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**AMENDED AND RESTATED ASSET ACQUISITION  
AND OPERATING AGREEMENT**

**BETWEEN**

**EDUCATIONAL BROADCASTING CORPORATION**

**AND**

**LONG ISLAND EDUCATIONAL TV COUNCIL, INC.**

**Dated as of August 7, 2002**

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I RATIONALE AND STATEMENT OF GOALS FOR THE TRANSACTION .....	2
1.1 Statement of Goals .....	2
ARTICLE II ACQUISITION OF ASSETS .....	3
2.1 Transfer of Assets.....	3
2.2 Excluded Assets .....	8
2.3 Assumed Liabilities.....	8
ARTICLE III CONSIDERATION.....	10
3.1 Consideration .....	10
ARTICLE IV CLOSING AND EFFECTIVENESS .....	10
4.1 Closing .....	10
4.2 Closing Deliveries of LIETV .....	11
4.3 Closing Deliveries of EBC.....	11
ARTICLE V COVENANTS RELATING TO POST-CLOSING ACTIVITIES .....	12
5.1 Board of Trustees and Senior Management .....	12
5.2 Employment .....	15
5.3 Sale of WLIW; Effect of WNET Sale.....	17
5.4 WLIW Operations .....	18
5.5 On-Going Activities of LIETV .....	19
5.6 Trustees' and Officers' Indemnification .....	20
5.7 Successor to LIETV .....	20
5.8 Gifts and Bequests.....	20
5.9 Insurance Matters .....	21
ARTICLE V.A BEST EFFORTS INTENTIONS FOR POST-CLOSING ACTIVITIES .....	21
5A.1 WLIW Station Programming .....	21
5A.2 Advertising and Promotion of WLIW.....	22
5A.3 Program Production Effort.....	22
5A.4 No Default.....	23
ARTICLE VI ADDITIONAL COVENANTS AND AGREEMENTS .....	23
6.1 Covenants of LIETV Relating to Conduct of Activities.....	23
6.2 Covenants of EBC Relating to Conduct of Activities.....	28
6.3 Joint Covenants Relating to Conduct of Activities .....	29

6.4	Preparation of Applications and Consents .....	30
6.5	Access to Information .....	32
6.6	Notification.....	32
6.7	No Inconsistent Action.....	33
6.8	Confidential Information.....	33
6.9	Public Announcements.....	33
6.10	Transaction Expenses.....	34
6.11	Revisions to Organizational Documents .....	35
6.12	Labor Filings .....	36
ARTICLE VII REPRESENTATIONS AND WARRANTIES .....		37
7.1	Representations and Warranties of LIETV .....	37
7.2	Representations and Warranties of EBC.....	49
ARTICLE VIII CONDITIONS PRECEDENT TO THE OBLIGATIONS.....		53
8.1	Conditions to Each Party’s Obligation.....	53
8.2	Additional Conditions to Obligations of LIETV .....	54
8.3	Additional Conditions to Obligations of EBC .....	56
ARTICLE IX GENERAL PROVISIONS.....		58
9.1	Non-Survival of Representations, Warranties and Agreements.....	58
9.2	Notices.....	59
9.3	Indemnity .....	60
9.4	Assignment.....	60
9.5	Further Assurances.....	60
9.6	Amendments.....	61
9.7	No Waiver .....	61
9.8	Counterparts .....	61
9.9	Governing Law.....	61
9.10	Severability.....	61
9.11	Binding Effect; No Third Party Beneficiaries.....	61
9.12	Bulk Transfer Law .....	62
9.13	Termination .....	62
9.14	Remedies Upon Default .....	63
9.15	Definition of Knowledge.....	63
9.16	Exhibits and Schedules.....	64
9.17	Effect of Headings.....	64
9.18	Entire Agreement .....	64
9.19	Amendment and Restatement; Effectiveness.....	64

Exhibits:

Exhibit A	Form of Assumption Agreement
Exhibit B	Form of Bill of Transfer and Assignment

Schedules:

Schedule 2.1(a)(vi)	LIETV Broadcasting Equipment
Schedule 2.2	Excluded Assets
Schedule 5.2(a)	Form of Cass Employment Agreement
Schedule 5.2(b)	Form of Key WLIW Manager Severance Agreement
Schedule 5.2(c)	LIETV Programs and Policies for Terminated Employees
Schedule 6.1(d)	LIETV Capital Expenditures
Schedule 7.1(c)	LIETV Governmental Approvals
Schedule 7.1(e)	LIETV Licenses and Permits
Schedule 7.1(g)	LIETV Litigation
Schedule 7.1(k)	LIETV Contracts
Schedule 7.1(l)	LIETV Intellectual Property
Schedule 7.1(m)	LIETV Financial Statements
Schedule 7.1(n)	LIETV Liens
Schedule 7.1(p)	LIETV Environmental Matters
Schedule 7.1(r)	LIETV Insurance
Schedule 7.1(s)	LIETV Labor
Schedule 7.1(t)	LIETV Employee Benefit Programs
Schedule 7.1(t)(iii)	LIETV Employee Benefit Accelerations or Increases
Schedule 7.2(c)	EBC Governmental Approvals; No Conflict
Schedule 7.2(g)	EBC Litigation
Schedule 7.2(k)	EBC Financial Statements

**AMENDED AND RESTATED ASSET ACQUISITION AND OPERATING AGREEMENT**, dated as of August 7, 2002, between LONG ISLAND EDUCATIONAL TV COUNCIL, INC., a New York educational corporation ("LIETV") and EDUCATIONAL BROADCASTING CORPORATION, a New York educational corporation ("EBC").

**WHEREAS**, LIETV is chartered to promote educational television in the Long Island area of New York and owns and operates WLIW (a.k.a. Channel 21), a noncommercial television broadcast station licensed to Garden City, New York ("WLIW") by the Federal Communications Commission (the "FCC"), and holds a permit from the FCC to construct WLIW-DT, a digital television broadcast station;

**WHEREAS**, EBC is chartered to provide educational and cultural programming and owns and operates WNET (a.k.a. Channel 13), a noncommercial television broadcast station licensed to Newark, New Jersey ("WNET") by the FCC, and holds a permit from the FCC to construct WNET-DT, a digital television broadcast station;

**WHEREAS**, in furtherance of the mission and purpose of each of EBC and LIETV (collectively, the "Parties"), the Parties executed the Asset Acquisition and Operating Agreement, dated as of September 21, 2001 (the "Original Agreement"), pursuant to which LIETV agreed to transfer and EBC agreed to acquire LIETV's right, title, and interest in and to all or substantially all of the assets of LIETV, including the right to operate WLIW and construct and operate WLIW-DT, and EBC further agreed to assume LIETV's liabilities related to such assets, including, without limitation, LIETV's obligation to construct and operate WLIW-DT;

**WHEREAS**, the Parties deem it advisable and in the best interests of each of them and the public interest to amend and restate the Original Agreement;

**WHEREAS**, after the transfer of assets and assumption of liabilities contemplated by this Agreement EBC shall operate WLIW and WLIW-DT in a manner so as to

enhance and preserve the current mission of WLIW by protecting its unique identity, continuing to operate the station in the public interest, strengthening WLIW by allowing it to produce, distribute and acquire additional programming, and expanding WLIW's commitment to Long Island.

**NOW, THEREFORE**, upon and subject to the terms and conditions set forth herein and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

## **ARTICLE I**

### **RATIONALE AND STATEMENT OF GOALS FOR THE TRANSACTION**

**1.1 Statement of Goals.** The Parties hereto hereby acknowledge that the goals of the asset acquisition contemplated hereunder include, among others, the following:

(a) building upon the successful base already established by WLIW and WNET in serving their respective local communities and the diversity of those communities;

(b) providing WLIW with increased resources to promote Long Island programming and produce new programs;

(c) increasing viewership of WLIW and WNET by coordinating scheduling and promotion efforts, by adopting a strategy of multiple broadcasts of programming on both stations, by actively cross-promoting programs on both stations, and by creating a bigger "footprint" for major initiatives, while preserving and enhancing the unique market identity that each station has created;

(d) enhancing revenues for both WLIW and WNET by coordinating fundraising activities and integrating membership programs and, at the same time, allowing WLIW to reduce its dependence on "on air" fundraising;

(e) realizing significant cost savings resulting from the combination of duplicative administrative functions and making the most efficient use of available resources, thereby freeing more dollars for programming and community outreach;

(f) strengthening the position of both stations with the Corporation for Public Broadcasting and Congress with the expectation that increased Federal funding for both operations and equipment, including digital conversion, may result; and

(g) by providing for seats on the EBC Board of Trustees and its Executive Committee, to be filled by representatives of LIETV's Board of Trustees which will afford such representatives with an oversight function following the transaction.

## ARTICLE II

### ACQUISITION OF ASSETS

#### 2.1 Transfer of Assets.

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction (or waiver by the party whose obligations hereunder are subject to such satisfaction) of the conditions set forth in this Agreement, on the Closing Date (as defined in Section 4.1), in consideration for the assumption by EBC of, and its agreement to pay, perform and discharge when due, the Assumed Liabilities (as hereinafter defined) and the other covenants and agreements of EBC contained herein, LIETV shall sell, convey, assign, transfer and deliver to EBC, and EBC shall accept and acquire from LIETV, all of the assets, rights, properties, claims, and contracts of LIETV used, useful or necessary in the conduct of the business and operations of WLIW and WLIW-DT (the "WLIW Operations") as of the Closing Date, subject to Section 2.2, of every kind, nature, character and description, tangible and intangible, real, personal or mixed, wherever located (the "Asset Acquisition"), including, without limitation, the following:

- (i) All rights in and to the FCC licenses and permits for WLIW, WLIW-DT and associated auxiliary stations and satellite earth station registration;
- (ii) All cash and cash equivalents or similar type investments, such as certificates of deposit, Treasury bills and other marketable securities, on hand as of the opening of business on the Closing Date;
- (iii) All real property and leasehold interests in real property leased by LIETV, including all buildings, structures and other improvements situated thereon;
- (iv) All accounts receivable and other receivables of LIETV in existence on or prior to the opening of business on the Closing Date (whether or not billed);
- (v) All rights to distribution and underwriting revenues, residuals, and royalties due to LIETV;
- (vi) All transmission, production and other equipment (including without limitation, the broadcasting equipment as listed on Schedule 2.1(a)(vi)), furniture, furnishings, fixtures, machinery, vehicles, telephones and other tangible personal property of LIETV (collectively, the “Equipment”) and all warranties and guarantees, if any, express or implied, existing for the benefit of LIETV with respect to the Equipment;
- (vii) All inventory and other supplies on hand, in transit or on order as of the opening of business on the Closing Date, including, without limitation, stationery, forms, labels, directories and promotional materials (the “Inventory”);
- (viii) All management information systems and software;
- (ix) All contracts, agreements, arrangements and understandings, including, in each case, all amendments, modifications and supplements thereto and

waivers and consents thereunder, other than contracts, agreements, arrangements and understandings that the Parties mutually agree shall be terminated, to the extent permitted by their respective terms, on or prior to the Closing Date (collectively, the “Contracts”);

(x) All restricted gifts and endowments received or receivable by LIETV (to the extent permitted by the terms of such restricted gift or endowment), including funds held in trust;

(xi) All other licenses, permits or franchises issued by any domestic or foreign governmental authority or other third party (to the extent permitted by applicable law to be transferred);

(xii) All security (including cash) deposited with third parties and security bonds;

(xiii) All goodwill and going concern value;

(xiv) All mailing lists and lists of donors and contributors at all levels, *provided, however*, that LIETV shall be permitted to retain copies of such lists to assist in its continued fundraising efforts;

(xv) All prepaid expenses as of the opening of business on the Closing Date;

(xvi) All insurance proceeds or claims arising out of or related to damages, destruction or loss of any Station Asset or any liability assumed by EBC under Section 2.3 or otherwise pursuant to this Agreement;

(xvii) Except as specified in Section 2.2(b), all of LIETV’s rights in and to the trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registrations of any of them, jingles, logos, slogans, Internet domain names, licenses, permits and privileges owned or held by LIETV, and all

programs and programming materials of whatever form, nature, or phase of development owned by LIETV (collectively, the “Intellectual Property”), together with any additions thereto until the Closing;

(xviii) All of the assets, rights, title, claims and interests of LIETV in respect of the LIETV Benefit Plans (as defined in Section 7.1(t)) (which EBC shall assume the sponsorship of) and any plan, policy, contract or arrangement described in Section 2.3(a)(vi);

(xix) All of LIETV’s right, title and interest in accounts in banks and other financial institutions, *provided, however*, that nothing in this Section 2.2(a) shall prohibit LIETV from opening new accounts in banks and other financial institutions after the Closing; and

(xx) Except as specified in Section 2.2(a), all of LIETV’s books, records, and files, wherever located, reasonably necessary to the WLIW Operations.

