that grant of any such modifications shall not be a condition precedent to the Closing.

4.8 **FCC Matters.** Buyer is legally, financially and otherwise qualified to assume and hold the Licenses and to acquire, own, and operate the Stations under the Communications Act of 1934, as amended, and published FCC rules, regulations, and policies (collectively, the "Communications Act"), including all such provisions relating to media ownership and attribution, foreign ownership and control, and character qualifications. Buyer knows of no fact that would, under the Communications Act, (a) disqualify Buyer as an assignee of the Licenses or as the owner and operator of the Stations or (b) cause the FCC to fail to grant the FCC Application in a timely manner. With respect to Buyer, no waiver of any FCC rule or policy is necessary to be obtained for the grant of the FCC Application, nor will processing pursuant to any exception to any FCC rule or policy of general applicability be requested or required in connection with Buyer's consummation of the transactions contemplated by this Agreement.

## **ARTICLE V. COVENANTS**

5.1 **Covenants of Seller.** Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer, Seller hereby covenants and agrees:

- (a) not to sell, transfer or further encumber any of the Station Assets;
- (b) to notify Buyer in writing of the commencement of any material claim, suit, action, arbitration, legal, administrative or other proceeding, governmental investigation or tax audit against Seller that could reasonably be expected to result in a Material Adverse Effect;
- (c) upon Buyer's request and at Buyer's expense, to file within a commercially reasonable time after its receipt of such request, an application or applications or, at Seller's election, to give written consent to Buyer filing an application or applications with the FCC for modification of the transmitting facilities of the Stations (it being understood that favorable action upon any such application or applications shall not be a condition to Buyer's performance of its obligations under this Agreement);
- (d) to give Buyer and its employees and other authorized representatives, during normal business hours and with reasonable written prior notice, reasonable access to the Station Assets and to all other books, records and documents of Seller relating solely to the Stations for the purpose of audit and inspection, and to furnish or cause to be furnished to Buyer or its authorized representatives, upon reasonable notice, all information with respect to the

Stations' business that Buyer may reasonably request; provided, however, that no such investigation or examination shall be permitted to the extent that it would require Seller or any of its Subsidiaries to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Seller or any of its Subsidiaries is bound; and

(e) At any time prior to Closing, Buyer may elect, by providing written notice to Seller, not to purchase any Station that has been off the air for over a year or that Buyer determines is not viable. In such event, Seller shall return the Station's License to the FCC within 10 days after the Closing Date; provided, that any such election by Buyer and any such return of Licenses by Seller shall not result in a reduction in the Purchase Price or the modification of any of the terms or provisions of this Agreement.

## 5.2. Joint Covenants.

(a) FCC Application. Buyer and Seller shall cooperate fully with each other and their respective counsel in connection with any actions required to be taken in connection with obtaining the FCC Consent, including (i) the filing of an application (the "FCC Application") with the FCC for all necessary consent of the FCC to the assignment of the Licenses to Buyer as proposed in this Agreement, (ii) the defense against any petition to deny or informal objection filed against the FCC Application. Each party shall prepare its portion of the FCC Application, which shall be filed with the FCC within five (5) Business Days after the execution of this Agreement; provided, that Seller or Buyer in their sole discretion may elect, by providing notice to Buyer, to extend such deadline to a date no later than five (5) Business Days after entry of the Sale Order. Buyer shall pay all FCC filing fees associated with the FCC Application. Each party shall pay its own attorney fees incurred in filing and prosecuting the FCC Application. The parties hereto acknowledge that the purchase and sale of the Station Assets as contemplated by this Agreement is subject to the receipt of the FCC Consent. Each party will promptly provide to the other party a copy of any pleading, order or other document served on or delivered to it relating to the FCC Application. Buyer and Seller shall take or cause to be taken all commercially reasonable actions necessary or appropriate to permit the FCC to grant the FCC Consent at the earliest practicable date and agree to comply with all conditions imposed on it (or its affiliates) by the FCC Consent that are applicable to broadcast television stations generally, that are customarily imposed on similarly situated broadcast television stations or that arise out of such party's breach of this Agreement. Each of Buyer and Seller shall use its commercially reasonable efforts to oppose any petitions to deny or other objections filed with respect to the FCC Application and any requests for reconsideration or review of the FCC Consent. Neither Seller, on the one hand, nor Buyer, on the other hand, shall agree to participate in any meeting with the FCC in respect of any filing, consent, approval, investigation or other inquiry relating to this Agreement or the transactions contemplated hereby unless it consults with the other party in advance and, to the extent permitted by the FCC, gives the other party the opportunity to attend and participate in such meeting.

