

---

---

ASSET PURCHASE AGREEMENT

by and between

SPIRIT TELEVISION LLC

as Seller

and

PARKER BROADCASTING, INC.

as Buyer

Dated as of July 14, 2006

---

---

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	DEFINITIONS ..... 1
1.1	Definitions ..... 1
1.2	Rules of Construction ..... 1
ARTICLE 2	PURCHASE AND SALE..... 1
2.1	Purchase and Sale ..... 2
2.2	Excluded Assets..... 2
2.3	Purchase Price ..... 3
2.4	Prorations and Adjustments as of Closing..... 4
2.5	Net Working Capital; Post-Closing Adjustment ..... 5
2.6	Assumption of Liabilities ..... 7
2.7	Allocation of Purchase Price ..... 7
2.8	Deferred Consents ..... 8
ARTICLE 3	GOVERNMENTAL APPROVALS AND CONTROL OF STATION ..... 8
3.1	FCC Consents..... 8
3.2	Control Prior to Closing ..... 9
3.4	Other Governmental Consents..... 9
ARTICLE 4	REPRESENTATIONS AND WARRANTIES OF SELLERS..... 9
4.1	Organization and Standing ..... 9
4.2	Authorization; Enforceability ..... 10
4.3	Absence of Conflicting Agreements; Consents ..... 10
4.4	Tangible Personal Property ..... 10
4.5	Contracts..... 11
4.6	Intangibles ..... 12
4.7	Real Property; Leases ..... 12
4.8	Conduct of Business ..... 15
4.9	Litigation ..... 15
4.10	Compliance with Laws ..... 16
4.11	Taxes ..... 16
4.12	FCC Matters ..... 16
4.13	Insurance..... 18
4.14	Employees ..... 18
4.15	Employee Benefit Plans..... 19
4.16	Environmental Compliance ..... 20
4.17	Brokers ..... 21
4.18	Title to Assets ..... 21
4.19	Sufficiency of Assets ..... 21
4.20	No Undisclosed Liabilities ..... 21
4.21	No Other Representations and Warranties ..... 22
ARTICLE 5	REPRESENTATIONS AND WARRANTIES OF BUYER..... 22
5.1	Organization and Standing ..... 22
5.2	Authorization; Enforceability ..... 22
5.3	Absence of Conflicting Agreements; Consents ..... 22
5.4	Buyer Qualifications..... 23
5.5	Absence of Litigation ..... 23
5.6	Brokers ..... 24
5.7	Financing ..... 24
ARTICLE 6	PRE-CLOSING COVENANTS ..... 24

6.1	Access.....	24
6.2	Notice of Certain Events.....	24
6.3	Operations Pending Closing.....	25
6.4	Cooperation; Consents.....	27
6.5	Public Announcements.....	28
6.6	Efforts.....	28
6.7	Exclusivity.....	28
6.8	Tolling Agreements.....	28
6.9	KXJB Closing.....	28
ARTICLE 7	SPECIAL COVENANTS AND AGREEMENTS.....	29
7.1	Employee Matters.....	29
7.2	Further Assurances.....	31
7.3	Confidentiality.....	31
7.4	Access to Books and Records.....	31
7.5	Non-Solicitation by Buyer.....	31
7.6	Non-Solicitation by Sellers.....	32
ARTICLE 8	CONDITIONS PRECEDENT OF BUYER.....	32
8.1	FCC Consents.....	32
8.2	Required Consents.....	32
8.3	Absence of Proceedings.....	32
8.4	KXJB Transaction.....	33
8.5	Deliveries at Closing.....	33
ARTICLE 9	CONDITIONS PRECEDENT OF SELLERS.....	33
9.1	FCC Consents.....	33
9.2	Required Consents.....	33
9.3	Absence of Proceedings.....	33
9.4	Other Station Agreement Closing.....	33
9.5	Deliveries at Closing.....	33
ARTICLE 10	CLOSING AND CLOSING DELIVERIES.....	34
10.1	Closing.....	34
10.2	Deliveries by Sellers.....	34
10.3	Deliveries by Buyer.....	35
ARTICLE 11	SURVIVAL; INDEMNIFICATION.....	36
11.1	Survival.....	36
11.2	Exclusive Remedy.....	36
ARTICLE 12	TERMINATION.....	36
12.1	Termination.....	36
12.2	Procedure and Effect of Termination.....	37
12.3	Specific Performance.....	37
ARTICLE 13	TRANSFER TAXES; FEES AND EXPENSES.....	37
13.1	Transfer and Other Taxes.....	37
13.2	Governmental Filing Fees.....	37
13.3	Expenses.....	38
ARTICLE 14	MISCELLANEOUS.....	38
14.1	Entire Agreement; Amendment.....	38
14.2	Waivers; Consents.....	38
14.3	Benefit; Assignment.....	38
14.4	Notices.....	38
14.5	Counterparts.....	39
14.6	Headings.....	40
14.7	Severability.....	40
14.8	No Reliance.....	40

14.9	Governing Law .....	40
14.10	Consent to Jurisdiction and Service of Process .....	40
14.11	No Strict Construction .....	41
14.12	Saturdays, Sundays and Legal Holidays .....	41
14.13	Incorporation of Annexes, Exhibits and Schedules .....	41
14.14	Non-Recourse .....	43

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into this 14<sup>th</sup> day of July, 2006, by and between SPIRIT TELEVISION LLC, a Delaware limited liability company ("Seller"), and PARKER BROADCASTING, INC., a Delaware corporation ("Buyer").

### WITNESSETH:

WHEREAS, upon completion of the KXJB Closing (as defined herein), Seller will hold the Station Licenses (as defined herein) and certain other assets used and useful to operate television station KXJB-TV, Valley City, North Dakota (the "Station");

WHEREAS, Seller will have the right to acquire the Station pursuant to the KXJB Agreement (as defined herein); and

WHEREAS, Seller desires to sell, assign and transfer, and Buyer desires to acquire, the Assets (as defined herein), and to assume certain liabilities of Seller and the Business (as defined herein) as described below, all on the terms described in this Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1: DEFINITIONS

1.1 Definitions. Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex A, which is incorporated herein by reference into this Agreement and made a part hereof.

1.2 Rules of Construction. Whenever the context requires, any pronoun shall include the corresponding masculine, feminine and neuter forms. Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references to "party" and "parties" shall be deemed references to parties to this Agreement unless the context shall otherwise require. Except as specifically otherwise provided in this Agreement, a reference to an Article, Annex, Section, Schedule or Exhibit is a reference to an Article or Section of this Agreement or an Annex, Schedule or Exhibit of this Agreement. The term "or" is used in its inclusive sense ("and/or") and, together with the terms "either" and "any" shall not be exclusive. When used in this Agreement, words such as "herein", "hereinafter", "hereby", "hereof," "hereto", "hereunder" and words of similar import shall refer to this Agreement as a whole, including Annexes, Schedules and Exhibits hereto, and not to any particular provision of this Agreement, unless the context clearly requires otherwise. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

### ARTICLE 2: PURCHASE AND SALE

2.1 Purchase and Sale. Upon all of the terms and subject to all of the conditions of this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer on the Closing Date, and Buyer shall acquire and purchase, all of Seller's right, title and interest in and to the tangible and intangible assets owned or leased by Seller and used or held for use by Seller in the Business, together with any additions thereto between the completion of the KXJB Closing and the Closing Date, but excluding the Excluded Assets (such assets being conveyed being collectively referred to herein as the "Assets"), including all of Seller's right, title and interest in and to the following:

- (a) the Tangible Personal Property, if any;
- (b) the Real Property, if any;
- (c) all of Seller's rights and interests in or to the Licenses, including the Station Licenses, and all rights of Seller in and to the call letters of the Station;
- (d) the Assumed Contracts;
- (e) the Intangibles;
- (f) the Records;
- (g) the Accounts Receivable (other than those that are more than one hundred twenty (120) days old or those that have a counterparty that is insolvent or bankrupt), if any;
- (h) all deposits (current and long-term), if any, and prepaid expenses that comprise part of Net Working Capital; and
- (i) equipment warranties relating to items included in the Tangible Personal Property, if any, to the extent contractually assignable by Seller;
- (j) any rights, claims or causes of action of Seller against third parties arising in connection with or relating to the Business, other than those relating to Excluded Assets or Retained Liabilities;
- (k) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided, to Seller relating to the Business or to the extent affecting any Assets; and
- (l) all Seller's goodwill in, and going concern value of, the Business.

2.2 Excluded Assets. The Assets shall not include the following (collectively, the "Excluded Assets"):

- (a) all Cash Equivalents;
- (b) any and all contracts or policies of insurance and insurance plans and the assets thereof, promissory notes, amounts due from employees, bonds, letters of credit or other similar items and any cash surrender value with respect thereto, and all rights under any of the

foregoing, including any insurance proceeds receivables (except with respect to proceeds under insurance policies for casualties for which repairs have not been made prior to the Closing);

(c) all assets disposed of or consumed in accordance with the terms and provisions of this Agreement;

(d) all rights and claims of Seller to the extent exclusively relating to any other Excluded Asset or any Retained Liability, including all guarantees, warranties, indemnities and similar rights in favor of Seller with respect to any Excluded Asset or any Retained Liability, and all claims for refunds of monies paid to any Governmental Authority (including Tax refunds);

(e) the Contracts listed on Schedule 2.2(e) (the “Excluded Contracts”);

(f) Seller’s limited liability company records and other books and records that relate to internal limited liability company matters of Seller, qualifications to do business, taxpayer and other identification numbers, corporate minute books and limited liability company interest transfer records, Tax returns, and copies of any records as are necessary or desirable to enable Seller to prepare and file Tax returns and reports, financial statements and other documents deemed necessary or desirable by Seller;

(g) all rights of Seller to enforce (i) the obligations of Buyer to pay, perform or discharge the Assumed Liabilities and (ii) all other obligations of Buyer under or in connection with, as well as all other rights of Seller under or in connection with, this Agreement or any agreement, document, instrument or certificate required hereunder;

(h) any assets of any compensation or benefit plan or arrangement of Seller, including Employee Benefit Plans;

(i) all shares of capital stock, partnership interests and member or limited liability company interests and all other equity interests and securities of, held by or in Seller;

(j) all notes, bonds and other evidences of indebtedness from, or other advances, intercompany accounts, transfers and investments made to or in, Seller by its parent or members (all such notes, bonds, evidences of indebtedness, advances, intercompany accounts, transfers and investments, collectively, “Intercompany Accounts”);

(k) all records and documents in respect of the Excluded Assets; and

(l) all Accounts Receivable that are more than one hundred twenty (120) days old or that have a counterparty that is insolvent or bankrupt; and

(m) the assets listed on Schedule 2.2(m).

For the avoidance of doubt, the parties acknowledge and agree that any assets and properties related to the Station that are subject to the Other Station Agreement are owned or held by the sellers thereunder and are not Assets being purchased by Buyer under this Agreement.

2.3 Purchase Price. In consideration for sale of the Assets to Buyer pursuant to the terms and subject to the conditions of this Agreement, Buyer shall assume the Assumed Liabilities from Seller and shall pay to Seller an aggregate amount equal to the sum of (i) One Million Dollars

(\$1,000,000) (the “Base Purchase Price”) plus (ii) the Net Working Capital. The Base Purchase Price plus the Net Working Capital (as adjusted pursuant to Section 2.5) is collectively referred to herein as the “Purchase Price”. At the Closing, Buyer shall pay the Purchase Price by paying Sellers an aggregate amount equal to the sum of the Base Purchase Price plus the amount of Estimated Net Working Capital calculated pursuant to Section 2.5. All such payments shall be made by wire transfer of immediately available Federal funds in accordance with the wire transfer instructions delivered by Seller to Buyer no later than one (1) Business Day prior to the Closing Date.