(b) Anything contained herein to the contrary notwithstanding, this Agreement will not constitute an assignment, an attempted assignment or an agreement to assign any Contract, license or permit if an assignment or attempted assignment of the same without the consent of any other party or parties thereto or, in the case of any license or permit, the governmental entity that issued or granted such license or permit, would constitute a breach thereof or not be permitted by law, or in any way impair the rights of LIETV or EBC thereunder. LIETV will use its best efforts and EBC will cooperate in all reasonable respects with LIETV, to obtain prior to the Closing all such consents without material change or impairment of any Contract, license or permit, and to resolve all impracticalities of assignments or transfers necessary to sell, assign, convey, transfer and deliver to EBC the Station Assets. If any such consent is not obtained prior to the Closing (excluding required governmental approvals

specified herein) or if an attempted assignment would be ineffective or would impair LIETV's or EBC's rights under any such Contract, license or permit so that EBC would not receive all such rights and EBC shall have waived the condition with respect to such consent, then LIETV will (x) use its best efforts to provide or cause to be provided to EBC following the Closing, to the extent permitted by law, the full benefits of any such Contract, license or permit, (y) pay promptly or cause to be paid promptly to EBC when received all monies and other properties received by LIETV with respect to any such Contract and (z) following the Closing, enforce, at the request of EBC and at the sole expense and for the account of EBC, to the extent permitted by law, any and all rights of LIETV arising from such Contract, license or permit against the other party or parties thereto or the issuer or grantor thereof (including the right to elect to terminate such Contract, license or permit in accordance with the terms thereof upon the written advice of EBC). In addition, LIETV will take such other actions (at EBC's expense) as may reasonably be requested by EBC in order to place EBC, insofar as reasonably possible, in the same position as if such Contract, license or permit had been transferred as contemplated hereby and so that all the benefits relating thereto, including possession, use, risk of loss, potential for gain and dominion, control and command, shall inure to EBC.

(c) The assets, properties and rights described in Section 2.1(a) to be sold, conveyed, assigned, transferred and delivered to EBC pursuant to this Agreement are herein collectively referred to as the "Station Assets". The term "Station Assets" will include all additions and replacements to, or proceeds from, any of the items described in Section 2.1(a) from September 21, 2001 through the Closing Date, but will exclude to the extent permitted by this Agreement, all deletions, sales or other disposals of any of the foregoing from September 21, 2001 through the Closing Date.

**2.2 Excluded Assets.** It is expressly understood and agreed that the Station Assets shall not include the following assets (the “Excluded Assets”), which Excluded Assets are not being sold, conveyed, assigned, transferred and delivered to EBC:

- (a) The corporate minute books of LIETV;
- (b) The right, title and use of the name “Long Island Educational TV Council”;
- (c) All contracts of insurance related to board liability; and
- (d) The items listed in Schedule 2.2.

**2.3 Assumed Liabilities.**

(a) On the basis of the representations, warranties, covenants and agreements and subject to the satisfaction of the conditions set forth in this Agreement, on the Closing Date, in consideration for the sale, conveyance, assignment, transfer and delivery of the Station Assets to EBC and the other covenants and agreements of LIETV contained herein, EBC shall deliver to LIETV an undertaking in the form attached as Exhibit A (the “Assumption Agreement”) pursuant to which EBC shall, on the Closing Date, assume and agree to pay, perform and discharge when due, the following liabilities and obligations of LIETV, whether actual or contingent, matured or unmatured, currently existing or arising in the future:

(i) All of LIETV’s liabilities and obligations related to the Station Assets or the operations thereof incurred or related to periods prior to the Closing (x) which are set forth in the books and records of LIETV, (y) which are otherwise disclosed in this Agreement or known to EBC or (z) the existence of which would not be a breach of the representation contained in Section 7.1(m);

(ii) All of LIETV’s other liabilities and obligations related to the Station Assets or the operations thereof incurred or related to periods prior to the Closing

which are unknown as of September 21, 2001 to Terrel Cass, the President and General Manager of WLIW or are otherwise immaterial;

(iii) All obligations in respect to LIETV's obligation to undertake the conversion of WLIW to digital broadcast transmissions;

(iv) All liabilities arising out of the operation of the Station Assets after the Closing;

(v) All liabilities arising after the Closing under Contracts which are effectively assigned and transferred to EBC as contemplated by Section 2.1;

(vi) Liabilities in respect of employees and former employees of LIETV (including without limitation liabilities of the collective bargaining agreement dated as of July 1, 1998 (as amended) with Local 1212 of the International Brotherhood of Electrical Workers (the "LIETV Collective Bargaining Agreement") pursuant to Section 7.03 thereof, the terms of said agreement being incorporated herein by reference) based upon, arising out of, relating to or otherwise in connection with both employment by LIETV at any time on or prior to the Closing Date and employment by EBC after the Closing Date, whether pursuant to Benefit Plans or otherwise, including without limitation, (i) liabilities for salary, bonuses, incentive payments, vacation and other compensation payments; (ii) liabilities in respect of pension benefits; (iii) liabilities for employee welfare and fringe benefits; (iv) liabilities in respect of severance pay, salary continuation and similar obligations relating to the termination or alleged termination (whether voluntary or involuntary) of employment or claims in respect thereof; and (v) liabilities with respect to workplace safety;

(vii) Liabilities for any income, transfer, sales, use and other taxes arising in connection with the consummation of the transactions contemplated hereby; and

(viii) Liabilities for any taxes of LIETV relating to the Station Assets or the Assumed Liabilities for periods (or portions thereof) up to and including the Closing Date.

(b) Notwithstanding anything contained herein to the contrary, EBC is not assuming, nor shall it be deemed to have assumed, (i) any liability or obligation which does not relate to the Station Assets or which is incurred by LIETV after the Closing Date or (ii) any liability or obligation relating to the Excluded Assets described in Section 2.2. The liabilities and obligations assumed by EBC in accordance with this Section are sometimes hereinafter referred to as the “Assumed Liabilities.”

### ARTICLE III

#### CONSIDERATION

**3.1 Consideration.** Subject to the terms and conditions set forth herein, in consideration for the sale, assignment, conveyance, transfer and delivery of the Station Assets, EBC shall, at the Closing, assume the Assumed Liabilities as provided in Section 2.3 and the future undertakings specified herein, including, but not limited to, those described in Article V.

### ARTICLE IV

#### CLOSING AND EFFECTIVENESS

**4.1 Closing.** On and subject to the conditions set forth herein, the closing of the Asset Acquisition (the “Closing”) will take place at 10:00 a.m. on a date to be specified by mutual agreement of the Parties (the “Closing Date”), which shall be the first business day that is at least two business days after the satisfaction or waiver (subject to applicable law) of the

conditions (excluding conditions that, by their terms, cannot be satisfied until the Closing Date) set forth in Article VIII, unless another time or date is agreed to in writing by the Parties. The Closing shall be held at the offices of Simpson Thacher & Bartlett at 425 Lexington Avenue, New York, New York or at such other location in the State of New York as is agreed to in writing by the Parties. The Closing will be deemed to be effective at 5:00 p.m., New York City time, on the Closing Date.

**4.2 Closing Deliveries of LIETV.** At the Closing, LIETV shall (a) deliver or cause to be delivered to EBC such deeds, bills of sale, endorsements, consents, assignments, and other good and sufficient instruments of conveyance and assignment, all in recordable form, where applicable, as shall be reasonably requested by EBC to effect or evidence the sale, assignment, conveyance, transfer and delivery of the Station Assets to EBC, (b) all closing certificates and other documents and agreements required to be delivered to EBC at the Closing pursuant to this Agreement, and (c) transfer control to EBC of all contracts, agreements, commitments, lien releases, books, records, files, recordings, physical materials, tapes, masters, certificates, licenses, consents, clearances, permits, plans and specifications and other data of LIETV, including, without limitation, computer tapes and computer-generated records and data, contemplated hereunder, but only to the extent the foregoing constitute Station Assets. All materials referred to in subsection (c) shall be delivered, to the extent practicable, to EBC in the form and order in which they are maintained by LIETV.

**4.3 Closing Deliveries of EBC.** At the Closing, EBC will deliver to LIETV (a) such instruments of assumption by EBC as shall reasonably be requested by LIETV to effect or evidence the assumption by EBC of the Assumed Liabilities and (b) all closing certificates and other documents required to be delivered by EBC to LIETV at the Closing pursuant to this Agreement.

## ARTICLE V

### COVENANTS RELATING TO POST-CLOSING ACTIVITIES

**5.1 Board of Trustees and Senior Management.** Prior to the Closing Date but effective immediately after the Closing Date, EBC will take all action necessary to cause its Board of Trustees to be reconstituted and its By-Laws to be revised, as necessary, to comply with the following (and LIETV shall have the right to comment on and approve the form of such By-Laws revisions which approval shall not be unreasonably withheld) and shall not be permitted to amend its By-Laws thereafter in a manner inconsistent with the following: •

(a) Representation on the Board of Trustees. EBC will take all action necessary to cause EBC's Board of Trustees to elect eight individuals who have been designated by LIETV's Board of Trustees to serve on the EBC Board of Trustees effective immediately after the Closing Date (the "LIETV Board Designees"); *provided however* that Terrel Cass shall not be eligible to serve as an LIETV Board Designee. The LIETV Board Designees shall be allocated among the three classes of EBC trustees so that such classes are as nearly equal in number as possible in accordance with New York law and EBC's By-Laws. At the expiration of the initial term of each such LIETV Board Designee, EBC shall use its best efforts to cause each LIETV Board Designee to be reelected to a full three-year term; *provided* that such trustee (i) has not been removed for cause, (ii) has not committed any act that would be the basis for removal for cause, (iii) would not jeopardize or imperil the licenses of any of EBC's broadcast stations, or (iv) would not subject EBC to material adverse publicity, subject in the case of each of clauses (i) to (iv) to the good faith judgment of the majority of both the EBC Board of Trustees and the disinterested LIETV Board Designees. If, at the expiration of a LIETV Board Designee's first full three-year term, such LIETV Board Designee has not served at least five years (the period of

each such trustee's service being rounded to the nearest year), EBC shall use its best efforts to cause such LIETV Board Designee to be reelected to another full three-year term or to a remaining term of another class of trustees such that the LIETV Board Designee would serve as an EBC trustee for a minimum of five years, subject to the criteria listed in the foregoing proviso. If any of the LIETV Board Designees resigns or is removed from the EBC Board of Trustees during the Limitation Period (as defined in Section 5.5), EBC shall use its best efforts to cause a successor trustee, who shall be nominated by the LIETV Board, to be elected; *provided* that if the term of the successor trustee would extend beyond the Limitation Period then such successor shall be subject to the procedures in the following sentence. After the Limitation Period, any vacancy created by the departure of a LIETV Board Designee shall be filled by EBC in accordance with its standard nominating committee procedures; *provided* that only the LIETV Board of Trustees (the "LIETV Board") shall have the right to nominate a person or persons as a successor LIETV Board Designee after the Limitation Period.

(b) Expansion or Reduction of Board of Trustees. If the number of members of EBC's Board of Trustees is increased to a number greater than 55, the Board of Directors of LIETV would be permitted to nominate persons to fill a number of new trustee seats (which number may be zero) equal to  $8/55$ s of the number of such new trusteeships, including vacancies and rounded to the nearest whole number. Under such conditions, EBC shall use its best efforts to cause such persons nominated by the LIETV Board to be elected and treat such trustee as a LIETV Board Designee. If the number of trusteeships constituting the entire EBC Board of Trustees, including vacancies, is reduced to a number less than 55, the number of LIETV Board Designees of the EBC Board of Trustees shall be reduced to the extent necessary so that the total number of LIETV Board Designees represents  $8/55$ s of the total number of members of the EBC Board of Trustees, including vacancies and rounded to the nearest whole number. If such

reduced number is less than the number of LIETV Board Designees then currently serving, the LIETV Board Designees would select, by a majority vote, those among the LIETV Board Designees who would resign, and the LIETV Board Designees shall use their best efforts to cause such LIETV Board Designee or Designees to resign promptly, from the EBC Board of Trustees to bring the total number of LIETV Board Designees serving in accord with the agreement hereto. If, after a reduction in number, the number of trusteeships constituting the entire EBC Board of Trustees, including vacancies, were to be subsequently increased, the number of LIETV Board Designees would be recalculated using the formula and procedures described above.

(c) Executive Committee and Board Officers. Until the tenth anniversary of the Closing, EBC shall appoint two of the LIETV Board Designees to serve on the Executive Committee of the EBC Board of Trustees (who will be the Chairman and the First Vice Chairman of LIETV (or, if LIETV is no longer in existence or is deemed pursuant to Section 5.5 to have dissolved, two persons upon whom a majority of the LIETV Board Designees shall agree), in each case so long as they are LIETV Board Designees; and if either or both of such officers are not LIETV Board Designees, such person or persons, as the case may be, from among the LIETV Board Designees upon whom a majority of the LIETV Board Designees shall agree). In addition, during this ten-year period, EBC will cause the Chairman of the LIETV Board of Trustees (or, if LIETV is no longer in existence or is deemed pursuant to Section 5.5 to have dissolved or the Chairman of LIETV is not a LIETV Board Designee, a person upon whom a majority of the LIETV Board Designees shall agree) to be elected as a Vice Chairman of EBC, in each case so long as he or she is a member of the EBC Board of Trustees and on its Executive Committee.

(d) Successor to President and General Manager of WLIW. If the position of President and General Manager of WLIW becomes vacant for any reason during the Limitation Period, to the extent permissible under applicable law, a successor shall be selected by the President of EBC with the advice of the LIETV Board, subject to the approval of the Board of Trustees of EBC.

**5.2 Employment**. (a) Contract with Terrel Cass. Subject to the occurrence of the Closing and the continued employment of Terrel Cass ("Cass") with LIETV from September 21, 2001 through the Closing Date, at the Closing, EBC shall offer to enter into an employment agreement ("Employment Agreement") with Cass. The Employment Agreement shall have a term of five years (the "Term") commencing immediately following the Closing Date for the services of Cass to serve as the President and General Manager of WLIW, reporting to the President of EBC, and shall be in the form attached as Schedule 5.2(a).

(b) WLIW Key Management Commitments. EBC recognizes that Roy Hammond, Laura Savini, Kent Steele, and Tom D'Agostino are critical WLIW management personnel ("Key WLIW Managers"). Accordingly, subject to the occurrence of the Closing and their continued employment with LIETV from September 21, 2001 through the Closing Date, each of the Key WLIW Managers who accepts EBC's offer of employment and commences employment with EBC immediately following the Closing Date will be provided cash severance from EBC, pursuant to the terms of a severance agreement in the form attached as Schedule 5.2(b) to be offered to each Key WLIW Manager by EBC on the Closing Date, if he or she is terminated by EBC for any reason other than cause during the 18-month period immediately following the Closing Date, in an amount equal to the greater of (i) one year's salary or (ii) salary for the remainder of the 18-month period.