(b) Other Consents. Seller shall use its commercially reasonable efforts, and Buyer shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the transactions contemplated by this Agreement; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party

from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval.

(c) Further Assurances. Each of Seller and Buyer shall use its commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement. At and after the Closing, Buyer and Seller will, without further consideration, execute and deliver such further instruments and documents and do such other acts and things that the other party may reasonably request in order to effect or confirm the transactions contemplated by this Agreement.

(d) Competing Bids. All of the obligations of Seller under this Article V shall be subject to Seller's rights with respect to Competing Bids, as set forth in Article VIII and/or the Bid Procedures Order.

(e) KPBI Digital. In the event that Buyer decides, with Seller's prior consent (which may not be unreasonably withheld), to build out the KPBI digital facility prior to Closing, all of the costs and expenses of such buildout shall be borne by Buyer and Seller shall not have any responsibility therefore, and Seller shall use commercially reasonable efforts to provide such cooperation, prior to Closing, as Buyer may reasonably request by Buyer with respect to such buildout.

## ARTICLE VI. CLOSING

6.1 Time and Place. Subject to the satisfaction of the conditions set forth in Article IX hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Station Assets and the assumption of the Assumed Liabilities provided for in Article I hereof (the "Closing") shall take place at the offices of Neligan Foley, LLP (or at such other place as Seller and Buyer may mutually agree in writing), via facsimile, at 10:00 a.m., Little Rock time on a date, set by Seller, that is no later than ten (10) Business Days following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date".

6.2 Seller's Deliveries at Closing. At Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(a) A Bill of Sale, and other such documents or instruments as Buyer may reasonably request to carry out the transaction contemplated by this Agreement. For purposes of this Agreement, all such documents are defined as the "Transaction Documents";

(b) An assignment and assumption agreement, duly executed by Seller, in substantially the form attached hereto as Exhibit B and, if necessary, general assignments of all intellectual property rights (if any) included among the Station Assets.

(c) Copies of the Licenses and all other files, records and correspondence pertaining to the Licenses or the Stations in Seller's possession that are not Excluded Assets; and

(d) Instructions from Seller to the Escrow Agent to disburse the Escrow Deposit to Seller.

6.3 **Buyer's Deliveries at Closing.** At Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) The Purchase Price as provided in Article II hereof plus the Cure Cost Reimbursement Amount, if any, by wire transfer of immediately available funds;

(b) An assignment and assumption agreement, duly executed by Buyer, in substantially the form attached hereto as Exhibit B; and

(d) Instructions from Buyer to the Escrow Agent, to disburse the Escrow Amount to Seller.

## **ARTICLE VII. TERMINATION**

7.1 **Termination by Buyer.** Buyer may terminate this Agreement, if not then in material default, upon written notice to Seller upon the occurrence of any of the following:

(a) If FCC approval is denied or approval has not been received within the six (6) month period following the date the FCC Application is filed, as such period may be extended mutually by Buyer and Seller; or

(b) If Seller defaults in any material respect in the observance or in the due and timely performance of any of its material covenants or agreements contained herein and such default has not been cured within thirty (30) days after written notice by Buyer.

7.2 **Termination by Seller.** Seller may terminate this Agreement, if not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(a) If FCC approval is denied or approval has not been received within the six (6) month period following the date the FCC Application is filed, provided, however, that Seller and Buyer may mutually extend such period, in writing, by up to an additional six (6) months upon written agreement executed by both parties;

(b) If the Bankruptcy Court shall enter an order approving a Competing Bid (as defined below); or

(c) If Buyer defaults in the observance or in the due and timely performance of any of its material covenants or agreements contained herein, and such default has not been cured within thirty (30) days after written notice by Seller.

7.3 **Termination by Either Party.** This Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.

7.4 **Effect of Termination.**

(a) In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Buyer or Seller (subject to Section 7.4 (b) and Seller's rights under Section 10.2); provided, however, that the obligations of the parties set forth in Article X hereof shall survive any such termination and shall be enforceable hereunder.