2.4 Prorations and Adjustments as of Closing. The following provisions shall be used in determining Net Working Capital pursuant to Section 2.5, as appropriate:

(a) All revenues and all expenses arising from the Assets and the Business, including tower rental, business and license fees, utility charges, real and personal property taxes and assessments levied against the Assets and rebates thereof, property and equipment rentals, sales commissions payable, applicable copyright or other fees, including program license payments, sales and service charges, Taxes (except for Taxes arising from the transfer of the Assets under this Agreement), any accrued expenses, employee compensation, including wages, salaries and commissions, all accrued vacation pay, FCC regulatory fees, music and other license fees and similar prepaid and deferred items, shall be prorated between Buyer and Seller in accordance with GAAP (to the extent not inconsistent therewith) and to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and liabilities allocable to the Business for the period ended immediately prior to the Effective Time, and Buyer shall receive all revenues and shall be responsible for all expenses, costs and obligations allocable to the Business for the period commencing immediately on and after the Effective Time.

(b) Notwithstanding anything else in this Section 2.4 to the contrary, any prorations and adjustments pursuant to Sections 2.4(a) and 2.5 shall be subject to the following:

(i) There shall be no adjustment for or in respect of the Excluded Assets and the Retained Liabilities;

(ii) No adjustment or proration between Buyer and Seller shall be made in favor of Sellers or Buyer for the amount, if any, by which the value of the goods or services to be received by the Station under the Station’s trade or barter agreements as of the Effective Time exceeds, or is less than, the value of any advertising time remaining to be run on the Stations under such trade or barter agreements as of the Effective Time, except that (i) an adjustment and proration shall be made in favor of Buyer to the extent that the aggregate amount of any advertising time remaining to be run by the Station under trade or barter agreements as of the Effective Time exceeds by more than Twenty-Five Thousand Dollars (\$25,000) in the aggregate the fair market value of the goods or services to be received by the Station as of the Effective Time under such trade or barter agreements, or (ii) an adjustment and proration shall be made in favor of Seller to the extent that the aggregate fair market value of the goods or services to be received by the Station under trade and barter agreements as of the Effective Time exceeds by more than Twenty-Five Thousand Dollars (\$25,000) in the aggregate of the aggregate amount of any advertising time remaining to be run by the Station under trade or barter agreements as of the Effective Time. For purposes of the foregoing adjustment for trade and barter, the RV Trade and all syndicated and network program barter shall be disregarded and excluded; and



(iii) There shall be no adjustment or proration between Buyer and Seller for program barter. There shall be no adjustment or proration between Buyer and Seller for payments due under the Programming Contracts except as expressly set forth in this Section 2.4(b)(iii). Except as set forth herein for the month in which the Effective Time occurs, Seller shall be responsible for filing and paying all film or programming license fees due and payable under the Programming Contracts prior to the Effective Time, and Buyer shall be responsible for filing and paying all such fees on and after the Effective Time; provided, however, that for the month in which the Effective Time occurs, such obligations for such month shall be allocated on a pro-rata basis based on the day of the month immediately prior to the Effective Time. Deposits for Programming Contracts, if any, shall be fully credited to Seller, provided, that on the Closing Date, such credit will be reduced on a pro-rated basis based on the length of the term that the film or program was available to be aired on the Station prior to the Effective Time and the total length of the term that the film or program is available to air on the Station on and after the Effective Time.

## 2.5 Net Working Capital; Post-Closing Adjustment.

(a) Not less than two (2) Business Days prior to the Closing Date, Seller shall deliver to Buyer a balance sheet for the Business as of the close of business on the last day of the calendar month immediately preceding the date of delivery of such balance sheet (the “Preliminary Balance Sheet”). The Preliminary Balance Sheet shall be prepared in accordance with GAAP consistent with past practices of Seller and shall contain a calculation of the Estimated Net Working Capital. In conjunction with delivering the Preliminary Balance Sheet, Seller shall also deliver to Buyer such work papers, schedules and detail reports that support the balance sheet accounts and the calculation of the Estimated Net Working Capital set forth in the Preliminary Balance Sheet. Seller shall, upon delivery of such Preliminary Balance Sheet, permit Buyer and its representatives access to the accounting records and accountant work papers (if any) used in connection with the preparation of the Preliminary Balance Sheet and the calculation of the Estimated Net Working Capital set forth therein.

(b) Within forty-five (45) days after the Closing Date, Buyer shall prepare and deliver to Seller a balance sheet of the Business as of the Effective Time (the “Closing Balance Sheet”). The Closing Balance Sheet shall be prepared in accordance with GAAP consistent with the past practices of Seller and shall contain a calculation of the Net Working Capital. In conjunction with delivering the Closing Balance Sheet, Buyer shall also deliver to Seller such work papers, schedules and detail reports that support the balance sheet accounts and the calculation of Net Working Capital set forth in the Closing Balance Sheet. Buyer shall, following such delivery and at the request of Seller, permit Seller and its representatives access to the accounting records and accountant work papers (if any) used in connection with the preparation of the Closing Balance Sheet and the calculation of the Net Working Capital set forth therein.

(c) Within forty-five (45) days after the date the Closing Balance Sheet is delivered to Seller, Seller shall complete their examination of the Closing Balance Sheet and the calculation of Net Working Capital set forth therein and shall deliver to Buyer either (i) the written acknowledgement of their acceptance of the Closing Balance Sheet and the calculation of Net Working Capital set forth therein or (ii) a written report setting forth any proposed adjustments to the Closing Balance Sheet and/or the calculation of Net Working Capital set forth therein (the “Adjustment Report”). If Seller fail to deliver such acknowledgement or the Adjustment Report

within such forty-five (45) day period, then the Closing Balance Sheet and the calculation of Net Working Capital set forth therein shall be deemed to be correct and to have been finally determined for purposes of this Section 2.5.

(d) If Seller and Buyer fail to agree on any or all of the proposed adjustments to the Closing Balance Sheet and/or the calculation of Net Working Capital set forth therein contained in the Adjustment Report within thirty (30) days after Buyer receives the Adjustment Report and the amount in dispute exceeds Twenty-Five Thousand Dollars (\$25,000), then either party may notify a “big four” independent certified public accounting firm as may be mutually agreed upon by the parties of the need for its services as an independent auditor and not as an auditor or advisor for Seller or Buyer (the “Independent Auditor”). The Independent Auditor shall be instructed to make the final determination with respect to the correctness of the proposed adjustments in the Adjustment Report in accordance with the terms and provisions of this Agreement within thirty (30) days after the submission thereof. The decision by the Independent Auditor as to the adjustments that should be made to the Closing Balance Sheet and/or the calculation of Net Working Capital shall be final and binding on Seller and Buyer absent manifest error. Buyer, on one hand, and Seller, on the other hand, shall share equally the costs and expenses of the Independent Auditor but each party shall bear its own legal and other expenses, if any. If the amount in dispute is equal to or less Twenty-Five Thousand Dollars (\$25,000), then the dispute shall not be submitted to the Independent Auditor, and such amount shall be divided equally between Buyer, on one hand, and Seller, on the other hand.

(e) The term “Final Closing Balance Sheet” shall mean the Closing Balance Sheet and the calculation of Net Working Capital set forth therein delivered by Buyer to Seller pursuant to Section 2.5(b), as adjusted, if at all, pursuant to this Section 2.5. The date on which the Closing Balance Sheet and the calculation of Net Working Capital set forth therein is finally determined pursuant to this Section 2.5 shall hereinafter be referred to as the “Settlement Date.”

(f) (i) If the Net Working Capital as determined from the Final Closing Balance Sheet is greater (*i.e.*, more positive) than the Estimated Net Working Capital, then Buyer shall pay to Seller, within five (5) Business Days after the Settlement Date, an amount equal to such difference.

(ii) If the Net Working Capital as determined from the Final Closing Balance Sheet is less than the Estimated Net Working Capital (*i.e.*, less positive), then Seller shall pay to Buyer, within five (5) Business Days after the Settlement Date, an amount equal to such difference.

(g) Any payments required pursuant to Section 2.5(f) shall be made by wire transfer of immediately available Federal funds for credit to the recipient in accordance with wire transfer instructions provided by such recipient in writing (or by such other method of funds transfer as may be agreed upon by Buyer and Seller).

(h) If either Buyer or Seller fail to pay when due any amount under this Section 2.5, interest on such amount will accrue from the date payment was due and be payable until paid at the per annum rate of the “prime rate” as published in the Money Rates column of the Eastern Edition of The Wall Street Journal (or the average of such rates if more than one rate is indicated) plus two percent (2%) and shall be payable upon demand.

2.6 Assumption of Liabilities. Except as set forth below, Buyer expressly does not, and shall not, assume or be deemed to assume any liabilities or obligations of Seller. On, from and after the Effective Time, Buyer shall assume and agree to duly and timely pay, discharge, defend and perform as and when due:

(a) any and all obligations and liabilities of Seller under the Assumed Contracts, the Licenses and the Station Licenses to the extent that such obligations and liabilities arise or accrue with respect to the operation of the Business as of or after the Effective Time;

(b) any and all liabilities and obligations to be assumed by or the responsibility of Buyer as set forth in Section 7.1;

(c) any and all liabilities and obligations relating to the Business that arise with respect to events occurring on or after the Effective Time that relates to the period from and after the Effective Time;

(d) any and all liabilities and obligations of Seller to the extent accrued as a current liability on the Closing Balance Sheet and for which Buyer receives an adjustment to the Purchase Price as part of Net Working Capital pursuant to Sections 2.5 and 2.6; and

(e) any and all liabilities and obligations of Seller for any advance payments or deposits for which Buyer receives an adjustment to the Purchase Price as part of Net Working Capital pursuant to Sections 2.5 and 2.6.

All of the foregoing under this Section 2.4, together with other liabilities or obligations expressly assumed by Buyer under this Agreement or any other document, agreement or instrument required of Buyer under this Agreement, are referred to herein collectively as the “Assumed Liabilities”. Seller shall retain all liabilities and obligations of Seller, other than the Assumed Liabilities (the “Retained Liabilities”), including any and all liabilities under any compensation or benefit plan or arrangement of Seller or any Employee Benefit Plan (except as set forth in Section 7.1). Seller shall pay, perform and discharge the Retained Liabilities.

2.7 Allocation of Purchase Price. Seller and Buyer will engage Bond & Pecaro, Inc. to allocate the purchase consideration payable under Section 2.3 (including the Purchase Price and, for this purpose, the Assumed Liabilities) to and among the Assets in accordance with the requirements of Code §1060 and the regulations thereunder. Seller and Buyer shall equally pay the costs and expenses of Bond & Pecaro, Inc. Seller shall have the right to object to such tax allocations prepared by Bond & Pecaro, Inc. for a period of thirty (30) days following Seller’s receipt thereof by providing written notice of objection to Buyer. If Seller does not provide any such notice of objection within such time period, then the tax allocations prepared by Bond & Pecaro, Inc. shall be deemed accepted by Seller. If Seller provides any such notice of objection, then the allocation of the purchase consideration payable under Section 2.3 (including the Purchase Price and, for this purpose, the Assumed Liabilities) to and among the Assets as required by Code §1060 and the regulations thereunder shall be determined by the Independent Auditor in accordance the procedures set forth in Section 2.6(d) of the Other Station Agreement (as if such section applied to the determination of the tax allocations described in this Section 2.7. The Bond & Pecaro, Inc. tax allocations agreed to by Seller or the tax allocations determined by the Independent Auditor, as applicable, shall be referred to herein as the “Final Tax Allocations”). Seller and Buyer shall each file its federal income tax returns and its other tax returns reflecting the Final Tax Allocations. The Final Tax Allocations shall be set

out on a separate Schedule 2.7 to be attached to this Agreement prior to Closing, which shall be signed by all parties. Each party agrees to file Form 8594 with its return in accordance with Schedule 2.7. The Final Tax Allocation shall be binding upon all parties.