(c) Additional Employment Matters. Subject to the provisions specified in Sections 5.2(a), 5.2(b) and the Schedules attached thereto, EBC shall offer employment, commencing immediately following the Closing Date at the same salary levels in effect immediately prior to the Closing Date, to Key WLIW Managers and such other employees of LIETV to be mutually agreed on prior to the Closing. Those employees of LIETV to whom offers of employment are made by EBC and who accept and commence employment with EBC immediately following the Closing Date shall be collectively referred to as the “Transferred Employees.” Those employees of LIETV to whom offers of employment are not made by EBC or who do not accept and commence employment with EBC immediately following the Closing Date, if any, shall be terminated by LIETV prior to or on the Closing Date, and shall be collectively referred to as the “Non-Transferred Employees.” All Non-Transferred Employees shall cease active participation in, and accrual of additional benefits under, all LIETV Benefit Plans as of a date that is not later than the Closing Date. EBC shall be responsible for all liabilities and obligations relating to the Non-Transferred Employees, including without limitation the payment and administration of severance, COBRA and any other payments, under the employee benefit plans, policies and programs listed on Schedule 5.2(c) on behalf of LIETV consistent with such employee benefit plans, policies and programs as in effect immediately prior to the Closing Date. Following the Closing Date, EBC shall be responsible for providing employee benefits to the Transferred Employees under any LIETV Benefit Plan that it assumes in connection with the consummation of the transactions contemplated by this Agreement, or otherwise under EBC’s employee benefit and severance plans on such terms and conditions as are consistent with EBC’s existing policies and practice for employees in similar positions; *provided, however,* that the Transferred Employees (including Cass) shall be given service credit for purposes of eligibility and vesting but not for purposes of benefit accruals for all periods of

regular, full-time employment with LIETV for purposes of all such employee benefits, including severance and vacation benefits (in which case such periods of employment with LIETV will count as service with EBC for all purposes of such severance and vacation benefits), provided to such Transferred Employees by EBC, if any. Nothing in this Section 5.2 shall be construed as in any way limiting or restricting EBC's ability to amend, modify or terminate any Benefit Plan or compensation or incentive practice at any time and from time to time, or as in any way providing for duplicative benefits or accruals to any Transferred Employee, or as in any way obligating EBC to continue to employ any Transferred Employee, except that EBC shall not amend any employment agreement with Terrel Cass or any severance agreement with a Key WLIW Manager in a manner which is inconsistent with Sections 5.2(a) and 5.2(b) and Schedules thereto. LIETV and EBC intend, and the parties shall take all necessary action to ensure, that the consummation of the transactions contemplated by this Agreement shall not constitute a severance of employment for any Transferred Employee including for purposes of any severance or termination plan, program or arrangement of any of the parties. The provisions set forth in Sections 5.2(a), 5.2(b), and in the exception to the seventh sentence of Section 5.2(c) are hereinafter referred to as the "Senior Staff Employment Provisions."

**5.3 Sale of WLIW; Effect of WNET Sale.**

(a) EBC hereby agrees and covenants that (i) it will not, directly or indirectly, sell, lease, exchange, or otherwise dispose of all or substantially all of the assets comprising the WLIW Operations, or transfer the license of WLIW (each, a "Sale"), without the approval of a majority of the members of the EBC Board of Trustees present and voting at a meeting at which a quorum is present and (ii) other than in connection with a sale of WLIW to LIETV itself, in the event of a Sale of WLIW, EBC will take all steps reasonably necessary and appropriate to assure

that WLIW would continue after such Sale of WLIW to serve the people of Long Island as they have been historically served by LIETV and WLIW.

(b) In the case of the sale, lease, exchange, or other disposition or change of control of EBC itself or all or substantially all of its assets, EBC will cause the acquiror of EBC, or of its assets, as the case may be, to agree to fulfill and honor the terms and provisions of this Section 5.3.

(c) In the unlikely event that EBC assigns the license of WNET, EBC shall take all steps reasonably necessary and appropriate to assure that thereafter WLIW continues to serve the people of Long Island in a manner consistent with its service prior to such assignment and that proceeds from any such assignment shall be made available in furtherance of the foregoing.

**5.4 WLIW Operations.** Effective at the Closing, EBC hereby agrees and covenants that it will consider the promotion of educational television in the Long Island area of New York a critical component of its organizational mission. In furtherance thereof, EBC shall take all action necessary to comply with the following:

(a) WLIW-DT Construction Permit. EBC shall comply with the terms of the WLIW-DT construction permit (the "Permit"), as the Permit may be modified by the FCC from time to time; *provided* that EBC shall not request any modification of the Permit that would result in lesser coverage of Long Island than those facilities that LIETV has requested of the FCC are predicted to provide.

(b) Digital Television Conversion. EBC shall use its best efforts (taking into account the time period required to effect such conversion and applicable FCC rules) to undertake the conversion of WLIW to digital broadcast transmissions and shall allocate appropriate equipment and financial resources to enable WLIW both to pass through and to

originate high definition television programming. EBC has at least \$4.6 million in cash available (or readily obtainable) for the conversion.

(c) Instructional Television (ITV). EBC agrees that it shall continue to broadcast ITV for Long Island on WLIW and maintain an ITV Advisory Committee dedicated to WLIW.

**5.5 On-Going Activities of LIETV**. Upon the Closing, LIETV agrees and covenants that it will cease to communicate, imply, or indicate to any and all persons or entities that it operates, controls or otherwise manages WLIW. Notwithstanding the foregoing but subject to Section 6.8, LIETV shall not be prohibited from communicating, implying or indicating to any person or entities that it has the rights and responsibilities set forth in this Agreement or in any other agreement that may subsequently be entered into with EBC; *provided* that LIETV does not imply directly or indirectly that it operates, controls or otherwise manages WLIW. For so long as LIETV maintains its corporate existence or use of the name “Long Island Educational TV Council” or “LIETV”, it agrees that effective as of the Closing, LIETV will amend its organizational documents to the extent it deems necessary or appropriate so as to continue to qualify as a tax-exempt organization that is not a private foundation under Section 509(a) of the Internal Revenue Code of 1986, as amended (the “Code”), at the expense of EBC (and EBC shall have the right to comment on and approve the form of such amendments to the organizational documents which approval shall not be unreasonably withheld). If, however, during or after the five-year period following the Closing Date (the “Limitation Period”), LIETV shall cease to operate as a supporting organization or other tax-exempt organization exclusively in support of EBC (as defined by the Code and its accompanying regulations), then LIETV (after written notice from EBC and a 45-day period following such notice to cure such failure) will be deemed to have dissolved for purposes of this Agreement.

**5.6 Trustees' and Officers' Indemnification.** EBC agrees following the Closing to indemnify the Trustees, former Trustees and officers of LIETV to the fullest extent permitted by New York law against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys fees, in conjunction with any action or proceeding, whether civil or criminal, brought or threatened to be brought against any such Trustee, former Trustee or officer by reason of such person's actions, prior to and including the Closing Date, in connection with (i) the negotiation and execution of this Agreement or the Original Agreement or the consummation of the Asset Acquisition and (ii) his or her service as a Trustee or officer of LIETV, but in the case of clause (ii) not to any greater extent than EBC would be permitted under applicable law to indemnify its own Trustees, former Trustees and officers.

**5.7 Successor to LIETV.** Notwithstanding anything in this Agreement to the contrary, it is expressly agreed that in the event that at any time after the Closing Date LIETV shall cease to be in existence, having dissolved pursuant to §§ 1001, 1101 or 1102 of the NPCL or been deemed to have dissolved pursuant to Section 5.5, all the rights and benefits conferred on LIETV by this Agreement shall automatically be assigned, transferred and conveyed to the LIETV Board Designees on the EBC Board of Trustees (acting by a majority vote), who shall be entitled to exercise such rights and enjoy such benefits to the same extent as LIETV under this Agreement.

**5.8 Gifts and Bequests.** Following the Closing Date, to the fullest extent possible, except as expressly permitted by § 522 of the New York Not-for-Profit Corporation Law (the "N-PCL") or by other applicable law, the restrictions and proscriptions imposed by donors and legators on gifts and bequests to, and trust funds of, LIETV shall be carried out and observed by EBC. In addition, following the Closing Date, to the fullest extent permitted by

applicable law, LIETV shall transfer and remit to EBC any and all gifts or bequests receivable to it and intended to benefit or support WLIW.

**5.9 Insurance Matters.** To the extent that (i) any insurance policies controlled by LIETV (the “LIETV Insurance Policies”), cover any loss, liability, claim, damage or expense relating to the Station Assets or on WLIW Operations (the “Subject Liabilities”) and relating to or arising out of occurrences prior to the Closing Date and (ii) the LIETV Insurance Policies continue after the Closing to permit claims to be made thereunder with respect to the Subject Liabilities relating to or arising out of occurrences prior to the Closing Date (“Subject Claims”), LIETV shall cooperate with EBC in submitting Subject Claims on behalf of EBC under the LIETV Insurance Policies. LIETV shall exercise its best efforts to cause LIETV Insurance Policies to be modified to allow for the assignment to EBC all benefits, rights and obligations thereunder in respect of any Subject Liabilities. To the extent any such policies are not so assigned, upon receipt by LIETV of any insurance proceeds relating to any Subject Claims made under the LIETV Insurance Policies, LIETV will promptly pay such insurance proceeds to EBC.

## ARTICLE V.A

### BEST EFFORTS INTENTIONS FOR POST-CLOSING ACTIVITIES

**5A.1 WLIW Station Programming.** During the Limitation Period, EBC shall use its best efforts to cause all decisions regarding the broadcast of specific programming for WLIW to be made by a joint committee of EBC employees (the “Joint Committee”); *provided* that final decision-making authority on all matters shall rest with the President of EBC, subject to the approval of EBC’s Board of Trustees. The Joint Committee would consist of an equal number of representatives from the staffs of WNET and WLIW. During the Limitation Period, EBC shall use its best efforts to assure that such programming shall include at least four Long

Island town hall meeting specials annually and at least five half-hour programs per week devoted to locally-produced Long Island programming (“Long Island Programming”). During the Limitation Period, EBC shall use its best efforts to broadcast such Long Island Programming between the hours of 6:00 p.m. and 11:30 p.m., local time, weekdays and fund Long Island Programming on an on-going basis with a budget of \$700,000 annually. It is contemplated that the Long Island Programming shall build on and enhance the programming philosophy that WLIW has historically employed. After the Limitation Period, EBC shall use its best efforts to provide such funding and programming consistent with past practice as will permit WLIW to continue to be responsive to the needs of the Long Island community. Subject to actions permitted by Section 5.3, EBC shall use its best efforts to assure that WLIW shall at all times be operated under a distinct identity within EBC; provided that the foregoing shall not preclude the combination or combined use by WLIW and WNET and/or other operations of EBC of administrative functions or of production or broadcast facilities. Each of the best efforts intentions contained in this Section 5A.1 shall be subject to the discretion that the FCC requires of all licensees.

**5A.2 Advertising and Promotion of WLIW.** During the Limitation Period, EBC shall use its best efforts to allocate at least \$750,000 annually to advertise and promote WLIW and its programming. After the Limitation Period, EBC shall use its best efforts to provide such funding as it shall deem necessary and prudent, in light of community needs, competitive pressures, and past practice, to adequately promote WLIW and its programming. Each of the best efforts intentions contained in this Section 5A.2 shall be subject to the discretion that the FCC requires of all licensees.

**5A.3 Program Production Effort.** As soon as practicable after the Closing Date, EBC shall use its best efforts to create a production and distribution effort (the “Production

Projects Effort”) for the purpose of producing and acquiring programming suitable for broadcast on WLIW and other public television outlets, including, but not limited to WNET. Until at least the second anniversary of the Closing Date, the Production Projects Effort would be headed by the President and General Manager of WLIW (as part of his regular duties), subject to the supervision of the President of EBC. EBC shall use its best efforts to fund the Production Projects Effort’s on-going expenses and support it for at least two years following the Closing Date. EBC will use its best efforts to provide a \$1,000,000 investment for the Production Projects Effort’s first year and \$1,000,000 for its second year. Any revenues generated by the production projects or underwriting raised for the Production Projects Effort would be first used to offset the direct costs of these projects. Any excess revenues raised during this two-year period would be used to supplement the Production Projects Effort’s production funds. The present WLIW resources devoted to such program production would be subsumed into the Production Projects Effort. Each of the best efforts intentions contained in this Section 5A.3 shall be subject to the discretion that the FCC requires of all licensees.

**5A.4 No Default.** The Parties agree that any failure to implement the intentions expressed in Sections 5A.1, 5A.2 and 5A.3 shall not constitute a default under this Agreement.

## ARTICLE VI

### ADDITIONAL COVENANTS AND AGREEMENTS

**6.1 Covenants of LIETV Relating to Conduct of Activities.** During the period between September 21, 2001 and the Closing Date (the “Interim Period”), EBC shall not, directly or indirectly, control, supervise or direct the operations of WLIW. Such operations shall be the sole responsibility of LIETV and, subject to the provisions of this Article VI, shall be in its complete discretion. However, during the Interim Period, LIETV agrees (except as expressly contemplated or permitted by this Agreement, or to the extent that EBC shall otherwise consent

in a writing signed by an authorized officer of EBC which consent shall not be unreasonably withheld (the reasonableness of any request for such consent shall take into account LIETV's ability to conduct and manage the affairs of WLIW during the Interim Period; *provided* that it shall not be unreasonable for EBC to withhold any such consent on the basis of any significant increase in costs of operating WLIW following the Closing that may result from such request or any resulting impediments to the Parties' ability to consummate the Asset Acquisition)) that:

(a) Ordinary Course. LIETV will carry on the operations of WLIW and the Station Assets in the usual, regular and ordinary course on a basis consistent with past practice and use all reasonable efforts to preserve intact its present organization, maintain contracts in full force and effect without impairment or waiver of material rights, continue to pursue its fundraising goals, maintain its rights, licenses and franchises and preserve its relationships with those with which it conducts its business and regulatory dealings (including seeking to preserve its rights for carriage on direct broadcast satellites and other multi-channel program suppliers), including supervisory and accrediting bodies.