(b) Nothing in this Article VII shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination, provided that Seller's liability hereunder for any and all such breaches shall be capped at an amount equal to Buyer's reasonable out-of-pocket expenses up to an aggregate amount equal to \$25,000; provided, further, that such amount shall be increased by \$37,500 in the event that (i) Seller consummates a sale of the Stations to a Person other than Buyer (or any of its successors or assignees) in a transaction with respect to which a Break-Up Fee is not payable pursuant to Section 8.1 and (ii) no material breach by Buyer of this Agreement has occurred. Notwithstanding the foregoing, this Section 7.4 shall not affect Seller's rights under Section 10.2 with respect to any breach of this Agreement by Buyer.

**ARTICLE VIII.**  
**BANKRUPTCY COURT MATTERS**

8.1 **Break-Up Fee.** In consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof, Seller shall pay Buyer a break-up fee in an amount equal to \$75,000 (the "Break-up Fee") on the fifth (5th) Business Day following the date of consummation of a Competing Bid (as defined below) if no material breach by Buyer of this Agreement has occurred.

8.2 **Competing Transaction.** This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a "Competing Bid"). Notwithstanding any other provision of this Agreement (including, without limitation, the covenants set forth in Article V), from the date of this Agreement until the Bankruptcy Court's approval of this Agreement and entry of the Sale Order, Seller shall be permitted to cause its representatives to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person or group of Persons in connection with any sale or other disposition of the Stations or the Station Assets. In addition, nothing contained herein shall restrict or limit the ability of Seller to respond to any inquiries or offers from any Person or group of Persons to purchase all or any part of the Station Assets and perform any and all other acts related thereto which are permitted under the Bankruptcy Code or other applicable law, including, without limitation, supplying information relating to the Stations or the Station Assets to prospective purchasers.

8.2 **Bankruptcy Court Filings.** As promptly as practicable following the execution of this Agreement, Seller shall file with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement, the Assumed Contracts and the Real Property Leases, and demonstrating that Buyer is a "good faith" Buyer under Section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Station Assets hereunder. In the event the entry of the Sale Order shall be appealed, Seller and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

## **ARTICLE IX.**

### **CONDITIONS TO CLOSING**

9.1 **Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Buyer), at or prior to the Closing, of Seller's obligation to deliver, or cause to be delivered, to Buyer, each of the items set forth in Section 6.2.

9.2 **Conditions to Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Seller), at or prior to the Closing, of Buyer's obligation to deliver, or cause to be delivered, to Seller, each of the items set forth in Section 6.3.

9.3 **Conditions to Obligations of Buyer and Seller.** The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer and Seller in whole or in part to the extent permitted by applicable Law):

- (a) the FCC shall have issued the FCC Consent;
- (b) there shall not be in effect any Order by a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and
- (c) the Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court.

9.4 **Frustration of Closing Conditions.** Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article IX if such failure was caused by such party's failure to comply with any provision of this Agreement.

**ARTICLE X.**  
**MISCELLANEOUS**

10.1 **No Survival.** The representations and warranties of Seller contained in Article III shall not survive the Closing, and Seller shall not have any liability to Buyer after the Closing for any breach thereof. The representations and warranties of Buyer contained in Article IV shall not survive the Closing, and Buyer shall not have any liability to Seller after the Closing for any breach thereof. None of the covenants of Buyer or Seller contained in this Agreement (except for Section 5.2(d) and such items as are expressly required to be performed after the Closing) shall survive the Closing hereunder, and neither party hereto shall be liable to the other after the Closing for any breach of such covenants.

10.2 **Specific Performance.** The parties recognize and agree that the Station Assets are unique and that if Buyer breaches any of the covenants, promises and agreements contained in this Agreement, Seller would be damaged irreparably and the award of monetary damages alone would not be adequate to compensate Seller for its injury. Accordingly, Seller shall be entitled to injunctive relief with respect to any such breach, including without limitation specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. If this Agreement is terminated pursuant to Article VII and, at the time of such termination, the conditions to closing set forth in Article IX have been met or would have been met but for any action of, omission of, or failure to comply with its obligations under this agreement by, Buyer, then the transactions contemplated by this Agreement shall be closed and Seller may sue for, and shall be entitled to, specific performance of this Agreement (including, without limitation, Buyer's payment of the Purchase Price and assumption of the Assumed Liabilities) and/or full money damages (including, without limitation, Seller's right to retain the Escrow Deposit and apply it as Seller determines), irrespective of any other condition of fact or law. The rights set forth in this Section 10.2 shall be in addition to any other rights which Seller may have under this Agreement or at law or in equity.