2.8 Deferred Consents. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign or transfer any Contract or any claim, right, or benefit arising thereunder or resulting therefrom, if an attempted assignment or transfer thereof, without the consent of a third party thereto would constitute a breach thereof. If such consent is not obtained prior to Closing (a “Deferred Consent”), or if an attempted assignment or transfer thereof would be ineffective or would affect the rights thereunder so that Buyer would not receive all such rights, then (i) Seller and Buyer will cooperate, in all reasonable respects, to obtain such Deferred Consents as soon as practicable; provided that Seller shall have no obligation (y) to pay any fees or provide or deliver any other consideration to any Person in order to obtain any Deferred Consent, or (z) to agree to any adverse change in any License or Assumed Contract in order to obtain a Deferred Consent, and (ii) until such Deferred Consent is obtained, Seller and Buyer will cooperate in all reasonable respects to provide to Buyer the benefits under the Contract to which such Deferred Consent relates and Buyer shall be responsible for all the liabilities and obligations thereunder arising after the Effective Time. In particular, in the event that any such Deferred Consent is not obtained prior to Closing, then Buyer and Seller shall enter into such arrangements (including subleasing or subcontracting if permitted) to provide to the parties the economic and operational equivalent of obtaining such Deferred Consent and assigning or transferring such Contract, including enforcement for the benefit of Buyer of all claims or rights arising thereunder, and the performance by Buyer of the obligations thereunder on a prompt and punctual basis.

### **ARTICLE 3: GOVERNMENTAL APPROVALS AND CONTROL OF STATION**

#### **3.1 FCC Consents.**

(a) The purchase and sale of the Assets as contemplated by this Agreement shall be in all respects subject to, and conditioned upon, the receipt of prior FCC Consents that shall have become Final Orders (unless such Final Order requirement shall be waived by all parties).

(b) Within five (5) Business Days after the execution and delivery of this Agreement, Buyer and Seller shall prepare, execute and file with the FCC the Assignment Applications. Buyer and Seller agree to prosecute the Assignment Applications with all reasonable diligence and take all steps reasonably necessary and otherwise use their commercially reasonable efforts to obtain the FCC Consents as expeditiously as possible, including the filing of all appropriate or necessary supplemental filings and amendments and vigorously contesting and opposing any petitions, objections, challenges or requests for reconsideration thereof, provided however, that neither Buyer nor Seller shall have any obligation to participate in an evidentiary hearing on the Assignment Applications. No party hereto shall take any action not contemplated by this Agreement that such party knows or would reasonably be expected to know would adversely affect obtaining the FCC Consents or adversely affect the FCC Consents becoming Final Orders. Each party will promptly provide the other party with true, correct and complete copies of all pleadings, orders, filings or other material documents served on them related to the Assignment Applications or the FCC Consents. All filing fees related to the Assignment Applications shall be borne and paid equally by Buyer, on one hand, and Seller, on the other hand.

(c) Each party agrees to comply with any condition imposed on it by any FCC Consent, except that no party shall be required to comply with a condition if compliance with the condition would have a material adverse effect upon it.

(d) If the Closing shall not have occurred for any reason within the original effective period of the FCC Consents and this Agreement shall not have been terminated by Buyer or Seller pursuant to Section 12.1, the parties hereto shall jointly request an extension (or extensions, as necessary) of the effective period of the FCC Consents. No extension of the FCC Consents shall limit the right of any party to exercise its rights under Section 12.1.

(e) The parties acknowledge that the License Renewals are pending before the FCC. To the extent reasonably necessary to expedite the grant of the License Renewals, and thereby facilitate grant of the Assignment Applications, Seller shall be permitted to enter into tolling agreements with the FCC with respect to the relevant License Renewal to extend, for a period of up to three years following the date of renewal, the statute of limitations for the FCC to determine or impose a forfeiture penalty against the Station in connection with any pending complaints that the Station aired programming that contained obscene, indecent, or profane material ("Tolling Agreements"). Seller shall consult with Buyer prior to entering any such Tolling Agreement.

(f) Control Prior to Closing. Between the date hereof and the Closing Date, Buyer shall not, directly or indirectly, control, supervise or direct, or attempt to control, supervise or direct, the operation of the Station. Such operation, including complete control and supervision of all programs, employees and policies, shall, upon completion of the KXJB Closing, be the sole responsibility of the Seller.

3.2 Other Governmental Consents. Promptly following the date of this Agreement, Buyer and Seller shall prepare and file with the appropriate Governmental Authorities any notices as well as any other requests for approval or waiver that are required from such Governmental Authorities in connection with the transactions contemplated hereby and shall diligently and expeditiously prosecute, and shall reasonably cooperate with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

#### **ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF SELLERS**

Seller represents and warrants to Buyer as of the completion of the KXJB Closing (provided that the representations and warranties set forth in Sections 4.1 and 4.2, are made as of the date of this Agreement) as follows:

4.1 Organization and Standing. Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to conduct business as a foreign limited liability company in each jurisdiction in which such qualification is required, except where the failure to be so qualified would not have a Material Adverse Effect. Seller has the requisite limited liability company power to own, lease, and operate its properties and to carry on its business as now conducted.

4.2 Authorization; Enforceability. The execution, delivery and performance of this Agreement by Seller and the agreements, documents and instruments required under this Agreement to which Seller is a party, and the consummation by Seller of the transactions contemplated hereby and thereby, are within the limited liability company power of Seller and have been duly authorized

by all necessary limited liability company action by Seller and its members, and no approval from or notice to any of the members of Seller is required regarding the same that has not been obtained or given, as applicable. This Agreement is, and the other agreements, documents and instruments required by this Agreement to which Seller is a party will be, when executed and delivered by Seller, the valid and binding obligation of Seller, enforceable against it in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles, which may limit the right to obtain equitable remedies.

4.3 Absence of Conflicting Agreements; Consents. Except as set forth in Schedule 4.3, neither the execution, delivery or performance of this Agreement by Seller, nor the consummation of the transactions contemplated hereby by Seller, does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) contravene, result in a breach of, or constitute a default under, any certificate of formation, limited liability company agreement or other governing or organizational instruments of Seller;

(b) subject to obtaining the FCC Consents and to the completion of the KXJB Closing, contravene or violate in any material respect any material applicable law, statute, ordinance, rule or regulation, or any court or administrative order or process, of any Governmental Authority to which Seller is a party or by which Seller or the Assets are bound;

(c) subject to obtaining the requisite Consents for the Assumed Contracts identified on Schedule 4.3, contravene in any material respect, or constitute a material default under, any Material Contract;

(d) require the consent, waiver, approval, permit, license, clearance or authorization of any Governmental Authority other than the FCC Consents and subject to completion of the KXJB Closing; or

(e) except as disclosed in Schedule 4.3, require the consent of any Person under any Material Contract.

4.4 Tangible Personal Property. Except as set forth in Schedule 4.4:

(a) Seller owns and has good title to its Tangible Personal Property, free and clear of any and all Liens other than Permitted Liens;

(b) To the Knowledge of Seller, each item of Tangible Personal Property individually having a net book value in excess of Ten Thousand Dollars (\$10,000) presently in use at the Station is in good operating condition and in a state of good maintenance and repair (ordinary wear and tear excepted);

(c) The Tangible Personal Property, if any, includes all items of tangible personal property to be used or held for use by Seller in connection with the Business; and

(d) Those items of Tangible Personal Property constituting transmitting and studio equipment that are currently used by the Station in its operations are operating and have been

served and maintained by Seller in accordance with normal industry standards and practices and applicable FCC rules and regulations.

(e) Schedule 4.4(e) sets forth all leases of personal property (“Personal Property Leases”) involving annual payments in excess of Ten Thousand Dollars (\$10,000) relating to personal property used by Seller in the Business or to which Seller is a party or by which the Assets are bound. All of the items of personal property under the Personal Property Leases are in good condition and repair (ordinary wear and tear excepted), and such property has been maintained by Seller in all material respects in such condition as is required of Seller as to such property by the terms of the lease applicable thereto during the term of the lease. To the extent available to or in Seller’s possession, Seller has delivered or otherwise made available to Buyer true, correct and complete copies of the Personal Property Leases, together with all amendments, modifications or supplements thereto.

(f) Seller has a valid and enforceable leasehold interest under each of the Personal Property Leases under which it is a lessee, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Each of the Personal Property Leases is in full force and effect, in all material respects, and Seller has not received or given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Personal Property Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any of the Personal Property Leases has exercised any termination rights with respect thereto. Subject to obtaining the consents and waivers and taking the actions set forth on Schedule 4.3, no consent or approval from any other party to any Personal Property Lease is required by the transfer of each Personal Property Lease pursuant to the provisions of this Agreement.

#### 4.5 Contracts.

(a) Schedule 4.5 lists all Assumed Contracts except: (i) Contracts entered into by Seller in the ordinary course of business that may be canceled on thirty (30) days or less notice and without obligation or liabilities on the part of Seller; and (ii) other Contracts entered into in the ordinary course of business not involving average annual payments or receipts by the Station of greater than Ten Thousand Dollars (\$10,000) per Contract (the “Material Contracts”). Seller has delivered or made available to Buyer originals or true and correct copies of all available written Material Contracts and accurate summaries of the material terms of all oral Material Contracts.

(b) Except as set forth in Schedule 4.5:

(i) Seller is not in default in any material respect under any Material Contract, and, to the Knowledge of Seller, no other Person that is a party to any such Material Contract is in default in any material respect thereunder, and, to the Knowledge of Seller, no event has occurred that with the passage of time or the giving of notice or both would constitute a default in any material respect thereunder by Seller or any other Person that is a party thereto; and

(ii) Each of the Assumed Contracts is valid, binding, enforceable and in full force and effect, in all material respects, and constitutes the legal and binding obligation of Seller and, to the Knowledge of Seller, each other Person that is a party thereto in

accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles, which may limit the right to obtain equitable remedies.

#### 4.6 Intangibles.

(a) Schedule 4.6 is a complete list as of the date of this Agreement of all material items of Intangibles (exclusive of Licenses and trade secrets). Seller has provided or made available to Buyer correct and complete copies of all documents in Seller's possession establishing or evidencing Seller's rights to the Intangibles listed on such Schedule.

(b) Except as set forth on Schedule 4.6:

(i) Seller's rights and interests in Intangibles have been issued or granted to or are owned by Seller and are valid and uncontested;

(ii) To the Knowledge of Seller, Seller's use of the Intangibles does not infringe in any material respect upon the rights of any third party to or under any trademarks, trade names, service marks or service names, and is in accordance in all material respects with the copyrights or other intellectual property rights owned or held by any third party, and Seller has not received any written threat alleging that the use of any Intangibles by Seller infringes in any material respect upon the rights of any third party to or under any trademarks, trade names, service marks or service names; and

(iii) To the Knowledge of Seller, no other Person is challenging, infringing on or is otherwise violating, in any material respect, any rights of Seller with respect to the Intangibles; and

(iv) Seller has not granted, nor is Seller obligated to grant, any license, sub-license or assignment of any Intangibles.