(b) Governing Documents. LIETV shall not amend or propose to amend its Charter or By-Laws (except as expressly contemplated or permitted by this Agreement).

(c) Indebtedness. LIETV shall not incur any indebtedness for borrowed money or guarantee any such indebtedness or enter into or amend any contract, agreement, commitment or arrangement with respect to any of the foregoing, other than borrowings under existing lines of credit in the ordinary course consistent with past practice.

(d) Capital Expenditures. LIETV shall not, without EBC's consent, which shall not be unreasonably withheld, incur or commit to any capital expenditures or any obligations or liabilities in connection therewith other than capital expenditures and obligations or liabilities (i) incurred or committed to prior to September 21, 2001 in the ordinary course consistent with past

practice and listed in Schedule 6.1(d) hereto (the Parties agreeing that anything listed on Schedule 6.1(d) shall be deemed to be incurred or committed to in the ordinary course consistent with past practice) or consistent with grants awarded to LIETV or (ii) reasonably required for repairs or replacements to continue operations consistent with past practices; *provided* that notice of such repair or replacement shall be given to EBC prior to such expenditure to the extent reasonably practicable and, in the case of repairs or replacements individually in excess of \$15,000, LIETV shall first consult with EBC (to the extent reasonably practicable unless any emergency repair or replacement is necessary to restore WLIW to the air) regarding alternative arrangements to such repairs or replacements.

(e) Operate in Compliance. LIETV shall operate WLIW in material compliance with (i) the Communications Act and the FCC's rules and regulations, (ii) all licenses, including the FCC licenses, (iii) all other applicable laws, regulations, rules, and orders (including the requirements of the Corporation for Public Broadcasting), and (iv) normal good business operating procedures and standards of good engineering practice, and LIETV shall not cause or permit any act, or failure to act, which would cause any of WLIW's licenses to expire, be surrendered, adversely modified, or otherwise terminated, and LIETV shall not fail or permit a failure to prosecute with due diligence any pending application to the FCC. Prior to Closing, LIETV shall cure any material violations of applicable law of which it has actual notice as soon as practicable.

(f) No Dispositions. LIETV shall not sell, lease, encumber or otherwise dispose of, or agree to sell, lease, encumber or otherwise dispose of, any of the Station Assets, except for assets consumed or disposed of in the ordinary course of business or where no longer used or useful in the business or operation of WLIW; *provided, however*, that any actions taken by LIETV pursuant to Section 6.11(a) shall be deemed not to be a violation of this Section 6.1(f).

(g) No Acquisitions. LIETV shall not acquire (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business or enter into any joint venture or similar arrangement, except in the ordinary course, consistent with past practice and then following consultation with EBC.

(h) No Compromise. LIETV shall not (i) settle or compromise any material federal, state, local or foreign tax liability or (ii) compromise any pending or threatened suit or claim which is material or which relates to the transactions contemplated hereby, without the prior written consent of EBC.

(i) No Liquidation. LIETV shall not adopt a plan of complete or partial liquidation, dissolution, merger, restructuring, recapitalization or other disposition of assets.

(j) Employment Matters. LIETV shall not (i) appoint, elect or hire any person to any position, whether as an officer, employee, consultant or otherwise or (ii) negotiate or enter into any collective bargaining agreement, except for the extension to June 30, 2004, certain wage changes and other changes to section 3.06 of the LIETV Collective Bargaining Agreement, consistent with those disclosed to EBC prior to September 21, 2001, and except as required by law or by the applicable collective bargaining agreement, in which case LIETV shall consult with EBC; *provided* that LIETV may hire, at its discretion, at-will employees to replace any current employee that may leave the employ of LIETV during the Interim Period to the extent necessary to conduct its activities; *provided further* that no compensation granted to such new employee shall exceed the compensation of the departed employee being replaced.

(k) Compensation and Benefits. LIETV shall not (i) increase the amount of compensation or benefits of any present or former trustee, officer, employee or consultant of LIETV; (ii) grant or increase any severance, termination or retention pay to any present or former trustee, officer, employee or consultant; or (iii) amend, modify, enter into or terminate

any Benefit Plan, except as required by law, in which case LIETV shall consult with EBC, and except for adoption of the amended and restated Tax-Deferred Annuity Plan and Defined Contribution Retirement Plan effective January 1, 2001 in a form substantially similar to that disclosed to EBC prior to September 21, 2001, and except for increases for employees in the ordinary course, consistent with past practice.

(l) Labor. LIETV shall not at any time during the Interim Period effectuate a “plant closing” or “mass layoff”, as those terms are defined in the Worker Adjustment and Retraining Notification Act of 1988 (“WARN”), affecting in whole or in part any site of employment, facility, operating unit or employee of LIETV, without notifying EBC in advance and without complying with the notice requirements and other provisions of WARN.

(m) No Material Commitments. LIETV shall not enter into, amend or renew any material agreement or other commitment relating to the Station Assets that is not by its terms terminable by LIETV upon 30 days notice or less and without penalty, without the prior written consent of EBC, which shall not be unreasonably withheld.

(n) Satisfaction of Closing Conditions. Except as required by law, LIETV shall not take any action that would or reasonably might be expected to result in any of the conditions of the Asset Acquisition not being satisfied, or (unless such action is required by applicable law) would adversely affect its ability to obtain any of the consents, orders, authorizations, approvals, or certifications required in connection herewith.

(o) Books and Records. LIETV shall maintain its books, accounts, files and records relating to its business in the usual, regular and ordinary manner, on a basis consistent with past practice, and comply with and perform in all material respects all laws and contractual and other obligations applicable to it or its activities; *provided* that LIETV shall send monthly unaudited revenue and expense statements and balance sheets to EBC.

(p) Insurance. LIETV shall maintain in full force and effect adequate insurance with respect to its properties, officers, directors, employees and representatives covering risks customarily insured.

(q) Third-Party Consents. LIETV shall use its best efforts to obtain the consent of any third parties necessary for the assignment to EBC without material change or impairment of any Contract to be assigned thereunder.

(r) Taxes. LIETV shall pay all income, transfer, sales, use, withholding and other taxes as such taxes become due and payable except to the extent any such taxes are disputed in good faith.

**6.2 Covenants of EBC Relating to Conduct of Activities**. During the Interim Period, EBC agrees (except as expressly contemplated or permitted by this Agreement, or to the extent that LIETV shall otherwise consent in a writing signed by an authorized officer of LIETV, which consent shall not be unreasonably withheld (the reasonableness of any request for such consent taking into account EBC's ability to conduct and manage the affairs of WNET and to conduct and manage the affairs of WLIW following the Closing, *provided* that it shall not be unreasonable for LIETV to withhold any such consent on the basis of any resulting impediments to the Parties' ability to consummate the Asset Acquisition or to EBC's ability to honor materially its covenants and agreements contained herein)) that:

(a) Ordinary Course. EBC will carry on the operations of WNET in the ordinary course of business and shall not without LIETV's prior written consent, engage in any action that, if engaged in, would constitute a material breach of the representations and warranties of EBC contained in Section 7.2.

(b) Governing Documents. Except as expressly contemplated or permitted by this Agreement, EBC shall not amend or propose to amend its Charter or By-Laws in any manner that would adversely affect LIETV.

(c) Operate in Compliance. EBC shall operate WNET in material compliance with (i) the FCC's rules and regulations; (ii) all licenses, including the FCC license, (iii) all other applicable laws, regulations, rules, orders (including the requirements of the Corporation for Public Broadcasting), and (iv) normal good business operating procedures, and EBC shall not cause or permit any act, or failure to act, which would cause any of WNET's licenses to expire, be surrendered, adversely modified, or otherwise terminated, and EBC shall not fail or permit a failure to prosecute with due diligence any pending application to the FCC.

(d) No Liquidation. EBC shall not adopt a plan of complete or partial liquidation, dissolution, merger, restructuring, recapitalization or other disposition of substantially all of its assets.

(e) Satisfaction of Closing Conditions. Except as required by law, EBC shall not take any action that would or reasonably might be expected to result in any of the conditions of the Asset Acquisition not being satisfied, or (unless such action is required by applicable law) would adversely affect its ability to obtain any of the consents, orders, authorizations, approvals, or certifications required in connection herewith.

(f) Third-Party Consents. EBC shall use its best efforts to obtain the consent of any third parties necessary to be obtained by EBC in connection with the Asset Acquisition.

### **6.3 Joint Covenants Relating to Conduct of Activities**

(a) Advice of Changes. During the Interim Period, each Party shall confer on an as-needed basis with the other, report on operational matters and promptly advise the other of any change or event having, or which, insofar as can reasonably be foreseen, could have, a

material adverse effect on the activities, results of operations or financial condition of such Party (or, in the case of LIETV, the WLIW Operations) or materially adversely affect the ability of the Parties to consummate the Asset Acquisition as contemplated by this Agreement (in each case, “Material Adverse Effect” on such Party or on the WLIW Operations, as the case may be) or which would cause or constitute a material breach of any of the covenants contained herein.

(b) Best Efforts. During the Interim Period, each Party shall use its best efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the other party to consummate the Asset Acquisition.

**6.4 Preparation of Applications and Consents.** (a) The Parties shall as promptly as practicable after September 21, 2001 prepare, execute, verify, and file with the Supreme Court of the State of New York (the “Supreme Court”) a petition for leave of the court pursuant to §§ 510 and 511 of the N-PCL and the applicable provisions of the New York Education Law (the “Court Petition”) upon notice to the Attorney General and to the Commissioner of Education of the State of New York. Both of the Parties will thereafter seek approval with all reasonable diligence and otherwise use their best efforts to have the Court Petition approved by the Supreme Court and become final and non-appealable as expeditiously as practicable; *provided, however*, that neither LIETV nor EBC shall have any obligation to satisfy any complainant or the Supreme Court by taking any steps that would have a Material Adverse Effect upon such Party. If the Supreme Court imposes any condition on any Party hereto as a condition to obtaining approval, such Party shall use its reasonable best efforts to comply with any such condition; *provided, however*, that no Party shall be required to comply with any condition that would have a Material Adverse Effect upon it. Each Party agrees to advise the Supreme Court fully and fairly of all facts considered relevant by that Party and its counsel or the court in connection with the Supreme Court’s review of the Court Petition.

(b) LIETV and EBC shall as promptly as practicable after September 21, 2001 prepare and file any necessary documents with the Regents of the State of New York (to effect the revised governing instrument and by-laws, respectively, required pursuant to Sections 5.1 and 6.11; *provided* that such revised governing instrument and by-laws shall not become effective until the Closing Date).

(c) If necessary and required, the Parties shall as promptly as practicable after September 21, 2001 prepare and file, at EBC's expense (including all filing fees), appropriate submissions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and use all reasonable efforts to respond promptly to any requests for further information in connection therewith.

(d) The Asset Acquisition as contemplated by this Agreement is subject to the prior consent and approval of the FCC ("FCC Consent"). As promptly as practicable after September 21, 2001, EBC and LIETV shall file the proper application with the FCC seeking consent to assign LIETV's FCC licenses and permits to EBC ("FCC Application"). The Parties shall thereafter prosecute the FCC Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the FCC Application as expeditiously as practicable; *provided, however*, that neither LIETV nor EBC shall have any obligation to satisfy any complainant or the FCC by taking any steps that would have a Material Adverse Effect upon such Party. If the FCC imposes any condition on any Party hereto as a condition to approval of the FCC Application, such Party shall use its reasonable best efforts to comply with such condition; *provided, however*, that no Party shall be required to comply with any condition that would have a Material Adverse Effect upon it. If reconsideration or judicial review is sought with respect to the FCC Consent, the Party affected shall vigorously oppose such efforts for

reconsideration or judicial review; *provided*, however, that nothing herein shall be construed to limit either Party's right to terminate this Agreement pursuant to Section 9.13 hereof.

(e) The Parties shall cooperate with each other in determining whether any other filings are required to be made with, or consents required to be obtained from, any governmental body or other person prior to the Closing Date in connection with this Agreement and shall cooperate in making any such filings promptly and in seeking to obtain any such consents in a timely manner.

**6.5 Access to Information.** Upon reasonable notice, LIETV shall afford to the officers, employees, accountants, counsel and other representatives of EBC reasonable access, during normal business hours during the period prior to the Closing Date, to all its properties, books (including corporate minute books), contracts, commitments, records, and employees, and shall furnish EBC with all information related to WLIW that EBC shall reasonably request; *provided*, however, that LIETV shall not be required to provide access to information, or furnish information, which is legally privileged, subject to confidentiality obligations to third parties or the provision of which is prohibited by law; *provided further*, however, that LIETV shall identify any such privileged, confidential or restricted information to the extent permitted and shall use its best efforts to release such information from any such privileges, confidentiality obligations or other legal restrictions.