10.3 **Binding Effect; Assignment; No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Seller or Buyer (by operation of law or otherwise) without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld; provided that Buyer may assign this Agreement to an Affiliate of Buyer without consent from Seller; provided, further that no assignment by Buyer of this Agreement or any of its rights or obligations hereunder shall be valid or given any force or effect for any purpose under this Agreement unless and until the assignee executes and delivers to Seller an instrument in form and substance reasonably satisfactory to Seller confirming that such assignee agrees to be bound by this Agreement and all of the terms and conditions hereof. Upon any such permitted assignment, all references in this Agreement to Buyer shall refer to such assignee. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below.



10.4. **Taxes.** Buyer shall be responsible for (and shall indemnify and hold harmless Seller and its directors, officers, employees, Affiliates, agents, successors and permitted assigns against) all Transfer Taxes. Seller shall, however, seek to include in the Sales Order a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes identified under Bankruptcy Code Section 1146(c). To the extent that any Transfer Taxes are required to be paid by Seller (or such Transfer Taxes are assessed against Seller), Buyer shall promptly reimburse Seller, as applicable, for such Transfer Taxes. Seller and Buyer shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes; provided, however, Seller may initially pay any Transfer Taxes (for which Buyer shall promptly reimburse Seller) and, thereafter, in reliance on Section 1146(c) of the Bankruptcy Code (if applicable) apply for a refund (which refund shall be remitted to Buyer to the extent such Transfer Taxes were previously reimbursed by Buyer). Seller and Buyer shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

10.5. **Legal Expenses.** Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit for damages, specific performance, or other permitted remedy, the prevailing party in such lawsuit shall be entitled to its reasonable legal fees and expenses, including such fees and expenses at the appellate level.

10.6 **Submission to Jurisdiction; Waiver of Jury Trial.**

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.9; provided, however, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of the State of Arkansas and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 10.9.

(c) EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING REGARDING THIS AGREEMENT OR ANY PROVISION HEREOF.

10.7 **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Arkansas, without regard to the choice of law provisions thereof.

10.8 **Construction.** The parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting party.

10.9 **Notices.** All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified, express or registered mail, return receipt requested, postage prepaid, overnight air courier service, personal delivery, or via facsimile (with proof of transmission) to the address specified below (or to such other address which a party shall specify to the other party in accordance herewith):

If to Buyer: Pinnacle Media, LLC  
14524 Cantrell Road  
Suite 140, #222  
Little Rock, AR 72223  
Attn: Greg Fess

With a copy to  
(which shall not constitute notice) Lori E. Withrow, PLLC  
12410 Cantrell Road  
Suite 100  
Little Rock, AR 72211  
Attn: Lori Withrow

If to Seller: TV 34, Inc.  
Ft. Smith 46, Inc.  
Equity Media Holdings Corporation  
#1 Shackleford Drive, Suite 400  
Little Rock, AR 72211  
Attn: Kim D. Kelly  
(501) 221-1101 (Facsimile)

With a copy to  
(which shall not constitute notice) Neligan Foley, LLP  
325 N. St. Paul, Suite 3600  
Dallas, TX 75201  
Attn: Patrick J. Neligan, Jr., Esq.  
James P. Muenker, Esq.  
(214) 840-5301 – (Facsimile)

Notice shall be deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the return receipt.

10.10 **Counterparts and Facsimile Signatures.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Counterpart signatures to the Agreement delivered and received by facsimile shall be acceptable and binding to both parties.

10.11 **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, and all documents to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. This Agreement supersedes all prior memoranda, discussions and agreements between the parties hereto, and may not be modified, supplemented or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified, supplemented or amended.