#### 4.7 Real Property; Leases.

(a) Schedule 4.7(a) lists the Real Property owned by Seller. With respect to each parcel of Real Property owned by Seller or as to which Seller holds an easement interest in:

(i) Seller has good and marketable fee simple title thereto or a valid easement interest in, as applicable, free and clear of all Liens except for Permitted Liens;

(ii) Seller has delivered to Buyer such copies of the following as Seller has in its possession: (A) deeds, title insurance policies and surveys relating to such Real Property and (B) Liens affecting such Real Property;

(iii) There are no leases, subleases, licenses or other agreements granting any other Person the right of use or occupancy of any portion thereof, except as disclosed on Schedule 4.7(a) or Schedule 4.7(b);



(iv) There are no existing options or contracts to sell or assign Seller's interest therein, and there are no rights of first refusal outstanding with respect thereto, except as disclosed on Schedule 4.7(a) or as contemplated by this Agreement;

(v) Seller has not received notice of any non-compliance with current zoning or land use laws or of any pending condemnation or similar proceeding affecting such owned Real Property or any portion thereof, and, to the Knowledge of Seller, no such action is presently threatened;

(vi) Seller has not received any written notice of, or other writing referring to, or have any other Knowledge of, any requirements or recommendations by (i) any Governmental Authority or (ii) any insurance company that has issued a title insurance policy covering any part of the Real Property or by any board of fire underwriters or other body exercising similar functions, requiring any repairs or work to be done on any part of the Real Property, which repair or work has not been completed;

(vii) There are no pending, or, to the Knowledge of Seller, threatened proceedings, claims or disputes, and to the Knowledge of Seller, there are no conditions affecting or threatening any of the Real Property, that, in any case, are reasonably likely to curtail or interfere in any material respect with the use thereof in connection with the operation of the Business as the same has been conducted by Sellers prior to the date hereof; and

(viii) To the Knowledge of Seller, none of the Liens included as continuing on either Schedule 4.7(a) or Schedule 4.7(b) has (A) materially interfered with the use of the Real Property in connection with the operation of the conduct of the Business in all material respects in the same manner as the Business has been conducted prior to the date hereof or (B) has materially adversely affected the value of the Real Property affected thereby, as Seller reasonably values such Real Property for the operation of the Business.

(b) The licenses, leases and subleases listed on Schedule 4.7(b) (collectively, the "Leases") constitute all of the licenses, leases or subleases for the use or occupancy of Real Property used or held for use by Seller in the Business. With respect to each such Lease:

(i) Seller holds valid leasehold title to such Lease subject only to the Permitted Liens;

(ii) Seller is not in material breach or in default of such Lease, and, to the Knowledge of Seller, no other Person that is a party to any such Lease is in material breach or default thereunder. To the Knowledge of Seller, no event has occurred that (whether with or without notice or lapse of time) would constitute a material default by Seller or any other party thereto under any Lease;

(iii) Each of the Leases is legal, valid, binding, enforceable and in full force and effect in all material respects, and constitutes the legal and binding obligation of Seller and, to the Knowledge of Seller, any other Person that is a party thereto in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles, which may limit the right to obtain equitable remedies;

(iv) Except as set forth in Schedule 4.7(b), Seller, and, to the Knowledge of Seller, the other Person that is party thereto, has not assigned, transferred, conveyed, mortgaged, deeded in trust or caused any Lien (other than any Permitted Lien) to exist with respect to any interest of Seller in such Lease;

(v) Seller has delivered to Buyer true and complete copies of (i) all Leases, tenant estoppels, subordination non-disturbance agreements, licenses, title insurance policies, and surveys relating to the property which is subject to the Lease to the extent they exist and are in Seller's possession;

(vi) There are no pending, or to the Knowledge of Seller, threatened proceedings, claims or disputes, and to the Knowledge of Seller, there are no conditions affecting or threatening any Leases, that are reasonably likely to curtail or interfere in any material respect with the use of any leased property in connection with the conduct of the Business as the same has been conducted by Seller prior to the date hereof;

(vii) Seller has not received written notice that any real property that is subject to any Lease is subject to any suit for condemnation or other taking by any public authority and, to the Knowledge of Seller, no such action is presently contemplated or threatened;

(viii) Except as set forth on Schedule 4.7(b), Seller is not a party to any sublease or similar arrangement (whether written or oral) under which Seller (or any Affiliate of Seller) is a landlord, sublandlord or otherwise makes available any portion of any leased real property for use by any third party;

(ix) Seller has not received any written notice of, or other writing referring to, or has any other Knowledge of, any requirements or recommendations by (i) any Governmental Authority or (ii) any insurance company that has issued a policy covering any part of any leased real property or by any board of fire underwriters or other body exercising similar functions, requiring any repairs or work to be done on any part of any leased real property, which repair or work has not been completed;

(x) Seller has received all certificates of occupancy (or other such permits) required for the lawful use and occupancy of property subject to any of its Leases. True and correct copies of such permits and certificates (and any other licenses for the use and operation of such leased property), have heretofore been made available or furnished to Buyer to the extent that the same are in Seller's possession; and

(xi) Seller is not a party to, or, to the Knowledge of Seller, is not obligated under any option, right of first refusal or other contractual right to sell, dispose of or lease any of its leased real property or any portion thereof or interest therein to any Person other than Buyer.

(c) The Real Property is accessible by public right of way or is otherwise reasonably accessible for purposes of conducting the use of such Real Property as presently conducted by Seller in conjunction with the operation of the Business.

4.8 Conduct of Business. Except as disclosed in Schedule 4.8 or as contemplated or permitted under this Agreement, from the completion of the KXJB Closing:

(a) Seller has conducted the Business in the ordinary course of business; and

(b) Seller has not:

(i) made any material adverse amendment to or terminated any Material Contract, Lease, or License to which Seller is a party with respect to the Business (except in connection with the expiration thereof in accordance with their respective terms);

(ii) made any increase in compensation paid, payable or to become payable by Seller to its employees outside of the ordinary course of business or otherwise increased the level of any employee benefits provided to an employee of the Business;

(iii) incurred material loss of or to any Assets not covered by insurance (excluding normal deductibles) or voluntarily waived any rights of material value;

(iv) made any material adverse change to any existing material commitment or liability to any labor organization that represents, or proposes to represent, employees of the Station;

(v) sold, assigned or otherwise transferred or disposed of any Assets used or held for use in the Business having a fair market value in excess of Ten Thousand Dollars (\$10,000) individually or in the aggregate, except (A) in the ordinary course of business, (B) in connection with the acquisition of similar or replacement property or assets, (C) inventory sold in the ordinary course of business, or (D) obsolete Assets not used or held for use in the Business; or

(vi) made any material change in any method of accounting or accounting practice; and

(c) There has not occurred any Material Adverse Effect, and, to the Knowledge of Seller, there is no condition of any kind in existence as of the date of this Agreement that would, with the passage of time, reasonably be expected to have a Material Adverse Effect.

4.9 Litigation. Except as set forth in Schedule 4.9 and except for proceedings (including FCC rulemaking proceedings) generally affecting the television broadcasting industry generally, there is no decree, judgment, order, litigation, arbitration proceeding or other legal or administrative proceeding pending or, to the Knowledge of Seller, threatened against Seller by or before any Governmental Authority that is reasonably likely to have a Material Adverse Effect.

4.10 Compliance with Laws. Except as set forth in Schedules 4.12(a), 4.12(b), 4.12(c), 4.12(d) and 4.12(e), (i) Seller is in compliance, in all material respects, with all federal, state and local laws, statutes, ordinances, rules and regulations and all court or administrative orders or processes applicable thereto, and (ii) Seller has not received any written or other notice from any Governmental Authority of, or been charged by any Governmental Authority with, the violation of any applicable laws relating to the Business.

4.11 Taxes. Except as set forth on Schedule 4.11:

(a) All federal, state and local Tax returns required to be filed by or on behalf of Seller has been timely filed (subject to any permitted filing date extensions) with the appropriate Governmental Authorities in all jurisdictions in which such returns and reports are required to be filed on or prior to the date hereof, and all Taxes owed by Seller has been paid, whether or not shown or required to be shown on such Tax returns. All such tax returns were accurate, complete and correct in all material respects;

(b) To the Knowledge of Seller, no claim has ever been made by any taxing authority in a jurisdiction where Seller does not file Tax returns that Seller is or may be subject to taxation by such jurisdiction;

(c) Seller has not requested, and is not a current beneficiary of, any extension of time within which to file any Tax returns;

(d) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid to any employee, independent contractor, creditor, member or other third Person; and

(e) There are no Liens for unpaid Taxes (other than for current Taxes either not yet due and payable or being contested in good faith) upon the Assets.

#### 4.12 FCC Matters.

(a) Schedule 4.12(a) identifies and includes a complete list of all Station Licenses and the applicable expiration dates thereof. The Station Licenses are in full force and effect and have not been revoked, suspended, cancelled, rescinded, or terminated and have not expired. Seller is the authorized holder of the Station Licenses. The Station Licenses listed on Schedule 4.12(a) constitute all of the licenses and authorizations issued by the FCC and required under the Communications Act and the current rules, regulations and published policies of the FCC for the lawful conduct of the Station as operated by Seller upon completion of the KXJB Closing. Seller knows of no fact, reason or proceeding that would disqualify Seller as the assignor of the Station Licenses and, to the Knowledge of Seller, Seller has no reason to believe that the Assignment Applications are reasonably likely to be challenged or are reasonably likely not to be granted by the FCC in the ordinary course due to any fact or circumstance relating to Seller's qualifications to hold the Station Licenses.

(b) Except as set forth on Schedule 4.12(b) and except for any FCC rulemakings or other proceedings affecting the television broadcasting industry generally, as of the date of this Agreement, there is no pending or, to the Knowledge of Seller, threatened investigation by or before the FCC or other Governmental Authority, or any order to show cause, notice of violation, notice of apparent liability, notice of forfeiture or complaint by, before or with the FCC with respect to Seller or the Station.

(c) Except as set forth on Schedules 4.12(b), 4.12(c), and 4.12(d), the Station, its physical facilities, electrical, and mechanical systems and transmitting and studio equipment are and have been operating in all material respects in accordance with the specifications of the applicable Station Licenses, and are in compliance in all material respects with the Communications Act and the rules, regulations and published policies of the FCC. Except as set forth in Schedule 4.12(c), all material filings (including regulatory fee payments), registrations, reports and statements that Seller is required to file with the FCC or the Federal Aviation Administration or to place in the Station's

public inspection file during the current applicable terms of the Station Licenses have been timely filed and are true and correct in all material respects. The most recent renewals of the Station Licenses were granted in the ordinary course for full renewal terms without any conditions (other than conditions set forth in the grant of renewal and those conditions generally applicable to television stations of the same type and class as the Station). Seller is not aware of any act or omission that is reasonably likely to result in a refusal by the FCC to renew the Station Licenses for a full term.