**6.6 Notification.** During the Interim Period, LIETV on the one hand, and EBC on the other hand, will each give prompt notice to the other and keep the other advised of (i) any litigation or administrative proceeding pending or, to the best knowledge of such Party, threatened against such Party which could, if adversely determined, reasonably be expected to have a Material Adverse Effect upon it, including any challenge to the FCC Application; (ii) in the case of LIETV, any material damage or destruction of any of the Station Assets; (iii) in the

case of LIETV, an interruption of WLIW's regular broadcast transmissions at full authorized effective radiated power of more than three (3) consecutive hours or an aggregate of six (6) hours in any continuous two (2) day period; and (iv) in the case of LIETV, any material adverse change in the Station Assets or Assumed Liabilities, and/or in the case of EBC, any material adverse change in EBC's assets or liabilities.

**6.7 No Inconsistent Action.** The Parties hereto shall not take any action inconsistent with their obligations under this Agreement or which could materially hinder or delay the consummation of the transactions contemplated by this Agreement. Neither of the Parties hereto shall take or omit to take any action that could result in any of their respective representations and warranties not being true in all material respects on the Closing Date.

**6.8 Confidential Information.** Neither of the Parties shall disclose to third parties any information (including without limitation the terms of this Agreement) learned or received from the other party or its agents in the course of investigating, negotiating and completing the transactions contemplated by this Agreement. Nothing shall be deemed to be confidential information which: (a) is known to the receiving party at the time of its disclosure to it from sources not subject to confidentiality obligations to the other Party; (b) becomes publicly known or available other than through disclosure by the receiving party; (c) is rightfully received by the receiving party from a third party; (d) is independently developed by the receiving party; or (e) is required by law, rule or regulation to be disclosed; *provided* that before disclosure, to the extent practicable, notice and opportunity to object will be afforded to the other Party.

**6.9 Public Announcements.** No news release or other public announcement pertaining in any way to the transactions contemplated by this Agreement will be made by either Party without the prior consent of the other Party, which consent shall not be unreasonably withheld.

**6.10 Transaction Expenses.**

(a) EBC agrees to pay or reimburse LIETV for all reasonable costs and expenses (including LIETV's reasonable attorney's fees and disbursements actually incurred after accounting for pre-negotiated discounts, if any) incurred in connection with the transaction (the "Transaction Expenses") by LIETV only if the transaction contemplated hereunder is completed; *provided* that if LIETV has directly paid any portion of the Transaction Expenses prior to the Closing Date, then EBC shall not be required to pay reimbursement for that portion of the Transaction Expenses to LIETV.

(b) So long as EBC is not also eligible to terminate this Agreement pursuant to Section 9.13(a)(iv), EBC agrees to reimburse LIETV for the lesser of 100% of its Transaction Expenses (including any portion directly paid by LIETV prior to the Closing Date) or \$350,000:

(i) if this Agreement is terminated by EBC pursuant to Section 9.13(a)(iii), or if this Agreement is terminated by EBC pursuant to Section 9.13(a)(ii) because the FCC Application is designated for a hearing by the FCC, or if this Agreement is terminated by EBC pursuant to Section 9.13(a)(vii) and prior to the time of such termination either (x) the FCC Application or the Court Order approving the Asset Acquisition, as contemplated herein, has been granted with one or more conditions that would cause a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations or EBC or (y) as a condition to the grant of such approval, the FCC or the Supreme Court is requiring amendments to this Agreement that would cause a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations or EBC (and, in each case, such conditions or required amendments have not been withdrawn by the FCC or the Supreme Court, as the case may be);

(ii) if this Agreement is terminated by LIETV or EBC pursuant to Section 9.13(a)(vii) and prior to the time of such termination either (x) the FCC Application or the Court Order approving the Asset Acquisition, as contemplated herein, has been granted with one or more conditions that would cause a Material Adverse Effect on LIETV or (y) as a condition to the grant of such approval, the FCC or the Supreme Court is requiring amendments to this Agreement that would cause a Material Adverse Effect on LIETV (and, in each case, such conditions or required amendments have not been withdrawn by the FCC or the Supreme Court, as the case may be); or

(iii) if this Agreement is terminated by either Party (x) pursuant to Section 9.13(a)(ii) because either the FCC has taken action on the FCC Application denying the Asset Acquisition or the Court Order approving the Asset Acquisition as contemplated herein is denied or (y) pursuant to Section 9.13(a)(vi).

(c) Notwithstanding the foregoing, for purposes of a termination by LIETV described in Section 6.10(b)(ii), the denial, limitation or alteration of any or all of the Senior Staff Employment Provisions shall be deemed not to have a Material Adverse Effect on LIETV and, for purposes of Section 6.10(b)(iii), no reimbursement of LIETV's Transaction Expenses shall be required if the primary reason for any such denial, judgment, decree, order or designation is the inclusion in this Agreement of any or all of the Senior Staff Employment Provisions.

(d) Except as set forth in Sections 2.1(b) and 6.4(c) and in this Section 6.10, each party shall pay its own Transaction Expenses.

**6.11 Revisions to Organizational Documents.** (a) LIETV agrees, subject to any approvals required by applicable law, to commence action as soon as practicable after the date hereof to amend its governing instrument and By-Laws, or otherwise reorganize if

necessary, in order to operate as a New York State education corporation with a “Regents” certificate of incorporation or as a not-for-profit corporation under the N-PCL whose purposes, effective upon the Closing, shall be limited to fundraising and grantmaking exclusively to support WLIW and related EBC projects, and thereafter to seek all required approvals with all reasonable diligence and otherwise use its best efforts to cause such changes to be effective as expeditiously as practicable; *provided, however*, that in no event shall the governing instrument or By-Laws require LIETV to return any payment received from EBC pursuant to clause (c) of the second sentence of Section 9.3 of this Agreement and *provided further* that the governing instrument and By-Laws shall permit LIETV to use, subject to Treasury regulations under the Internal Revenue Code, any such payment to support any public or educational television broadcasting facilities or public or educational television programming accessible to residents of the State of New York.

(b) Prior to Closing, EBC agrees, subject to any approvals required by applicable law, to amend its By-Laws, effective not later than the Closing, to reflect that in addition to its present purposes, the purposes of EBC shall also include operating WLIW with regard for the promotion of educational television in the Long Island area of New York. Each party shall have the right to comment on and approve such amendments of the other Party, which approval shall not be unreasonably withheld.

**6.12 Labor Filings.** EBC shall be responsible for making any required notice under WARN in connection with any “mass layoff” or “plant closing” resulting from EBC not hiring any employees of LIETV, or terminating any Transferred Employees, on or after the Closing Date, and with respect thereto, to the extent required, LIETV shall upon EBC’s request assist EBC in providing any required notice.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

7.1 **Representations and Warranties of LIETV**. Subject to Section 9.19(b) hereof, LIETV hereby represents and warrants as follows (which representations and warranties shall not survive the Closing):

(a) **Organization**. It is a corporation duly organized, validly existing, and in good standing as an educational corporation under the laws of the State of New York. It has the requisite corporate power and authority to own, lease, and operate its property and assets and to carry on its educational activities as they are now being conducted by it.

(b) **Authorization**. The execution and delivery of this Agreement and the Original Agreement and the consummation of the transactions contemplated herein by it have been duly authorized by all necessary corporate action, and it has all requisite corporate and other power and authority to enter into this Agreement and any other agreement contemplated hereby and to perform its obligations hereunder and thereunder.

(c) **Governmental Approvals; No Conflict**. Except as set forth in Schedule 7.1(c), the execution, delivery and performance of this Agreement and any other agreements contemplated hereby by LIETV and the consummation by LIETV of the transactions contemplated hereby and thereby (i) will not violate (with or without the giving of notice or the lapse of time or both), or require any consent, approval, filing or notice under, any provision of any law, rule or regulation, court or administrative order, writ, judgment or decree applicable to LIETV or any of the Station Assets and (ii) will not (with or without the giving of notice or the lapse of time or both) violate or conflict with, or result in the breach, suspension or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of LIETV, or require any consent, approval, filing or notice, under, or result in

the creation of any lien, mortgage, pledge, security interest, right of first refusal, claim, charge or encumbrance or other restriction of any kind or nature (collectively, “Liens”) upon all or any portion of the Station Assets pursuant to the organizational document or By-Laws of LIETV, or any indenture, mortgage, deed of trust, lease, agreement, contract, instrument or other agreement to which LIETV is a party or by which LIETV or any of the Station Assets or business is bound which violation, breach or default, or failure to obtain a consent, would in the case of clauses (i) and (ii) result in a Material Adverse Effect on the WLIW Operations or materially adversely affect the ability of the Parties to consummate the Asset Acquisition.

(d) No Violations. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of or default under any term or provision of (i) its organizational document or By-Laws or (ii) (upon receipt of all governmental approvals and consents specified herein as conditions to the Asset Acquisition) of any contract, commitment, indenture, or other agreement or restriction to which it is a party or by which it is bound, which violation or default in the case of clause (ii) would have a Material Adverse Effect on the WLIW Operations or materially adversely affect the ability of the Parties to consummate the Asset Acquisition.

(e) Licenses and Permits.

(i) Schedule 7.1(e) contains a true and complete list of all material licenses, permits, and other authorizations, including any temporary waivers or special temporary authorizations, including their expiration dates, and there are no other material licenses, permits or other authorizations from governmental or regulatory authorities required for the lawful conduct of the business and operation of WLIW in the manner and to the full extent they are now conducted. LIETV has delivered to EBC true and complete copies of such licenses, permits and authorizations, including any amendments

or modifications thereto. The licenses, permits and authorizations listed in Schedule 7.1(e) were, to the best knowledge of LIETV, validly issued and are validly held by LIETV, are in full force and effect and are unimpaired by any act or omission of LIETV, its officers, employees or agents except as disclosed in Schedule 7.1(e), none is subject to any restriction or condition which would limit in any respect the full operation of WLIW as now operated. LIETV has no reason to believe that the FCC will not renew such licenses, permits and authorizations in the ordinary course.

(ii) Except as disclosed in Schedule 7.1(e), there are no applications, complaints or proceedings pending or, to the best of LIETV's knowledge, threatened before the FCC relating to the business or operation of WLIW or that may result in the revocation, modification, non-renewal or suspension of any of the licenses, permits or authorizations, the denial of any pending application or the imposition of any fines, forfeitures, or other administrative actions by the FCC with respect to WLIW or its operation other than proceedings affecting the broadcasting industry generally. Except as disclosed in Schedule 7.1(e), LIETV is not subject to any outstanding judgment or order of the FCC. WLIW is being operated in accordance with the terms and conditions of its licenses, permits or authorizations, the underlying construction permits, the Communications Act of 1934, as amended, and all rules, regulations and policies of the FCC. All ownership reports, employment reports and other reports and documents required to be filed by LIETV with the FCC have been timely filed; such items as are required to be placed in the station's local public file have been placed in such file; all proofs of performance and measurements that are required to be made by LIETV with respect to the station's transmission facilities have been completed and filed; and all information contained in the foregoing documents is true, complete and correct.

(iii) To LIETV's knowledge, there are no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify LIETV as the assignor of WLIW's licenses, permits or authorizations.

(f) Compliance with Law and Requirements. It has conducted its educational activities in compliance, in all material respects, with all applicable laws, regulations, ordinances, licenses, know-how or other proprietary rights, the failure to comply with which could individually or in the aggregate have a Material Adverse Effect on the WLIW Operations.

(g) Litigation. Except as described in Schedule 7.1(g), there is no legal or governmental suit, action, arbitration or proceeding to which LIETV is a party pending or, to LIETV's knowledge, threatened against it or relating to the Station Assets or the business of LIETV, affecting the transactions contemplated by this Agreement.

(h) Binding Effect. This Agreement and the Original Agreement have each been duly executed and delivered and is (or in the case of the Original Agreement, was) a valid and binding obligation enforceable against it in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(i) Federal Income Tax Status. It (i) is exempt from Federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, (ii) is classified as a public charity under Section 509(a) of the Code, and (iii) has received a determination letter from the Internal Revenue Service to such effect, which letter has not been modified, rescinded or revoked, and there is no notice, action or proceeding now pending relating to its Federal income tax status.

(j) No Restricted Gifts. LIETV represents that there are no restricted gifts in which the terms of such gift instrument would require modification in order for the gift to be transferred to EBC without a violation.

(k) Contracts. Schedule 7.1(k) contains a complete and correct list of all material oral and written Contracts to which LIETV is a party or by which any of its respective assets or properties is bound and which is not cancelable by LIETV on thirty days or less notice (unless such cancellation would result in a penalty or liability to EBC). Except as disclosed on such Schedule 7.1(k) or as would not individually or in the aggregate have a Material Adverse Effect on the WLIW Operations, (i) all such Contracts are in full force and effect and are valid, binding and enforceable by LIETV in accordance with their respective terms, (ii) LIETV has complied in all material respects with all such Contracts and is not in default under any of the contracts, (iii) LIETV has not granted or been granted any waiver or forbearance with respect to any of such Contracts, (iv) LIETV has full legal power and authority to assign its rights under such Contracts to EBC in accordance with this Agreement on terms and conditions no less favorable than those in effect on September 21, 2001, and such assignment will not require the consent of any third party or affect the validity, enforceability or continuity of any of the Contracts and (v) such Contracts listed on Schedule 7.1(k) include all those necessary to conduct the business and operation of WLIW as is now being conducted.

(l) Intellectual Property. Schedule 7.1(l) lists all material copyrights, trademarks, trade names, service marks, licenses, patents, permits, jingles, privileges, Internet domain names and other similar intangible property rights and interests (exclusive of those required to be listed in other Schedules hereto) applied for, issued to or owned by LIETV, or under which LIETV is licensed or franchised, and used or useful in the conduct of the business and operation of WLIW, all of which rights and interests are issued to or owned by LIETV, or if

licensed or franchised to LIETV, are valid and uncontested. Except as described in Schedule 7.1(l), LIETV has delivered to EBC copies of all documents, if any, establishing such rights, licenses or other authority. Except as described in Schedule 7.1(g), there is no pending or, to the best of LIETV's knowledge, threatened proceedings or litigation affecting or with respect to the Intellectual Property. Except as described in Schedule 7.1(g), LIETV has received no notice and has no knowledge of any infringement or unlawful use of such property.