10.12 **Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

10.13 **No Waiver.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by the other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by another shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by any party for the performance of any obligation or act by any other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

10.14 **No Consequential Damages.** Notwithstanding anything to the contrary elsewhere in this Agreement, no party shall, in any event, be liable to any other Person for any consequential, incidental, indirect, special or punitive damages of such other Person, including loss of future revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to the breach or alleged breach hereof (provided that such limitation with respect to lost profits or diminution in value shall not limit Seller's right to recover contract damages in connection with Buyer's failure to close in violation of this Agreement).

10.15 **Expenses.** Except as otherwise provided in this Agreement, each of Seller and Buyer shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

## ARTICLE XI. DEFINITIONS; INTERPRETATION

11.1 **Certain Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

"**Affiliate**" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or

cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Business Day" means any day of the year on which national banking institutions within the State of Arkansas are open to the public for conducting business and are not required or authorized to close.

"FCC Consent" means the consent and other actions of the FCC (including any action duly taken by the FCC's staff pursuant to delegated authority) granting its consent to the assignment of the Licenses in connection with the transactions contemplated by this Agreement, without regard to whether such action remains subject to reconsideration or review.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"Governmental Entity" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Knowledge of Seller" means the actual knowledge of the Chief Restructuring Officer of Seller.

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance

"Material Adverse Effect" means any event or change that (A) has a material adverse effect on the Station Assets, taken as a whole or (B) prevents Seller from performing its obligations under this Agreement or the consummation of the transactions contemplated hereby; provided, however, that a Material Adverse Effect shall not include (i) any event, change, circumstance, occurrence, effect or state of facts generally affecting any industry in which Seller or any of its Subsidiaries operates, (ii) any event, change or condition generally affecting the economy or the financial or securities markets, or political or regulatory conditions, in the United States or any other jurisdiction in which Seller has business operations, (iii) any outbreak or escalation of hostilities or acts of war or terrorism, (iv) changes in law or to GAAP, (v) any change attributable to the negotiation, execution, announcement or pendency of this Agreement or the transactions contemplated hereby, including any litigation resulting therefrom, (vi) any failure by Seller to meet internal projections, forecasts or revenue or earnings predictions, in and of itself, (vii) any matter of which Buyer is aware on the date hereof, and (viii) any effect resulting from the precarious nature of Seller, the filing of the Bankruptcy Cases, the causes of such filing, or the reasonably anticipated effects thereof.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Entity.

"Permitted Encumbrance" means (i) all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance which have been made available to Buyer; (ii) statutory liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings provided an appropriate reserve is established therefor; (iii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of Seller's business; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Entity; (v) title of a lessor under a capital or operating lease; and (vi) such other imperfections in title, charges, easements, restrictions and encumbrances which would not result in a Material Adverse Effect.

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Entity or other entity.

"Sale Motion" means the motion or motions of Seller, which Seller shall prepare in consultation with Buyer, seeking approval and entry of the Bidding Procedures Order and Sale Order.

"Sale Order" means an order or orders of the Bankruptcy Court approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Seller to consummate the transactions contemplated hereby.

"Subsidiary" means with respect to any Person, any other Person of which stock or other equity interests having ordinary voting power to elect more than 50% of the board of directors or other governing body are owned, directly or indirectly, by such first Person.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including, without limitation, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

"Transfer Taxes" means any sales, use, stamp, documentary stamp, filing, recording, mortgage or deed recording, transfer, real property transfer, personal property transfer or similar fees or Taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement.

11.2 Interpretation. All references in this Agreement to any "Section" or "Article" are to the corresponding Section or Article, as applicable, of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden

of proof shall arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and first year above written.

EQUITY MEDIA HOLDINGS CORPORATION

By: Constance Vaughn  
Name: CONSTANCE VAUGHN  
Title: ASST. Vice President

TV 34, INC.

By: Constance Vaughn  
Name: CONSTANCE VAUGHN  
Title: ASST. Corporate Secretary

FT. SMITH 46, INC.

By: Constance Vaughn  
Name: CONSTANCE VAUGHN  
Title: Asst. Corporate Secretary

PINNACLE MEDIA, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and first year above written.

**EQUITY MEDIA HOLDINGS CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TV 34, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FT. SMITH 46, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PINNACLE MEDIA, LLC**

By: Larry E. Horton

Name: LARRY E. HORTON

Title: Manager