(d) Except as set forth on Schedule 4.12(d), the Station, including both its analog and digital facilities, is operating in accordance with the applicable Station License in all material respects and not pursuant to any special temporary authority or other waiver. Except as set forth on Schedule 4.12(d), the Station has completed the construction of digital facilities required by the FCC's Report and Order released on September 7, 2004 in MB Docket No. 03-15 and has obtained or filed an application for a license to cover its DTV construction permit. Schedule 4.12(d) includes a table which provides (i) the status of construction of the Station's DTV facilities, (ii) the estimated date of completion of construction (with the understanding that completion of construction will entitle the Station licensee to file an application with the FCC for a license to cover the construction permit), and (iii) if the estimated date for completion of construction is after July 1, 2006, the reasons for the delay.

(e) Except as set forth on Schedule 4.12(e), the Station has been assigned a channel by the FCC for the provision of digital television ("DTV") service. There are no pending petitions for rulemaking or notices of proposed rulemaking to reallocate the DTV allotment of the Station or, to the Knowledge of Seller, to reallocate the digital or analog television allotment of any other station that would reasonably be expected to have a Material Adverse Effect on the Station. The Station is or has been authorized under a construction permit issued by the FCC to construct DTV facilities. Except as set forth in Schedule 4.12(d), there is no pending application before the FCC for the Station to modify its Station Licenses for DTV service or to change the Station's DTV allotment. Except as set forth in Schedule 4.12(d), the Station has a Station License (construction permit or license) from the FCC to operate DTV facilities that are identical to the facilities certified by the Station licensee on FCC Form 381 and predicted to at least replicate the area and population coverage of such Station's 1997 Grade B contour as set forth in Appendix B to the *Memorandum Opinion and Order On Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998).

(f) The information disclosed on Schedule 4.12(f) is true, correct and complete in all material respects as of the date hereof and includes the following:

- (i) a list of all Market Cable Systems carrying the signal of the Station;
- (ii) a list of all Market Cable Systems on which the Station, respectively, made a must-carry election for the period ending December 31, 2008 (by default or otherwise) and on which the Station is not currently carried;
- (iii) a list of all direct broadcast satellite systems carrying the signal of the Station;

(iv) a list of all retransmission consent agreements and copyright indemnification agreements that are in effect entered into on behalf of the Station and any multi-channel video distribution system;

(v) a list of all Market Cable Systems, if any, which are carrying the Station and that notified Seller or the Station of such Market Cable System's intention to delete the Station from carriage or to change the channel position of the Station on such cable system;

(vi) a list of all retransmission consent elections made by the Station for the three-year period ending December 31, 2008;

(vii) a list of each notice, if any, received by Seller or by the Station from any Market Cable System alleging that the Station does not deliver an adequate quality signal, as defined in 47 C.F.R. § 76.55(c)(3), to such Market Cable System's principal headend (other than any such notice as to which such failure has been remedied or been determined not to exist), and all further material correspondence between Seller or the Station and the Market Cable System relating to such notice;

(viii) a list of all pending petitions for special relief to modify the area in which the Station is entitled to demand must-carry pursuant to the rules and regulations of the FCC; and

(ix) a list of must-carry complaints, if any, filed on behalf of the Station.

Seller has delivered or made available to Buyer true and correct copies of all material notices, agreements, correspondence, petitions and other items described in this Section 4.12.

4.13 Insurance. Schedule 4.13 contains a true and complete list of all insurance policies in respect of the Business that are in effect as of the date of this Agreement. All policies of insurance listed on Schedule 4.13 are in full force and effect in all material respects as of the date of this Agreement. Seller maintains (or there is maintained on Seller's behalf) customary insurance policies covering the tangible Assets in respect of the Business and various occurrences that may be reasonably anticipated to arise in connection with the operation of the Business.

4.14 Employees.

(a) Seller has furnished to Buyer a true and complete list of all employees of the Station as of the date set forth in such list showing each of their names, titles, years of service and current compensation, including base salary and bonus. Except as set forth in Schedule 4.14(a) or as otherwise provided by applicable state law, the employment of all employees of Seller is terminable at will.

(b) Except as set forth in Schedule 4.14(b):

(i) Seller is not bound by any collective bargaining agreement covering any of its employees at the Station, and, to the Knowledge of Seller, there exists no organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of Seller at the Station; and

(ii) Seller is not engaged in any material unfair labor practice or other material unlawful employment practice, and, to the Knowledge of Seller, there are no charges of any material unfair labor practice or other material unlawful employment practice pending against Seller before the National Labor Relations Board, the Equal Opportunity Commission, the Occupational Safety and Health Review Commission, the Department of Labor or any other Governmental Authority.

(iii) Seller has not experienced any strikes, grievances or other collective bargaining disputes. Seller has not committed any unfair labor practice (as determined under any Law).

#### 4.15 Employee Benefit Plans.

(a) Except as set forth in Schedule 4.15, Seller does not maintain or is not a party to or does not make contributions to any “employee benefit plan,” within the meaning of Section 3(3) of ERISA or “multiemployer plan” within the meaning of Sections 3(37) or 4001(a)(3) of ERISA (the “Employee Benefit Plans”). All Employee Benefit Plans maintained by Seller or to which Seller is obligated to contribute, if any, are in all material respects maintained, funded and administered in compliance with ERISA, the Code, and other applicable law and no circumstances exists where Buyer would have any liability with respect to any Employee Benefit Plan on or following the Closing, except as set forth in Section 7.1. As to each Employee Benefit Plan for which an annual report is required to be filed under ERISA or the Code, no liabilities with respect to such plan existed on the date of the most recently filed annual report except as disclosed therein and, except as disclosed in Schedule 4.15, no material adverse change has occurred with respect to the financial data covered by the most recently filed annual report since the date thereof.

(b) Except as disclosed in Schedule 4.15, the execution of this Agreement and performance of the transactions contemplated hereby will not in and of itself constitute a triggering event under any Employee Benefit Plan or other arrangement or Contract that will result in any payment or benefit (whether of severance pay or otherwise) becoming due from Seller and will not accelerate the time of payment or vesting any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable pursuant to, any of the Employee Benefit Plans and will not result in any breach or violation of, or a default under, any of the Employee Benefit Plans. Each Employee Benefit Plan that is an employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a plan that is unfunded and covers only employees who are among the select group of management or highly compensated employees of Seller), if any, has received a favorable determination letter stating that the plan is qualified under Section 401(a) of the Code, or it is in a prototype or volume submitter plan document whose language has been pre-approved by the IRS as is evidenced by a letter from the IRS, and no event has occurred that is reasonably likely to result in the loss of the qualification of such plan under Section 401(a) of the Code. Except as set forth in Schedule 4.15, Seller has never maintained a pension plan subject to Section 412 of the Code or Title IV of ERISA, and Seller has never maintained, contributed to or been required to contribute to any employee benefit plan that is a “multiemployer plan” (as defined in Section 3(37)(A) or (D) of ERISA) as amended by the Multiemployer Pension Plan Amendments Acts of 1980. No circumstance exists where Buyer could have any liability with respect to a pension plan subject to Section 412 of the Code or Title IV of ERISA or a multiemployer plan that is or was sponsored by Seller or any entity that is considered one employer with Seller under Section 4001 of ERISA or Section 414 of the Code. No notice of a “reportable event”, within

the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived, has been required to be filed with respect to any Employee Benefit Plan of Seller within the 12-month period ending on the date hereof or will be required to be filed in connection with the transactions contemplated by this Agreement.

(c) No “prohibited transaction,” within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Employee Benefit Plan. There are no actions, suits or claims pending or, to the Knowledge of Seller, threatened (other than routine claims for benefits) against any Employee Benefit Plan or against the assets of any Employee Benefit Plan. There are no audits, inquiries or proceedings pending or, to the Knowledge of Seller, threatened by the IRS, the U.S. Department of Labor, or any other Governmental Authority with respect to any Employee Benefit Plan. Seller is not subject to any penalty or tax with respect to any Employee Benefit Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. Seller has timely made all contributions and other payments required by and due under the terms of each Employee Benefit Plan. No Employee Benefit Plan has an “accumulated funding deficiency” (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and Seller do not have an outstanding funding waiver. Seller has not provided, or is required to provide, security to any Employee Benefit Plan pursuant to Section 401(a)(29) of the Code. Seller has complied in all material respects with the notice and benefit obligations regarding any Employee Benefit Plan mandated by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Neither Seller nor any of its subsidiaries have any obligations for retiree health and life benefits under any Employee Benefit Plan or have ever represented, promised or contracted (whether in oral or written form) to any current or past employee(s), directors(s) or consultants(s) that such individuals would be provided with retiree health or life benefits.

4.16 Environmental Compliance. Except as set forth on Schedule 4.16:

(a) Seller has complied and are in compliance in all material respects with all Environmental Laws, and, to the Knowledge of Seller, no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed, commenced or threatened against Seller that: (i) asserts or alleges that Seller violated in any material respect any Environmental Laws or are otherwise subject to any material liabilities arising under any Environmental Laws, including material liabilities under Environmental Laws for personal injury, property damage, or natural resources damage; (ii) asserts or alleges that Seller is required to clean up, remove or take remedial or other response action due to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials at or relating to the Real Property; or (iii) asserts or alleges that Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal, remedial or other response action that arises out of, or is related to, the disposal, depositing, discharge, leaking or other release of any Hazardous Materials by Seller at or relating to any of the Real Property;

(b) Seller has obtained, has complied in all material respects with, and is in compliance in all material respects with, all permits that are required pursuant to Environmental Laws for Seller’s operations and the occupation of the Real Property;

(c) Seller has not caused Hazardous Materials to be stored, deposited, treated, recycled, disposed of, transported from, or released at any Real Property owned, leased, used, operated or occupied by Seller that would subject any owner or operator of such Real Property to



liability for cleanup, removal or some other remedial action under any Environmental Laws or that has given or would give rise to any material liability under any Environmental Laws, including material liabilities under Environmental Laws for personal injury, property damage, or natural resources damages;

(d) To the Knowledge of Seller, there are no: (i) tanks or other facilities on, under, or at the Real Property that contain any Hazardous Materials that, if known to be present in soils or ground water, would subject any owner or operator of such Real Property to liability for cleanup, removal or some other remedial action or material liability under any Environmental Laws; (ii) asbestos containing material in any form or condition; (iii) materials or equipment containing PCBs; or (iv) landfills, surface impoundments, or disposal areas; and

(e) Seller is not subject, as a result of its interest in the Real Property, to any judgment, order or citation related to or arising out of any Environmental Laws; Seller has not been named or listed as a potentially responsible party in a matter related to or arising out of any Environmental Laws; and to the Knowledge of Seller, no such naming or listing is threatened.

4.17 Brokers. Seller does not have any obligation or liability to pay any finders' or brokers' fees or commissions with respect to the transactions contemplated by this Agreement.

4.18 Title to Assets. On the Closing Date, Seller will have and, subject to obtaining any required Consents, will convey to Buyer good and marketable title to all Assets that are owned by the Seller and valid and existing leasehold or license interests in all Assets that are leased or licensed by the Seller, in each case free and clear of all Liens, except for and subject only to Permitted Liens.

4.19 Sufficiency of Assets. Except as set forth in Schedule 4.19 and except for the Excluded Assets, the Assets, together with the assets of the Other Stations, constitute all of the assets and properties that Seller reasonably believes are necessary to operate the Business as currently conducted by Seller. Except for the assets of the Other Stations, no assets that Seller reasonably believe are necessary to operate the Business as currently conducted by Seller or that are used or held for use by Seller in the conduct of the Business are located outside of the Station or used by Affiliates of Seller (other than another Seller).