(m) Financial Statements; Absence of Certain Changes or Events. LIETV has provided EBC with true and complete copies of the most recent audited and unaudited financial statements of LIETV which are attached hereto as Schedule 7.1(m) (the "LIETV Financial Statements"), as prepared in a manner consistent with generally accepted accounting principles for a not-for-profit corporation. The LIETV Financial Statements accurately reflect and present fairly the financial position and results of operations of LIETV as of the dates and for the periods indicated. Since June 30, 2000 and except as expressly permitted by this Agreement or as otherwise disclosed on Schedule 7.1(m), LIETV has conducted its educational activities only in the ordinary course and in a manner consistent with past practice, and there has not been (i) any material adverse change in the Station Assets or results of operations, (ii) any material damage, destruction or loss relating to the business or assets of LIETV, (iii) any liabilities created or incurred that EBC will assume other than liabilities created or incurred in the ordinary course of business and in amounts not unusual in respect of LIETV's business as customarily conducted, (iv) any condemnation proceedings commenced with respect to any of the Station Assets, (v) any material Lien created on any Station Asset, (vi) any material increase in, or commitment or plan adopted to increase, the wages, salaries, compensation, pension or other benefits or payments to present or former trustees, officers, employees or consultants that is not consistent with past practice, (vii) any material capital expenditures or commitment to make any such expenditures

with respect to the Station Assets or as to which EBC will become obligated after the Closing pursuant to this Agreement and the Assumption Agreement, (viii) any rights of substantial value waived with respect to the Station Assets or the business of LIETV or (ix) any sale, transfer or license of any Station Assets.

(n) Title and Condition of Properties; Absence of Liens.

(i) LIETV has, and EBC on the Closing Date will receive, good and marketable title to all the Station Assets, including without limitation the broadcasting equipment as listed on Schedule 2.1(a)(vi), free and clear of all Liens, except (1) Liens for current taxes not yet due and payable or being contested in good faith by appropriate proceedings, (2) such imperfections of title, easements, pledges, charges and encumbrances, if any, as do not in the aggregate materially detract from the value or materially interfere with the present use of the Station Assets or otherwise materially impair or interfere with LIETV's business and (3) those Liens listed on Schedule 7.1(n).

(ii) LIETV has no knowledge of any material defect in the normal operating condition and repair of the Equipment. The Inventory is good and merchantable in all material respects.

(o) Disclosure. The Original Agreement, together with all other documents and instruments to be executed and delivered by LIETV in connection therewith, does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein and therein not misleading. To the best knowledge of Terrel Cass after due inquiry of LIETV's officers and managerial employees, there is no fact which LIETV has not disclosed to EBC in writing that has had or would reasonably be expected to have a Material Adverse Effect on the WLIW Operations or EBC.

(p) Environmental Matters. Except as set forth in Schedule 7.1(p), LIETV has not in the past materially violated any, and it is now in material compliance with all, federal, state or local laws, codes, statutes, ordinances, rules, rules of common law, regulations or guidelines relating to natural resources, environmental matters or health and safety (including without limitation as relating to exposure to radiation or electro-magnetic fields) (“Environmental Laws”) in connection with its activities or the ownership or operation of any of its assets (including, without limitation, the Station Assets). Except as set forth in Schedule 7.1(p), LIETV has not received any written notice from any governmental authority or any other person or have knowledge of any governmental inquiry or inquiry by any other person, with respect to any actual or alleged violation of, or failure to be in compliance with, any Environmental Laws, or any actual or alleged liability under or relating to Environmental Laws. Except as set forth in Schedule 7.1(p), to the best knowledge of LIETV, there has been no storage, disposal or treatment of any materials regulated under any Environmental Laws that would reasonably be expected to result in material liability under Environmental Laws, including without limitation, petroleum, asbestos and polychlorinated biphenyls (“Hazardous Substances”) on or under any real property or any improvement thereupon used, owned or leased by LIETV. Except as set forth in Schedule 7.1(p), there has been no Release or threatened Release from operations of LIETV at any location or, to the best knowledge of LIETV, otherwise, from, onto or, in any real property or any improvement thereupon used by LIETV or into the environment surrounding any such real property thereupon, of any Hazardous Substances, other than those Releases and threatened Releases permissible under all applicable Environmental Laws or that would not reasonably be expected to result in material liability under or relating to Environmental Laws. Except as set forth in Schedule 7.1(p), to the best knowledge of LIETV no person has discovered any occurrence or condition on any real property adjoining or in the

vicinity of any real property owned, leased or used by LIETV that would reasonably be expected to cause such real property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such real property under any Environmental Law. As used in this Section, the term “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, spreading, dumping or disposing. For purposes of this Section 7.1(p) only, “best knowledge” shall not require the conduct of any environmental or engineering study of properties nor the examination of public records normally examined in such studies. The representations contained in this Section 7.1(p) and in Section 7.1(o) are LIETV’s sole and exclusive representations herein regarding matters related to Environmental Laws.

(q) No Other Assets. Except for the Excluded Assets, the Station Assets being transferred to EBC pursuant to this Agreement constitute all of the assets of LIETV and such Station Assets constitute all of the assets reasonably necessary, used or useful in connection with the conduct of operating WLIW and WLIW-DT.

(r) Insurance. The insurance contracts set forth on Schedule 7.1(r) are in full force and effect and LIETV has not been notified of any threatened cancellation or termination thereof, but those contracts are not fully assignable to EBC in accordance with the terms thereof.

(s) Labor. (i) LIETV is in compliance in all material respects with all applicable laws relating to employment practices, terms and conditions of employment and wages and hours, (ii) except as set forth on Schedule 7.1(s), LIETV is not a party to any collective bargaining agreement on behalf of any employees of LIETV, nor, to the best knowledge of LIETV, are there any ongoing efforts to organize any union representation; (iii) there are no controversies pending or, to the best knowledge of LIETV, threatened between LIETV and any of its employees, prospective employees, former employees or retirees; (iv) no unfair labor

practice complaints have been filed against LIETV and LIETV has not received any notice or communication reflecting an intention or a threat to file any such complaint; (v) there is no labor strike, dispute, slow-down or stoppage pending or, to the best knowledge of LIETV, threatened against LIETV; (vi) LIETV has paid in full to all of its employees all wages, salaries, commissions, bonuses, benefits and other compensation due to such employees as of the Closing Date; (vii) no promises of benefit improvements have been made by LIETV to any of its present or former officers, employees or consultants, and (viii) LIETV is in compliance with its obligations pursuant to WARN, and all other notification and bargaining obligations that arose under any agreement, statute or otherwise.

(t) Employee Benefit Programs; ERISA.

(i) Schedule 7.1(t) contains a true and complete list of each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)), including, without limitation, all multiemployer plans, and all severance, change of control, employment, fringe benefit, collective bargaining, bonus, incentive, deferred compensation, and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, whether formal or informal (collectively, “Benefit Plans”), under which any present or former officer, employee or consultant of LIETV or any of its subsidiaries has any present or future right, or which is sponsored, contributed to or maintained by LIETV or any of its subsidiaries, or under which LIETV or any of its subsidiaries has any present or future liability (the “LIETV Benefit Plans”).

(ii) With respect to each LIETV Benefit Plan, LIETV has provided or made available to EBC a current accurate and complete copy thereof, and, to the extent applicable: (A) any related trust agreement or other funding instrument; (B) the most

recent determination or similar letter, if applicable; (C) any summary plan description and other written communications (or a description of any oral communications) by LIETV or its subsidiaries to their officers, employees or consultants concerning the extent of the benefits provided under an LIETV Benefit Plan; and (D) for the three most recent years (1) the Form 5500 and attached schedules, (2) audited financial statements, (3) actuarial valuation reports, if any and (4) attorney's response to an auditor's request for information, if any.

(iii) (A) Each LIETV Benefit Plan has been established and administered in all material respects in accordance with its terms, and in all material respects in compliance with the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations; (B) each LIETV Benefit Plan which is intended to be qualified within the meaning of Code Section 401(a) or 403(b) is so qualified, has received, if applicable, a favorable determination or opinion letter as to its qualification, and nothing has occurred, whether by action or failure to act, that could reasonably be expected to cause the loss of such qualification; (C) no event has occurred and no condition exists that would subject LIETV or its subsidiaries, either directly or by reason of their affiliation with any member of their "Controlled Group" (defined as any organization which is a member of a controlled group of organizations within the meaning of Code Sections 414(b), (c), (m) or (o)), to any tax, fine, lien, penalty or other liability imposed by ERISA, the Code or other applicable laws, rules and regulations; (D) for each LIETV Benefit Plan with respect to which a Form 5500 has been filed, no material change has occurred with respect to the matters covered by the most recent Form since the date thereof; (E) no "reportable event" (as such term is defined in ERISA Section 4043), "prohibited transaction" (as such term is defined in ERISA Section 406

and Code Section 4975) or “accumulated funding deficiency” (as such term is defined in ERISA Section 302 and Code Section 412 (whether or not waived)) has occurred with respect to any LIETV Benefit Plan; (F) no LIETV Benefit Plan provides retiree welfare benefits and neither LIETV nor its subsidiaries have any obligations to provide any retiree welfare benefits; (G) neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will, either alone or in conjunction with other events, except as listed in Schedule 7.1(t)(iii), (1) result in any payment becoming due to any present or former trustee, officer, employee or consultant of LIETV, including termination, severance or retention payments, (2) increase any benefits otherwise payable under any LIETV Benefit Plan, or (3) result in the acceleration of the time of payment or vesting of any benefit under any LIETV Benefit Plan; (H) LIETV does not and has not at any time sponsored, contributed to or maintained a Benefit Plan that is subject to Title IV of ERISA, including a multiemployer plan within the meaning of ERISA Section 4001(a)(3); (I) with respect to any LIETV Benefit Plan, no actions, suits or claims (other than routine claims for benefits in the ordinary course) are pending, in progress or, to LIETV’s knowledge, threatened, and no facts or circumstances exist that could give rise to any such actions, suits or claims; and (J) with respect to any LIETV Benefit Plan, no administrative investigation, audit or other administrative proceeding by the Department of Labor, the Internal Revenue Service or any other governmental agency is pending, in progress or threatened.

(u) Brokers. Neither it nor any of its representatives or affiliates has retained any broker or finder in connection with the Original Agreement, the Asset Acquisition or any other transaction contemplated herein or incurred any liability on behalf of itself or any other party for

any broker's, finder's, or similar fees in connection with the Original Agreement, the Asset Acquisition or any other transaction contemplated herein.

(v) Bankruptcy. No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting LIETV or any of the Station Assets, are pending or (to the best knowledge of LIETV) threatened, and LIETV has not made any assignment for the benefit of credits or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

**7.2 Representations and Warranties of EBC**. Subject to Section 9.19(b) hereof, EBC hereby represents and warrants as follows (which representations and warranties shall not survive the Closing):

(a) Organization. It is a corporation duly organized, validly existing, and in good standing as an educational corporation under the laws of the State of New York. It has the requisite corporate power and authority to own lease, and operate its property and assets and to carry on its educational activities as are now being conducted by it.

(b) Authorization. The execution and delivery of this Agreement and the Original Agreement and the consummation of the transactions contemplated herein by it have been duly authorized by all necessary corporate action, and it has all requisite corporate and other power and authority to enter into this Agreement and the Original Agreement and any other agreement contemplated hereby and to perform its obligations hereunder and thereunder.

(c) Governmental Approvals; No Conflict. Except as set forth in Schedule 7.2(c), the execution, delivery and performance of this Agreement and any other agreements contemplated hereby by EBC and the consummation by EBC of the transactions contemplated hereby and thereby (i) will not violate (with or without the giving of notice or the lapse of time

or both), or require any consent, approval, filing or notice under, any provision of any law, rule or regulation, court or administrative order, writ, judgment or decree applicable to EBC and (ii) will not (with or without the giving of notice or the lapse of time or both) violate or conflict with, or result in the breach, suspension or termination of any provision of, or constitute a default under, or result in the acceleration of the performance of the obligations of EBC, or require any consent, approval, filing or notice, under, the organizational document or By-Laws of EBC, or any indenture, mortgage, deed of trust, lease, agreement, contract, instrument or other agreement to which EBC is a party or by which EBC or its assets or business is bound, which violation or default would have a Material Adverse Effect on EBC or the transactions contemplated herein.

(d) No Violations. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation of or default under any term or provision of (i) its organizational document or By-Laws or (ii) (upon receipt of all governmental approvals and consents specified herein as conditions to the Asset Acquisition) of any contract, commitment, indenture, or other agreement or restriction to which it is a party or by which it is bound, which violation or default in the case of clause (ii) would have a Material Adverse Effect on EBC or the transactions contemplated herein.

(e) Licenses and Permits. EBC has all material licenses, permits, consents, approvals, authorizations, qualifications and orders, including those of governmental authorities, required for the conduct of its educational activities as presently conducted.

(f) Compliance with Law and Requirements. It has conducted its educational activities in compliance, in all material respects, with all applicable laws, regulations, ordinances, licenses, know-how or other proprietary rights, the failure to comply with which could individually or in the aggregate have a Material Adverse Effect on EBC.

(g) Litigation. Except as described in Schedule 7.2(g), there is no legal or governmental suit, action, arbitration or proceeding to which EBC is a party pending, or to EBC's knowledge, threatened against it or the business of EBC that would materially adversely affect EBC or the transactions contemplated by this Agreement.

(h) Binding Effect. This Agreement and the Original Agreement have each been duly executed and delivered and is (or in the case of the Original Agreement, was) a valid and binding obligation enforceable against it in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(i) Federal Income Tax Status. It (i) is exempt from Federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, (ii) is classified as a public charity under Section 509(a) of the Code, and (iii) has received a determination letter from the Internal Revenue Service to such effect, which letter has not been modified, rescinded or revoked, and there is no notice, action or proceeding now pending relating to its Federal income tax status.

(j) Contracts. EBC has, in full force and effect and is in compliance in all material respects with, and is not in default under, all contracts (valid, binding and enforceable by EBC in accordance with their respective terms) necessary to conduct the business and operation of WNET as now conducted.

(k) Financial Statements; Absence of Certain Changes or Events. EBC has provided LIETV with true and complete copies of the most recent audited and unaudited financial statements of EBC which are attached hereto as Schedule 7.2(k) (the "EBC Financial Statements"), as prepared in a manner consistent with generally accepted accounting principles for a not-for-profit corporation. The EBC Financial Statements accurately reflect and present

fairly the financial position and results of operations of EBC as of the dates and for the periods indicated. Since June 30, 2000 and except as expressly permitted by this Agreement or as otherwise disclosed on Schedule 7.2(k), there has not been (i) any material adverse change in results in operations, (ii) any material damage, destruction or loss relating to the business or assets of EBC or (iii) any liabilities created or incurred that would have a Material Adverse Effect on EBC.

(l) Brokers. EBC represents that neither it nor any of its representatives or affiliates has retained any broker or finder in connection with the Original Agreement, the Asset Acquisition or any other transaction contemplated herein or incurred any liability on behalf of itself or any other party for any broker's, finder's, or similar fees in connection with the Original Agreement, the Asset Acquisition or any other transaction contemplated herein.

(m) Disclosure. The Original Agreement, including the Schedules thereto, together with all other documents and instruments to be executed and delivered by EBC in connection herewith, do not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein and therein not misleading. To the best knowledge of EBC, after reasonable inquiry there is no fact which EBC has not disclosed to LIETV in writing and of which any of EBC's respective officers, directors or managerial employees is aware which has had or would reasonably be expected to have a Material Adverse Effect on EBC.

(n) Bankruptcy. No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting EBC, are pending or threatened (to the knowledge of EBC), and EBC has not made any assignment for the benefit of creditors or taken any action in

contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

(o) Assignment of WNET License. EBC represents that it does not have any current plans nor has it contemplated with any person within the past two years the sale, assignment or transfer of its license to broadcast on Channel 13.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO THE OBLIGATIONS

**8.1 Conditions to Each Party's Obligation**. The obligations of LIETV and EBC provided for in this Agreement are subject to satisfaction at or before the Closing of the following conditions:

(a) Order of the Supreme Court. There shall have been obtained an order of the Supreme Court (the "Court Order") pursuant to which such court shall approve the Court Petition as contemplated by this Agreement. Such Court Order shall not have been revoked or stayed as of the Closing Date.

(b) HSR Act. Any filings required to be made under the HSR Act have been made and any waiting period that is applicable to the Asset Acquisition thereunder shall have expired, without receipt of any objection from the appropriate government agency, or been terminated.

(c) No Injunction. As of the Closing Date there shall not be in effect any preliminary or permanent injunction, writ, restraining order or any order of any nature issued by any court or other governmental or regulatory body or agency which restrains, enjoins or otherwise prohibits the transaction contemplated herein.

(d) FCC Approvals. The FCC Consent shall have been obtained and shall have appeared in an FCC Public Notice, and shall not at the time of the Closing (i) have been vacated,

reversed, stayed, set aside, annulled or suspended, (ii) be the subject of a timely judicial or administrative request for stay, petition for reconsideration, or application for review, or (iii) be the subject to announced review by the FCC on its own motion. Notwithstanding the foregoing, if an appeal, request for stay or petition for rehearing, reconsideration or review of the FCC Consent has been filed by any party other than the FCC, this condition to Closing shall be deemed satisfied if EBC determines in good faith that the FCC Consent will reasonably not be vacated, reversed, stayed, set aside, annulled or suspended.

(e) Other Consents and Approvals. The Parties shall have obtained all other material consents and approvals of any lender, governmental body or agency or any other persons required in connection with the performance by the Parties of their obligations pursuant to this Agreement.

**8.2 Additional Conditions to Obligations of LIETV**. The obligations of LIETV provided for in this Agreement are subject to satisfaction (or waiver by LIETV) at or before the Closing of the following conditions:

(a) By-Law Amendments. As specified in Sections 5.1 and 6.11, the required revisions to EBC's By-Laws shall have been enacted and approved, and shall become effective as of the Closing.

(b) No Material Adverse Change. Other than as contemplated in this Agreement, from September 21, 2001 through the Closing Date there will not have occurred any event, change or development which would reasonably be expected to have a Material Adverse Effect on EBC.

(c) No Violations. The consummation of the Asset Acquisition in accordance with the terms and conditions hereof shall not constitute a violation of or default under any term or provision of the organizational document or By-Laws of EBC, or of any contract,

commitment, indenture or other agreement or restriction to which EBC or WNET is a party or by which it is bound, which violation or default would have a Material Adverse Effect on EBC.

(d) Delivery of Employment and Letter Agreements. EBC shall have executed and delivered to each Key WLIW Manager a Key Manager letter consistent with the provisions of Section 5.2(b) and EBC shall have executed and delivered an Employment Agreement to Terrel Cass consistent with the terms on Schedule 5.2(a), subject in each case to their respective continued employment by LIETV from September 21, 2001 through the Closing Date.

(e) Accuracy of Representations and Warranties. All representations and warranties of EBC contained in Sections 7.2(a), 7.2(b), 7.2(h), 7.2(i), 7.2(l), 7.2(n) and 7.2(o) and in clause (i) of Section 7.2(d) (and all representations and warranties of EBC as to the same representations and warranties contained in any certificate, instrument or other document delivered pursuant to this Agreement) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that such representation and warranty is made as of a specified date, in which case such representation and warranty shall be true and correct as of such date. All other representations and warranties of EBC contained herein or in any certificate, instrument or other document delivered pursuant to this Agreement shall be true and correct in all respects (and, with respect to those representations and warranties that are qualified by materiality, the determination of truth and correctness shall be made without regard to such qualification) on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that such representation and warranty is made as of a specified date, in which case such representation and warranty shall be true and correct as of such date, and except for failures

of such representations and warranties to be true and correct which failures individually or in the aggregate would not have a Material Adverse Effect on EBC.

(f) Performance of Obligations. All obligations and agreements on the part of EBC to be performed under this Agreement prior to the Closing shall have been duly performed at or prior to the time of the Closing in all material respects.

(g) Officers Certificate. EBC shall have delivered certificates, dated as of the Closing Date, of a duly authorized officer to the effect that the conditions specified in Sections 8.2(e) and 8.2(f) have been fulfilled (together with certified copies of the resolutions of its members and its board of directors or trustees, dated on or prior to the date of this Agreement, authorizing the execution, delivery and performance of this Agreement).

(h) Assumption Agreement. EBC shall have delivered to LIETV an Assumption Agreement in the form attached as Exhibit A hereto.

**8.3 Additional Conditions to Obligations of EBC**. The obligations of EBC provided for in this Agreement are subject to satisfaction (or waiver by EBC) at or before the Closing of the following conditions:

(a) Governmental Authorizations. LIETV shall be the lawful holder of all material licenses, permits and other authorizations listed in Schedule 7.1(e), and there shall not have been any modification of any of such licenses, permits and other authorizations which might have a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations. No proceeding shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, fail to renew, suspend or modify adversely any license, permit or other authorization relating to WLIW which revocation, cancellation, failure to renew, suspension or modification might have a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations.

(b) [intentionally omitted].

(c) No Material Adverse Change. Other than as contemplated in this Agreement, from September 21, 2001 through the Closing Date there will not have occurred any event, change or development which would reasonably be expected to have a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations.

(d) No Violations. The consummation of the Asset Acquisition in accordance with the terms and conditions hereof shall not constitute a violation of or default under any term or provision of the organizational document or By-Laws of LIETV, or of any contract, commitment, indenture or other agreement or restriction to which LIETV or WLIW is a party or by which it is bound, which violation or default would have a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations.

(e) Accuracy of Representations and Warranties. All representations and warranties of LIETV contained in Sections 7.1(a), 7.1(b), 7.1(h), 7.1(i), 7.1(u) and 7.1(v), and in clause (i) of Section 7.1(d) (and all representations and warranties of LIETV as to the same representations and warranties contained in any certificate, instrument or other document delivered pursuant to this Agreement) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that such representation and warranty is made as of a specified date, in which case such representation and warranty shall be true and correct as of such date. All other representations and warranties of LIETV contained herein or in any certificate, instrument or other document delivered pursuant to this Agreement shall be true and correct in all respects (and, with respect to those representations and warranties that are qualified by materiality, the determination of truth and correctness shall be made without regard to such qualification) on and as of the Closing Date with the same force and effect as

though such representations and warranties had been made on and as of the Closing Date, except to the extent that such representation and warranty is made as of a specified date, in which case such representation and warranty shall be true and correct as of such date, and except for failures of such representations and warranties to be true and correct which failures individually or in the aggregate would not have a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations.

(f) Performance of Obligations. All obligations and agreements on the part of LIETV to be performed under this Agreement prior to the Closing shall have been duly performed at or prior to the time of the Closing in all material respects.

(g) Officers Certificate. LIETV shall have delivered certificates, dated as of the Closing Date, of a duly authorized officer to the effect that the conditions specified in Sections 8.3(e) and 8.3(f) have been fulfilled (together with certified copies of the resolutions of its members and its board of directors or trustees, dated on or prior to the date of this Agreement, authorizing the execution, delivery and performance of this Agreement).

(h) Bill of Transfer. LIETV shall have delivered to EBC a Bill of Transfer and Assignment in the form attached as Exhibit B hereto and such other instruments of transfer and conveyance as are reasonably requested by EBC to convey good title to the Station Assets in accordance with the terms of this Agreement.

## ARTICLE IX

### GENERAL PROVISIONS

**9.1 Non-Survival of Representations, Warranties and Agreements**. None of the representations, warranties, covenants and other agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing, except for those agreements and other provisions contained herein (including, without limitation, Article V) that

by their terms apply or are to be performed in whole or in part after the Closing and this Article IX.

**9.2 Notices.** Any notice, request, demand or other communication permitted or required to be given hereunder shall be in writing and shall be deemed to have been given when such notice shall have been: (a) sent three business days earlier by United States mail, postage prepaid to the addressee; (b) delivered to the addressee; or (c) sent to the addressee by facsimile, receipt confirmed in writing; in each case at the address or facsimile telephone number specified below:

If to LIETV:

Long Island Educational TV Council, Inc.  
303 Sunnyside Blvd.  
Plainview, NY 11803  
Facsimile: 516-349-0760  
Attn: Terrel Cass

with copy to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Facsimile: 212-351-4035  
Attn: Scott A. Kislin, Esq.

If to EBC:

Educational Broadcasting Corporation  
450 West 33rd Street  
New York, NY 10001  
Facsimile: 212-560-3190  
Attn: Eleanor S. Applewhaite, Esq.  
Vice President,  
General Counsel & Secretary

with copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, NY 10017  
Facsimile: 212-455-2502  
Attn: Victoria B. Bjorklund, Esq. or  
Alan M. Klein, Esq.

**9.3 Indemnity.** LIETV agrees to indemnify and hold EBC harmless against and in respect of all obligations and liabilities of LIETV, whether accrued, absolute, fixed, contingent or otherwise, not assumed by EBC pursuant to this Agreement but only to the extent of any and all available insurance proceeds. EBC agrees to indemnify and hold LIETV harmless against and in respect of any claim, cost, loss, liability or damage (including reasonable attorney's fees and expenses) incurred or sustained by LIETV as a result of (a) the Assumed Liabilities, (b) the operation of WLIW and the Station Assets by EBC following 5:00 p.m., New York City time on the Closing Date, and (c) a breach of EBC's obligations hereunder to the extent that (i) a court of competent jurisdiction has entered a final and non-appealable judgment holding EBC liable for a default of a term of this Agreement that occurs after Closing or (ii) the Parties have so provided pursuant to a written settlement agreement.

**9.4 Assignment.** Except as contemplated by Sections 5.3(a) and 5.7 this Agreement shall not be assignable in whole or in part by either Party.

**9.5 Further Assurances.** From time to time after the Closing Date and at EBC's expense, LIETV shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance, assignment, transfer and delivery and will take or cause to be taken such other actions relating to the Station Assets as EBC may reasonably request in order more effectively to convey, assign, transfer, and deliver to EBC any of the Station Assets, to enable EBC to protect, exercise and enjoy all rights and

benefits of LIETV with respect thereto, to enable EBC to operate WLIW in the manner such business was operated by LIETV prior to September 21, 2001 and as otherwise may be appropriate to carry out the transactions herein contemplated.

**9.6 Amendments.** This Agreement may be amended, supplemented or otherwise modified only by a written instrument executed by the parties hereto.

**9.7 No Waiver.** No waiver by either party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. No waiver shall constitute a waiver by such person of such provision or any other provision of this Agreement in any other instance. The intention of the Parties is that no such waiver shall require the approval of the Supreme Court or any notice to either party in interest. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**9.8 Counterparts.** This Agreement may be executed in counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on both of the Parties hereto, notwithstanding that both Parties shall not have executed the same counterpart. Faxed copies of signatures shall be valid and binding for all purposes.