4.20 No Undisclosed Liabilities. Except as set forth on Schedule 4.20, Seller has no liabilities of any kind relating to the Business that are required to be reflected on a balance sheet of the Business in accordance with GAAP other than those (i) fully reflected in, reserved against or otherwise described in the Audited Balance Sheet or the notes thereto, (ii) incurred or arising in the ordinary course of business since December 31, 2005, or (iii) liabilities reflected in the terms of Contracts (including future film and programming commitments) disclosed to Buyer prior to the date hereof and not resulting from any breach by Seller of any such Contract.

4.21 No Other Representations and Warranties. Except for the representations and warranties contained in this Agreement, in the Exhibits, Schedules and Annexes to this Agreement, and in the certificates required to be delivered pursuant to or in connection with this Agreement, none of Seller and any other Person acting for Seller makes any representation or warranty, express or implied, and Seller hereby disclaims any such representation or warranty, whether by Seller or its officers, directors, employees, agents, representatives or any other Person, with respect to the execution, delivery or performance by Seller of this Agreement or with respect to the transactions contemplated by this Agreement, notwithstanding the delivery or disclosure to Buyer or any of its

officers, directors, employees, agents or representatives or any other Person of any documentation or other information by Seller or any of its officers, directors, employees, agents or representatives or any other Person with respect to any one or more of the foregoing.

## **ARTICLE 5: REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

5.1 Organization and Standing. Buyer is a corporation company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and in good standing in each jurisdiction in which such qualification is necessary for Buyer to own its assets and conduct its business. Prior to Closing, Buyer will be qualified to do business in the States of North Dakota, South Dakota and Minnesota. Buyer has full power to own, lease, and operate its properties and to carry on its business as such is now conducted.

5.2 Authorization; Enforceability. The execution, delivery and performance of this Agreement by Buyer and all of the agreements, documents and instruments required under this Agreement, and the consummation by Buyer of the transactions contemplated hereby and thereby, are within the power of Buyer and have been duly authorized by all necessary action by Buyer, and no approval from or notice to any of the members of Buyer is required regarding the same that has not been obtained or given, as applicable. This Agreement is, and the other agreements, documents and instruments required by this Agreement will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer, enforceable against it in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

5.3 Absence of Conflicting Agreements; Consents. Neither the execution, delivery or performance of this Agreement by Buyer, nor the consummation of the transactions contemplated hereby by Buyer does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) contravene, result in a breach of, or constitute a default under, any certificate or articles of formation, organization or incorporation, bylaws or other applicable organizational or governing instruments or documents of Buyer;

(b) subject to obtaining the FCC Consents, contravene or violate in any material respect any material applicable law, statute, ordinance, rule or regulation, or any court or administrative order or process, of any Governmental Authority to which Buyer is a party or by which Buyer or its assets or properties are bound;

(c) contravene in any material respect, or constitute a default in any material respect under, any material contract or agreement to which Buyer is a party or by which Buyer or its assets or properties are bound;

(d) require the Consent of or notice to any Governmental Authority other than the FCC Consents; or

(e) require the Consent of any Person under any agreement, arrangement or commitment of any nature which Buyer is a party to or bound by or which the assets or properties of Buyer are bound or subject.

5.4 Buyer Qualifications. Buyer is legally, technically, financially and otherwise qualified as, and is not taking action or contemplating taking action that might disqualify it from being, under present law (including the Communications Act) and present rules, regulations and published policies or practices of the FCC, the holder of the Station Licenses, as an owner or operator of the Business or the Station, or as the owner of any or all of the Assets. Buyer knows of no fact, reason or proceeding that would disqualify Buyer as the assignee of the Station Licenses, and to Buyer's knowledge, Buyer has no reason to believe that the Assignment Applications are reasonably likely to be challenged or are reasonably likely not to be granted by the FCC in the ordinary course due to any fact or circumstance relating to Buyer's qualifications to hold the Station Licenses. Buyer further represents and warrants that it is financially qualified to meet all terms, conditions and undertakings contemplated by this Agreement, including the payment of the Purchase Price.

5.5 Absence of Litigation. There is no decree, judgment, order, litigation, arbitration proceeding or other legal or administrative proceeding pending or, to the knowledge of Buyer, threatened against Buyer or any of its subsidiaries or Affiliates in any federal, state or local court, or before any other Governmental Authority that could reasonably be expected to have a material adverse effect on the financial condition, the business, assets or properties of Buyer or on Buyer's ability to purchase the Assets under this Agreement or to perform its obligations under this Agreement or any agreement, document or instrument required hereunder. To the knowledge of Buyer, there is no claim, demand or investigation pending or threatened against Buyer or any of its subsidiaries or Affiliates by or before any Governmental Authority that could reasonably be expected to have a material adverse effect on the financial condition, the business, assets or properties of Buyer or on Buyer's ability to purchase the Assets under this Agreement or to perform its obligations under this Agreement or any agreement, document or instrument required hereunder.

5.6 Brokers. Buyer does not have any obligation or liability to pay any finders' or brokers' fees or commissions with respect to the transactions contemplated by this Agreement.

5.7 Financing. Buyer has, or will have at the Closing, all funds necessary to consummate the transactions contemplated by this Agreement, including payment of the Purchase Price and all necessary payments required of Buyer in connection with the transactions contemplated under this Agreement.

## **ARTICLE 6: PRE-CLOSING COVENANTS**

6.1 Access. From the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 12.1, Buyer and its authorized agents, officers and representatives shall have reasonable access upon reasonable advance notice, during normal business hours, to the offices, properties, books, contracts, commitments and records of the Station that Buyer may reasonably request. Notwithstanding the foregoing, all of Buyer's inquiries and/or requests for any such information or access shall be made directly to Michael Wach, Seller's President and Chief Executive Officer ("Wach"), or his written designee, who shall obtain the information and transmit the same to Buyer. Any conversations between Buyer and any representative or employee of the Station other than Wach or his designee (including Station-level management employees) shall be arranged by Wach or his designee. Wach or his designee shall participate in all conversations or

meetings between Buyer and any representative or employee of the Station unless Wach or his designee shall otherwise consent. Buyer's access under this Section 6.1 shall be exercised in a manner as to not unreasonably interfere with the Business.

## 6.2 Notice of Certain Events.

(a) From the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 12.1, Seller shall give Buyer prompt written notice of the occurrence of any of the following:

- (i) a loss, taking, condemnation, damage or destruction of or to any of the Assets involving in excess of One Hundred Thousand Dollars (\$100,000);
- (ii) the commencement of any material proceeding or litigation at law or in equity or before the FCC or any other Governmental Authority that involves the Station Licenses, other than proceedings or litigation of general applicability to the television broadcasting industry;
- (iii) any material labor grievance, strike, or other material labor dispute;
- (iv) any material violation by Seller of any federal, state or local law, statute, ordinance, rule or regulation known to Seller; or
- (v) any material breach, default, claimed default or termination of any material Assumed Contract on the part of Seller, or, to the Knowledge of Seller, on the part of any other parties thereto.

(b) Seller and Buyer shall promptly notify the other in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining, enjoining or challenging the consummation of this Agreement or the transactions contemplated hereunder (including challenges to the Assignment Applications), or upon receiving any notice from any Governmental Authority of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of this Agreement or the transactions contemplated hereby. Seller and Buyer will each use commercially reasonable efforts to contest, defend and resolve any such suit, proceeding or injunction brought against it so as to permit the prompt consummation of the transactions contemplated hereby.

## 6.3 Operations Pending Closing.

(a) Upon completion of the KXJB Closing until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 12.1, Seller shall:

- (i) operate the Business in all material respects in the ordinary course of business consistent with past practices (except where such conduct would conflict with the covenants set forth herein or other obligations under this Agreement);
- (ii) operate the Station in compliance in all material respects with applicable law, including the Communications Act and the rules and regulations of the FCC;

(iii) maintain the Tangible Personal Property, if any, in the ordinary course of business consistent with past practice to the extent commercially reasonable;

(iv) maintain policies of liability and casualty insurance of substantially similar coverage as the policies currently carried by Seller for the Business;

(v) use commercially reasonable efforts to (x) retain the services of the key employees of Seller, (y) preserve substantially intact the operations of Business, including, with respect to the Business, relationships with customers, advertisers, suppliers and others having business relations;

(vi) take commercially reasonable steps necessary to maintain in full force and effect, or renew when required, all Station Licenses, including the renewal of any digital special temporary authorizations;

(vii) (x) use commercially reasonable efforts to complete construction of the digital facilities described in Schedule 4.12(d) or authorized by the Station's digital construction permit, which authorizes DTV facilities identical to the facilities certified by Seller on FCC Form 381 and are predicted to at least replicate the area and population coverage of such Station's 1997 Grade B contour as set forth in Appendix B to the *Memorandum Opinion and Order On Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 (1998), except as set forth in Schedule 4.12(e);

(viii) promptly provide Buyer with copies of all material correspondence with Market Cable Systems and direct broadcast satellite systems relating to the Business, if any, concerning must carry status, retransmission consent and other material matters arising under the Cable Act or the Satellite Home Viewer Improvement Act of 1999, as amended, and keep Buyer reasonably advised of the status of all negotiations with Market Cable Systems and direct broadcast satellite systems relating to the Business, if any, concerning such matters; and

(ix) exercise commercially reasonable efforts to maintain carriage, if any, of the Station's signals on (x) all Market Cable Systems located within the Station's markets, as applicable, and as to which the Station's signals are currently being carried and (y) other multichannel video programming distributors (as such term is defined in the Communications Act) to which the Station's signals are currently being carried; and use commercially reasonable efforts to oppose all applications, proposals or proceedings, if any, that could materially adversely affect each such Station and its service area;

provided that, nothing in this Section 6.3(a) shall be deemed to limit the ability of Seller to consummate the transactions that are the subject of the KXJB Agreement.