**9.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**9.10 Severability.** If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

**9.11 Binding Effect; No Third Party Beneficiaries.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. Except as provided in Sections 5.6 and 5.7, nothing in this Agreement, expressed or implied, is

intended to confer on any person other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**9.12 Bulk Transfer Law.** The Parties hereto agree to waive compliance with the requirements and provisions of any bulk transfer laws of any jurisdiction that may otherwise be applicable with respect to the transfer of the Station Assets to EBC.

**9.13 Termination.**

(a) General. At any time prior to the Closing Date, this Agreement may be terminated, in writing, if the party seeking to terminate is not in material default or breach of this Agreement:

- (i) by mutual consent of both Parties;
- (ii) by either Party if either (x) the FCC has taken action on the FCC Application denying the Asset Acquisition and such action has become final or if the FCC Application is designated for a hearing by the FCC or (y) the Court Order approving the Asset Acquisition as contemplated herein is denied;
- (iii) by EBC, if the FCC Application or the Court Order approving the Asset Acquisition, as contemplated herein, is granted with one or more conditions that EBC, in its sole discretion, determines would cause a material adverse effect on the Station Assets or a Material Adverse Effect on the WLIW Operations or EBC;
- (iv) by EBC, if LIETV shall have materially breached any of its representations or warranties or shall have materially failed to perform any of its covenants or other agreements which are required to be performed on or before the Closing Date and, if capable of being cured, any such breach or failure to perform is not cured within 45 days (or such shorter period ending on the Termination Date) after LIETV receives written notice from EBC of such breach;

(v) by LIETV, if EBC shall have materially breached any of its representations or warranties or shall have materially failed to perform any of its covenants or other agreements which are required to be performed on or before the Closing Date and, if capable of being cured, any such breach or failure to perform is not cured within 45 days (or such shorter period ending on the Termination Date) after EBC receives written notice from LIETV of such breach;

(vi) by either Party if there shall be in effect any final judgment, decree or order that would prevent or make the Closing unlawful; or

(vii) by either Party if the Closing shall not have occurred on or prior to December 21, 2002 (the "Termination Date").

(b) Effect of Termination. In the event of any termination of this Agreement, in accordance with this Section 9.13, this Agreement shall become null and void and of no further force or effect, except with respect to Sections 6.8 and 6.10 and this Section 9.13.

**9.14 Remedies Upon Default.** Except as otherwise specified in Section 5.5 and except with respect to Sections 5.6 and 9.3(c), the Parties recognize and hereby acknowledge that upon a default of a term of this Agreement that occurs after Closing, the Parties shall only be entitled to obtain specific performance of the terms of this Agreement. Each Party covenants and agrees that it shall not assert in any court or other proceeding that injunctive relief is an inappropriate remedy for breach of any provision of this Agreement.

**9.15 Definition of Knowledge.** As used in this Agreement, with respect to LIETV, "knowledge" means, exclusively, information of which Terrel Cass or his successor as President and General Manager has knowledge after due inquiry of LIETV's officers and managerial employees.

**9.16 Exhibits and Schedules.** Exhibits and Schedules attached to this Agreement are incorporated herein and shall be part of this Agreement for all purposes. Disclosure of any fact or item in any Schedule referenced to a particular paragraph or section of this Agreement shall, should the existence of the fact or item be relevant to any other paragraph or section of this Agreement, be deemed to be disclosed with respect to that other paragraph or section whether or not a specific cross reference appears to the extent that the fact or item disclosed is reasonably clearly on such Schedule applicable to such other paragraph or section.

**9.17 Effect of Headings.** The subject headings of the Articles and Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of this Agreement.

**9.18 Entire Agreement.** This Agreement sets forth the entire understanding of the Parties hereto and supersedes all prior contracts, agreements, arrangements, communications, discussions, representations and warranties, whether oral or written between the Parties hereto.

**9.19 Amendment and Restatement; Effectiveness.** (a) This Agreement amends certain provisions of the Original Agreement and restates the terms of the Original Agreement in their entirety so as to reflect and give effect to such amendments. Except as provided in Section 9.19(b), all amendments to the Original Agreement effected by this Agreement, and all other covenants, agreements, terms and provisions of this Agreement, shall have effect from the date of the Original Agreement.

(b) Each of the representations and warranties made in Article VII hereof shall be deemed (i) to be made on the date of the Original Agreement (other than the representations and warranties contained in Sections 7.1(b), 7.1(h), 7.2(b) and 7.2(h), which are made as of the date hereof) and (ii) not made on the date hereof (except as set forth in the parenthetical in clause (i))

above). The foregoing sentence shall not cause any representation and warranty to be “made as of a specified date” for purposes of Sections 8.2(e) and 8.3(e).

IN WITNESS WHEREOF, the duly authorized representatives of the Parties  
have executed this Agreement as of the day and year first written above:

LONG ISLAND EDUCATIONAL TV  
COUNCIL, INC.

EDUCATIONAL BROADCASTING  
CORPORATION

By: [Signature]  
Name: Barry R. Shapiro  
Title: Chairman

By: \_\_\_\_\_  
Name: Steven Rattner  
Title: Chairman

By: \_\_\_\_\_  
Name: Terrell M. Chen  
Title: President and General Manager

By: \_\_\_\_\_  
Name: William R. Baker  
Title: President and Chief Executive Officer

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P. 02/02

IN WITNESS WHEREOF, the duly authorized representatives of the Parties  
have executed this Agreement as of the day and year first written above.

**LONG ISLAND EDUCATIONAL TV  
COUNCIL, INC.**

**EDUCATIONAL BROADCASTING  
CORPORATION**

By: \_\_\_\_\_  
Name: Barry R. Shapiro  
Title: Chairman

By: \_\_\_\_\_  
Name: Steven Ratner  
Title: Chairman

By:   
Name: Terrel L. Cass  
Title: President and General Manager

By: \_\_\_\_\_  
Name: William F. Baker  
Title: President and Chief Executive Officer

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties

have executed this Agreement as of the day and year first written above.

**LONG ISLAND EDUCATIONAL TV  
COUNCIL, INC.**

**EDUCATIONAL BROADCASTING  
CORPORATION**

By: \_\_\_\_\_  
Name: Barry R. Shapiro  
Title: Chairman

By:  \_\_\_\_\_  
Name: Steven Rattner  
Title: Chairman

By: \_\_\_\_\_  
Name: Terrel L. Cass  
Title: President and General Manager

By: \_\_\_\_\_  
Name: William F. Baker  
Title: President and Chief Executive Officer

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties

have executed this Agreement as of the day and year first written above.

**LONG ISLAND EDUCATIONAL TV  
COUNCIL, INC.**

**EDUCATIONAL BROADCASTING  
CORPORATION**

By: \_\_\_\_\_  
Name: Barry R. Shapiro  
Title: Chairman

By: \_\_\_\_\_  
Name: Steven Rattner  
Title: Chairman

By: \_\_\_\_\_  
Name: Terrel L. Cass  
Title: President and General Manager

By:  \_\_\_\_\_  
Name: William F. Baker  
Title: President and Chief Executive Officer

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT is made, executed and delivered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between Educational Broadcasting Corporation, a New York educational corporation (“**EBC**”), in favor of Long Island Educational TV Council, Inc., a New York educational corporation (“**LIETV**”). All capitalized terms used herein and not otherwise defined shall have the meanings given them in the Acquisition Agreement as defined below.

W I T N E S S E T H:

WHEREAS, an Amended and Restated Asset Acquisition and Operating Agreement, dated as of August 7, 2002 (the “**Acquisition Agreement**”), has been entered into by and between LIETV and EBC for, among other matters, the sale by LIETV to EBC of the Station Assets and the assumption by EBC of the Assumed Liabilities;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Subject to the provisions of this Assumption Agreement and the Acquisition Agreement, effective as of the Closing, EBC absolutely and irrevocably assumes and is solely liable and responsible for any and all of the Assumed Liabilities and EBC hereby releases LIETV from any and all liability with respect to the Assumed Liabilities.

Section 2. Nothing contained in this Assumption Agreement shall be deemed to modify, limit, extend or amend any of the rights or obligations of any party hereto under the Acquisition Agreement or any ancillary agreement thereto.

Section 3. The provisions of this Assumption Agreement shall survive the date on which the transactions contemplated by the Acquisition Agreement are consummated.

Section 4. This Assumption Agreement shall be binding upon, and inure to the benefit of, all parties hereto and their respective successors, legal representatives and assigns permitted in accordance herewith. Except as expressly provided herein, nothing herein shall create or be deemed to create any third party beneficiary rights in any person or entity not a party hereto. No assignment of this Assumption Agreement or of any rights or obligations hereunder can be made by any party (by operation of law or otherwise) without the prior written consent of the other party, and any attempted assignment without the required consent shall be void; *provided, however*, that no consent shall be required for EBC to assign part or all of its rights under this Assumption Agreement after the Closing to a third party, provided that no such assignment by EBC of its rights hereunder shall relieve EBC of its obligations under this Assumption Agreement to LIETV.

Section 5. This Assumption Agreement and the rights and duties of LIETV and EBC hereunder shall be governed by, and construed in accordance with, the law of the State of New York applicable to contracts made and to be performed therein. Each of LIETV and EBC waives any objection that it may have to the venue of any suit, action or proceeding with respect

to this Assumption Agreement or the transactions contemplated hereby in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, City of New York and State of New York, or that such suit, action or proceeding brought in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, City of New York and State of New York, was brought in an inconvenient court and agrees not to plead or claim the same. Each of LIETV and EBC agrees to service of process by registered mail, return receipt requested, or by any other manner provided by New York law.

Section 6. At any time after the Closing, LIETV and EBC agree to cooperate to execute and deliver such other documents, instruments of transfer or assumption, files, books and records and do all such further acts and things as may be reasonably required for EBC to assume the Assumed Liabilities taken by this Assumption Agreement.

Section 7. This Assumption Agreement shall become effective when the Closing under the Acquisition Agreement has occurred.

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be executed by its duly authorized representatives as of the day and year first above written.

EDUCATIONAL BROADCASTING CORPORATION

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

Name:

Title:

LONG ISLAND EDUCATIONAL TV COUNCIL, INC.

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

Name:

Title:

BILL OF TRANSFER

AND

ASSIGNMENT

THIS BILL OF TRANSFER AND ASSIGNMENT is made, executed and delivered as of the \_\_\_ day of \_\_\_\_\_, 2002, by Long Island Educational TV Council, Inc., a New York educational corporation (“**LIETV**”), in favor of Educational Broadcasting Corporation, a New York educational corporation (“**EBC**”). All capitalized terms used herein and not otherwise defined shall have the meanings given them in the Acquisition Agreement as defined below.

WHEREAS, an Amended and Restated Asset Acquisition and Operating Agreement, dated as of August 7, 2002 (the “**Acquisition Agreement**”), has been entered into by and between LIETV and EBC for, among other matters, the transfer by LIETV to EBC of the Station Assets and the assumption by EBC of the Assumed Liabilities;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. In consideration of the assumption of the Assumed Liabilities by EBC, the receipt and sufficiency of which are hereby acknowledged, LIETV has transferred and by this Bill of Transfer and Assignment hereby does grant, assign, transfer, convey and deliver to EBC all of the right, title and interest of LIETV in and to the Station Assets.

Section 2. At any time after the Closing, LIETV agrees to cooperate with EBC to execute and deliver such other documents, instruments of transfer or assignment, files, books and records and do all such further acts and things as may be reasonably required to sell, transfer, assign and convey to and to vest in EBC the Station Assets transferred, assigned and conveyed by this Bill of Transfer and Assignment.

Section 3. Nothing contained in this Bill of Transfer and Assignment shall be deemed to modify, limit, extend or amend any of the rights or obligations of either party hereto under the Acquisition Agreement or any ancillary agreement.

Section 4. The provisions of this Bill of Transfer and Assignment shall survive the date on which the transactions contemplated by the Acquisition Agreement are consummated.

Section 5. Nothing expressed or implied in this Bill of Transfer and Assignment shall be deemed to be an assumption by EBC of any obligations or liabilities, including any Assumed Liabilities, of LIETV. The terms and provisions of the assumption of Assumed Liabilities are set forth in the Acquisition Agreement and the Assumption Agreement dated as of the date hereof by EBC in favor of LIETV.

Section 6. This Bill of Transfer and Assignment shall be binding upon, and inure to the benefit of, all the parties hereto and their respective successors, legal representatives and assigns permitted in accordance herewith. Except as expressly provided herein, nothing herein shall create or be deemed to create any third party beneficiary rights in any person or entity not a party hereto. No assignment of this Bill of Transfer and Assignment or of any rights or obligations hereunder may be made by either party (by operation of law or otherwise) without the prior written consent of the other party, and any attempted assignment without the required consents shall be void; *provided, however*, that no consent shall be required for EBC to assign part or all of its rights under this Bill of Transfer and Assignment after the Closing to a third party, but no such assignment by EBC of its rights hereunder shall relieve EBC of its obligations under this Bill of Transfer and Assignment to LIETV.

Section 7. This Bill of Transfer and Assignment and the rights and duties of LIETV and EBC hereunder shall be governed by, and construed in accordance with, the law of the State of New York applicable to contracts made and to be performed therein. Each of LIETV and EBC waives any objection that it may have to the venue of any suit, action or proceeding with respect to this Bill of Transfer and Assignment or the transactions contemplated hereby in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, City of New York and State of New York, or that such suit, action or proceeding brought in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, City of New York and State of New York, was brought in an inconvenient court and agrees not to plead or claim the same. Each of LIETV and EBC agrees to service of process by registered mail, return receipt requested, or by any other manner provided by New York law.

IN WITNESS WHEREOF, LIETV has caused this Bill of Transfer and Assignment to be executed by their duly authorized representatives as of the day and year first above written.

LONG ISLAND EDUCATIONAL TV  
COUNCIL, INC.

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