(b) From the completion of the KXJB Closing until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 12.1, Seller shall not, without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed:

(i) sell, assign, lease, or otherwise dispose of any of the Assets, except for inventory or supplies or other assets consumed or disposed of in the ordinary course of business, assets no longer used or held for use in the Business, or assets transferred or

disposed of in connection with the acquisition of replacement property of substantially equivalent, or better, kind and use;

(ii) (a) amend, terminate, extend, renew or waive any material right under any Material Contract or series of related Contracts involving payments of more than Ten Thousand Dollars (\$10,000) per year or having a term of more than two years, (b) enter into any new agreement or arrangement or series of related Contracts involving payments of more than Ten Thousand Dollars (\$10,000) per year or having a term of more than two years, except in connection with capital expenditures permitted under Section 6.3(b)(vi), (c) enter into, amend, extend or renew any Material Contract relating to programming rights involving payments of more than Twenty-Five Thousand Dollars (\$25,000) per year for trade or barter agreements (other than syndicated or network program barter) that would, in the aggregate, require the broadcast of more than Twenty-Five Thousand Dollars (\$25,000) of time based on the Station's current rates for advertising time, which, in any case, shall be binding on Buyer on and after the Closing, or (d) enter into, amend, extend or renew any network affiliation agreement or any national advertising representation agreement with respect to the Assets, the Station or the Business, except, with respect to any network affiliation agreement, for any changes generally required of affiliates by the applicable network;

(iii) except as required by applicable law or existing Contract, increase the compensation (including wages, salaries and bonuses) that is paid or payable to any employee of Seller or to any officer, other than increases made in accordance with normal compensation practices and consistent with past compensation practices; provided, however, that Seller may pay bonuses to any of its employees or officers so long as such bonuses do not create binding obligations upon Buyer after the Closing Date;

(iv) except as required by applicable law or existing Contract, voluntarily agree to enter into any collective bargaining agreement applicable to any employees of Seller or otherwise recognize any union as the bargaining representative of any such employees;

(v) create, assume or permit to exist any Liens upon any of the Assets, except for Permitted Liens and Liens that will be discharged prior to or on the Closing Date;

(vi) make any commitment for capital expenditures in excess of Ten Thousand Dollars (\$10,000) in the aggregate that will be binding upon Buyer;

(vii) enter into any Contract for the purchase by Seller of real property or exercise any option to extend a Lease;

(viii) institute any increase in any profit-sharing, bonus, incentive, deferred compensation, insurance, pension, retirement, medical, hospital, disability, welfare or other employee benefit plan with respect to its employees, other than in the ordinary course of the Business or as required by any such plan or law;

(ix) enter into any employment agreement for services to be performed on behalf of Seller in respect of the Business or hire any new employees other than replacement "at will" employees at comparable compensation and benefits;

(x) acquire (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or any equity interest therein which would, or whose assets or Liabilities would, be included in the Assets or Assumed Liabilities;

(xi) assume, guarantee, endorse or otherwise become liable or responsible (whether directly or indirectly, contingently or otherwise) for the Liabilities of any other Person which may be binding on or affect, the Assets or Buyer on or after the Closing; or

(xii) default in any material respect under any indebtedness for borrowed money having a principal balance in excess of Fifty Thousand Dollars (\$50,000) that causes the acceleration of such indebtedness, or voluntarily take any action or permit the occurrence of any event that, with the lapse of time, giving of notice or both, would constitute such a default;

provided that, nothing in this Section 6.3(b) shall be deemed to limit the ability of Seller to consummate the transactions that are the subject of the KXJB Agreement.

6.4 Cooperation; Consents. Buyer and Seller shall reasonably cooperate with each other and their respective counsel and accountants in connection with any actions reasonably required to be taken as part of their respective obligations under this Agreement and otherwise use their commercially reasonable efforts to consummate the transactions contemplated by this Agreement and to fulfill their obligations under this Agreement. Seller shall diligently make all commercially reasonable efforts to obtain or cause to be obtained prior to the Closing Date all Consents from third Persons that are parties to Assumed Contracts without any change in the terms or conditions of any Assumed Contract. Anything to the contrary herein notwithstanding, Seller shall not be required to pay any fees or provide or deliver any other consideration to any Person in order to obtain any Consent of such Person. Buyer agrees to use all commercially reasonable efforts to assist Seller in obtaining such Consents, and to take all commercially reasonable actions necessary or desirable to obtain such Consents, including executing such assumption instruments and other documents as may be required in connection with obtaining the Consents.

6.5 Public Announcements. No party shall publish, issue or make any press release or make any other public announcement concerning this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other party, which shall not be withheld or delayed unreasonably; provided, however, that (i) nothing contained in this Agreement shall prevent any party, after notification to the other party to the extent legally permissible, from making any filings with Governmental Authorities that, based on advice of legal counsel, may be required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby and (ii) Seller shall be permitted to publish and broadcast public notices concerning the filing of the Assignment Applications in accordance with the requirements of Section 73.3580 of the FCC's Rules.

6.6 Efforts. Without limiting the specific obligations of any party hereto under any agreement or covenant hereunder, each party hereto shall use commercially reasonable efforts to take all action and do all things necessary in order to consummate the transactions contemplated by this Agreement, including satisfaction, but not waiver, of the closing conditions set forth in Article 8 and Article 9.

6.7 Exclusivity. From the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 12.1, Seller shall not, directly or indirectly, sell, agree to sell, solicit inquiries or proposals, or initiate or participate in any negotiations whatsoever concerning, or, except for the KXJB Agreement, enter into any contract pertaining to, any acquisition or purchase of all or substantially all of the Assets related to the Station, or the merger, consolidation or sale of equity of Seller or any similar transaction affecting ownership of the Station.

6.8 Tolling Agreements. To the extent reasonably necessary to expedite the grant of the License Renewals, and thereby facilitate the grant of the Assignment Applications, Seller shall enter into the Tolling Agreement(s) as set forth in Section 3.1(e).

6.9 KXJB Closing. Seller agrees to use commercially reasonable efforts to consummate the KXJB Closing in accordance with the KXJB Agreement on or before the Closing.

6.10 Termination of Lease Agreements. Seller shall have caused the lease agreements set forth on Schedule 6.10 to be terminated as of the Closing Date.

## **ARTICLE 7: SPECIAL COVENANTS AND AGREEMENTS**

### **7.1 Employee Matters.**

(a) Buyer shall offer employment (i) as of the Closing Date, to each active employee of the Business who is available for work on the Closing Date, and (ii) as of the date of return to work, to each employee who is on leave or disability who returns to work within any period prescribed under applicable law or regulation (any such employee who accepts Buyer's offer of employment shall be referred to as a "Transferred Employee"); provided, however, that Buyer shall not be required to offer employment to those employees on leave or disability as of the Closing Date who do not return to work within any period prescribed under applicable law or regulation. Except for Transferred Employees with employment Contracts as set forth in Schedule 7.1(e) (which employment Contracts shall be assumed by Buyer), any such offer shall be for employment at will by Buyer as a new employee of Buyer to occupy positions designated by Buyer and pursuant to terms and conditions determined by Buyer in its sole discretion. Seller and its Affiliates agree that they shall not interfere with or offer employment to any employee of the Business that Buyer seeks to make an offer of employment as set forth in this Section 7.1(a). Except as required by applicable law, Seller agrees to make available to Buyer all information and materials requested by Buyer from Seller's personnel files of each Transferred Employee.

(b) Buyer agrees to administer or amend any welfare benefit plan of Buyer that Transferred Employees may be eligible to participate in on or after the Closing Date to waive or cause to be waived all limitations as to preexisting conditions, exclusions and waiting periods otherwise applicable to the Transferred Employees under such plan, except that such waivers shall not be required to a plan to the extent that Seller's plan applied such limitations, or to the extent that ERISA, the conditions for favorable tax treatment (if applicable) of such welfare benefit plans, or state or local law would prohibit them.

(c) Buyer agrees to amend or change the administration of all of the employee benefit programs and arrangements covering or otherwise benefiting any of the Transferred Employees on or after the Closing Date so that service with Seller shall be credited under such



employee benefit programs and arrangements for purposes of determining eligibility to participate, meeting a waiting period for eligibility for a benefit, or vesting of benefits under such programs and arrangements, except that such amendment or change in administration shall not be required to the extent that ERISA, the conditions for favorable tax treatment (if applicable) of such employee benefit programs and arrangements, or state or local law would prohibit it.

(d) Buyer and Seller agree to cooperate in good faith to determine whether any notification may be required under the WARN Act, as a result of the transactions contemplated under the Agreement and, if such notices are required, to provide such notice in a manner that is reasonably satisfactory to each of the parties hereto.

(e) Except for any Contract that Buyer has agreed to assume in accordance with this Agreement and as set forth in Schedule 7.1(e), Buyer assumes no obligation to continue or assume any compensation arrangements or liabilities of Seller (including, but not without being limited to, any fringe benefits, insurance plans, or pension or retirement benefits under any compensation or retirement plan maintained by Seller) to any employee of Seller.

(f) Seller agrees to remain responsible for the payment of all accrued benefits in accordance with the terms of the Employee Benefit Plans. Buyer shall not at any time assume any liability under the Employee Benefit Plans, including, without limitation, liability for the payment of benefits to any active or any terminated, vested or retired participants in such Employee Benefit Plans.

(g) Seller shall retain the responsibility for payment of all medical, dental, health and disability claims incurred by any employee of Seller prior to the Closing Date, and Buyer shall not assume any liability with respect to such claims. Seller also agrees to retain responsibility for disability payments to its employees on medical or disability leave at the Closing Date until such time as such employee is offered employment by Buyer, or as otherwise required under applicable law or regulation.

(h) Seller agrees that they shall retain all liabilities and obligations, if any (including, without limitation, the liability and obligation for all wages, salary, vacation pay, sick leave, leave time and unemployment, medical, dental, health and disability benefits), for those former employees of Seller who retired or terminated employment prior to the Closing Date.

(i) Seller agrees to pay and be liable to Buyer, and shall assume, indemnify, defend and hold harmless Buyer from and against and in respect of any and all losses, damages, liabilities, taxes, sanctions that arise under Section 4980B of the Code, interest and penalties, costs and expenses imposed upon, incurred by, or assessed against Buyer arising by reason of or relating to any failure to comply with the continuation health care coverage requirements of Section 4980B of the Code and Sections 601-608 of ERISA which failure occurred with respect to any employees of Seller or any qualified beneficiary of such employee prior to the Closing Date. On the Closing Date, Buyer shall assume responsibility for making available and administering any continuation health care coverage for any former or current employees of Seller or any qualified beneficiary of such employees, and Buyers shall be responsible for providing any continuation health care notice or coverage for any Transferred Employees.

(j) Immediately prior to the Closing Date, Seller shall cause each Transferred Employee to become fully vested in his or her account balance under the Seller Employee Benefit

Plans that are qualified under Section 401(a) of the Code (“Pension Plans”). In addition, with respect to any Transferred Employee who has an outstanding loan balance in any of Seller’s Pension Plans as of the Closing Date, Seller shall cause such plan to permit the repayment of such loan (in accordance with the terms and conditions of the loan) by the Transferred Employee following the Closing Date notwithstanding the fact that such employee is no longer an active participant in such plan.

(k) Seller and Buyer hereby adopt the “standard procedure” for preparing and filing IRS Forms W-2, IRS Forms W-3, IRS Forms W-4, IRS Forms W-5 and IRS Forms 941, as described in Section 4 of Revenue Procedure 96-60, 1996-2 IRS Cumulative Bulletin 399. The parties intend that the Purchaser qualify as a “successor employer” for purposes of receiving credit for the payment of taxes under the Federal Insurance Contribution Act and Federal Unemployment Tax Act by Seller with respect to Transferred Employees within the meaning of Section 3121 and 3306 of the Code.

7.2 Further Assurances. From time to time after the Closing Date, upon the reasonable request of any party hereto, the other party or parties hereto shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment, transfer, acceptance and assumption, and take such further action as the requesting party may reasonably request in order to fully effectuate the purposes, terms and conditions of this Agreement and the other agreements specified in this Agreement.

7.3 Confidentiality. Neither party will use or disclose to any other Person (except as may be necessary for the consummation of the transactions contemplated hereby, or as required by applicable law, and then, to the extent legally permissible, only with prior notice to the other party hereto) this Agreement or any information received from the other party hereto or its agents in the course of investigating, negotiating and performing the transactions contemplated by this Agreement; provided, however, that each party may disclose such information to such party’s officers, directors, members, managers, employees, lenders, advisors, attorneys and accountants who need to know such information in connection with the consummation of the transactions contemplated by this Agreement and who are informed by such party of the confidential nature of such information and agree to be bound by the confidentiality covenants set forth in this Section 7.3. Each party shall be responsible to the other party for any breach by its officers, directors, stockholders, managers, members, employees, lenders, advisors, attorneys or accountants of such confidentiality covenants. Nothing shall be deemed to be confidential information that: (i) is already in such party’s possession prior to receipt from the other party or parties hereto or its or their agents, provided that such information is not known by such party to be subject to another confidentiality agreement with or other obligation of secrecy to the other party hereto or another party; (ii) becomes generally available to the public other than as a result of a disclosure by such party or such party’s officers, directors, stockholders, managers, members, employees, lenders, advisors, attorneys or accountants in breach of this Section 7.3; (iii) becomes available to such party on a nonconfidential basis from a source other than another party hereto or its advisors, provided that such source is not known by such party to be bound by a confidentiality agreement with or other obligation of secrecy to the other party hereto or another party; or (iv) is developed independently by either party without resort to the confidential information of the other party. If this Agreement is terminated, then each party will return to the other party all information, including all documents, work papers and other written confidential material obtained by such party from the other party in connection with the transactions contemplated by this Agreement. The covenant contained in this Section 7.3 shall survive for a

period of two (2) years from the earlier of the Closing Date or the date in which this Agreement is terminated pursuant to Section 12.1.

7.4 Access to Books and Records. Seller shall provide Buyer reasonable access and the right to copy, at Buyer's expense, for a period of three (3) years from the Closing Date any books and records relating to the Assets but not included in the Assets. Buyer shall provide Seller reasonable access and the right to copy, at Seller's expense, for a period of three (3) years after the Closing Date any books and records relating to the Assets that are included in the Assets.

7.5 Non-Solicitation by Buyer. If this Agreement is terminated as described in Section 12.1(b) as a result of the termination of the Other Station Agreement pursuant to Section 12.2(b)(i) thereof, then Buyer shall not, beginning on the effective date of termination and continuing for a period of one (1) year thereafter, without the prior written approval of Seller, directly or indirectly, hire, solicit, encourage, entice or induce any Person who is employed by Seller on the date hereof or at any time hereafter that precedes such termination, to terminate his or her employment with Seller (provided that general advertisements in the media not directed at Seller's employees shall not be prohibited by this Section 7.5. Buyer agrees that any remedy at law for any breach by it of this Section 7.5 would be inadequate, and Seller would be entitled to injunctive relief in such a case, in addition to any other remedies at law to which Seller may be entitled. If it is ever held that the restrictions placed on Buyer by this Section 7.5 are too onerous and are not necessary for the protection of Seller, then the parties agree that any court of competent jurisdiction may reduce the duration or scope hereof, or delete specific words or phrases, and in its reduced form such provision will then be enforceable and will be enforced.

7.6 Non-Solicitation by Seller. Seller shall not, and shall not permit any of its Affiliates to, beginning on the Closing Date and continuing for a period of one (1) year thereafter, (a) without the prior written approval of Buyer, directly or indirectly, solicit, encourage, entice or induce any Person who was a Transferred Employee to terminate his or her employment with Buyer (provided that general advertisements in the media not directed at Buyer's employees shall not be prohibited by this Section 7.6), or (b) solicit, entice, divert, or take away from Buyer's business and operations in respect of the Station any customers, advertisers, suppliers and others having business relations with the Station, or attempt to do the same, or otherwise interfere in any respect with the such business or operations or with Buyer's relationships with such Persons. Seller agree that any remedy at law for any breach by them of this Section 7.6 would be inadequate, and Buyer would be entitled to injunctive relief in such a case, in addition to any other remedies at law to which Buyer may be entitled. If it is ever held that the restrictions placed on Buyer by this Section 7.6 are too onerous and are not necessary for the protection of Buyer, then the parties agree that any court of competent jurisdiction may reduce the duration or scope hereof, or delete specific words or phrases, and in its reduced form such provision will then be enforceable and will be enforced.

## **ARTICLE 8: CONDITIONS PRECEDENT OF BUYER**

The obligation of Buyer to consummate the transactions to be performed by it at the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing Date:

8.1 FCC Consents. The FCC Consents shall have been granted and shall have become Final Orders.

8.2 Required Consents. All Consents set forth on Schedule 8.2 (collectively, the “Required Consents”) shall have been obtained.

8.3 Absence of Proceedings. No injunction, restraining order or decree of any nature of any Governmental Authority of competent jurisdiction shall be in effect enjoining or preventing consummation of the transactions contemplated by this Agreement, and no action or proceeding by or before any Governmental Authority (other than an action or proceeding instituted or threatened by or on behalf of Buyer) shall have been instituted or threatened (and not subsequently dismissed, settled or otherwise terminated) that is reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

8.4 Other Station Agreement. The closing contemplated under the Other Station Agreement shall have been consummated or shall be consummated concurrently with the Closing hereunder.

8.5 Deliveries at Closing. Seller shall have made or shall stand willing to make all deliveries required under Section 10.2.

If any of the conditions set forth in this Article 8 have not been satisfied prior to or at the Closing Date, then Buyer may waive any such condition (to the extent not prohibited by applicable law) and nevertheless elect to proceed with the consummation of the transactions contemplated hereby. Buyer may not rely on the failure of any condition set forth in this Article 8 if such failure was caused by Buyer’s failure to comply with any term or provision of this Agreement.

## **ARTICLE 9: CONDITIONS PRECEDENT OF SELLERS**

The obligation of Seller to consummate the transactions to be performed by it at the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing Date:

9.1 FCC Consents. The FCC Consents shall have been granted and shall have become Final Orders.

9.2 Required Consents. All Required Consents shall have been obtained.

9.3 Absence of Proceedings. No injunction, restraining order or decree of any nature of any Governmental Authority of competent jurisdiction shall be in effect preventing consummation of the transactions contemplated by this Agreement, and no action or proceeding by or before any Governmental Authority (other than an action or proceeding instituted or threatened by Seller) shall have been instituted or threatened (and not subsequently dismissed, settled or otherwise terminated) that is reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement.

9.4 Other Station Agreement Closing. The closing contemplated under the Other Station Agreement shall have been consummated or shall be consummated concurrently with the Closing hereunder.

9.5 Deliveries at Closing. Buyer shall have made or stand willing to make all deliveries required under Section 10.3.

If any of the conditions set forth in this Article 9 have not been satisfied prior to or at the Closing, then Seller may waive any of such conditions (to the extent not prohibited by applicable law) and nevertheless elect to proceed with the consummation of the transactions contemplated hereby. Seller may not rely on the failure of any condition set forth in this Article 9 if such failure was caused by Seller's failure to comply with any term or provision of this Agreement.

## **ARTICLE 10: CLOSING AND CLOSING DELIVERIES**

10.1 Closing. The Closing shall occur on (i) the fifth (5<sup>th</sup>) Business Day following the date the FCC Consents shall have become Final Orders, or (ii) if later, the first (1<sup>st</sup>) Business Day following the satisfaction or waiver of the conditions precedent set forth in Article 8 and Article 9, but in any event no later than the Termination Date, and shall be held at the offices of Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, North Carolina at 9:00 a.m. local time, or at such other time and place as Seller and Buyer may mutually agree. Notwithstanding the actual time the deliveries of the parties hereto are made on the Closing Date, the parties hereto agree that the Closing shall be effective and deemed for all purposes to have occurred as of 12:01 a.m., Central time, on the Closing Date.

10.2 Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, to Buyer (or as otherwise set forth below) the following:

(a) Duly executed assignments and other instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to Buyer, effecting the sale, transfer, assignment and conveyance of the Assets to Buyer, including the following:

(i) Assignment and Assumption of Contracts in the form attached hereto as Exhibit A;

(ii) Assignment and Acceptance of the Station Licenses in the form attached hereto as Exhibit B;

(iii) Assignment and Assumption of Intangibles in the form attached hereto as Exhibit C;

(iv) Assumption Agreement in the form attached hereto as Exhibit D;

(v) Bill of Sale in the form of attached hereto as Exhibit E;

(b) A certificate, dated as of the Closing Date, executed by the secretary, or any assistant secretary, of Seller, certifying that the resolutions, as attached to such certificate, were duly adopted by the board (if applicable) and members (if required) of Seller, authorizing and approving the execution of this Agreement and the consummation of the transactions contemplated hereby and that such resolutions remain in full force and effect;

(c) An opinion of Dickstein Shapiro Morin & Oshinsky LLP, Seller's counsel, dated as of the Closing Date, in substantially the form attached hereto as Exhibit F, or otherwise reasonably acceptable to Buyer's counsel;

(d) Certificates of incumbency for the officers of Seller duly authorized to execute and deliver this Agreement and the agreements, instruments, certificates and documents contemplated hereby;

(e) Copies of all instruments evidencing the Required Consents received by Seller and other Consents received by Seller;

(f) Any mortgage discharges or releases of Liens that are necessary in order for the Assets to be free and clear of all Liens, other than the Permitted Liens, or, in lieu thereof with respect to Seller's senior lender, a payoff letter from Seller's senior lenders in form and substance reasonably satisfactory to Buyer's counsel;

(g) Copies of Seller's certificate of formation issued by the Secretary of State of the State of Delaware, dated not more than thirty (30) days before the Closing Date, and certificates issued by the appropriate Governmental Authorities as to the qualification of Seller to do business as foreign limited liability companies in all jurisdictions where Seller has so qualified; and

(h) Such other documents as may reasonably be requested by Buyer or its counsel in order to effect the closing of transactions contemplated by this Agreement.

10.3 Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller the following:

(a) The Purchase Price;

(b) Appropriate assumption and acceptance agreements, in form and substance reasonably satisfactory to Seller's counsel, pursuant to which (x) Buyer shall assume and undertake to perform the Assumed Liabilities, including the following:

(i) Assignment and Assumption of Contracts in the form attached hereto as Exhibit A;

(ii) Assignment and Acceptance of the Station Licenses in the form attached hereto as Exhibit B;

(iii) Assignment and Assumption of Intangibles in the form attached hereto as Exhibit C;

(iv) Assumption Agreement in the form of attached hereto as Exhibit D;  
and

(v) Bill of Sale in the form of attached hereto as Exhibit E;

(c) A certificate, dated as of the Closing Date, executed by the secretary, or any assistant secretary, of Buyer, certifying that (i) the certificate of incorporation and bylaws of Buyer attached thereto are true, correct and complete and in full force and effect and (ii) the resolutions, as attached to such certificate, were duly adopted by the Board of Directors and stockholders (if required) of Buyer, authorizing and approving the execution of this Agreement and the consummation of the transactions contemplated hereby and that such resolutions remain in full force and effect;

(d) Certificates of incumbency for the officers of Buyer duly authorized to execute and deliver this Agreement and the agreements, instruments, certificates and documents contemplated hereby;

(e) Copies of all instruments evidencing the Required Consents or other Consents received by Buyer;

(f) A copy of Buyer's certificate or articles of organization, incorporation or formation issued by the Secretary of State of the State of Delaware, dated not more than thirty (30) days before the Closing Date and certificates issued by the appropriate Governmental Authorities as to the qualification of Buyer to do business as a foreign corporation in each jurisdiction where such qualification is necessary for Buyer to own the Assets and operate the businesses of the Station; and

(g) Such other documents as may reasonably be requested by Seller or its counsel in order to effect the closing of transactions contemplated by this Agreement.

#### **ARTICLE 11: SURVIVAL; INDEMNIFICATION**

11.1 Survival. All of the representations and warranties of the parties hereto contained in the Agreement, and any claims related to the performance of any covenant or agreement of the parties contained in this Agreement that are required to be performed prior to or at the Closing ("Pre-Closing Covenants"), shall survive the Closing and continue in full force and effect for a period of one (1) year after the Closing Date, after which such representations, warranties and claims for Pre-Closing Covenants will terminate and be of no further force or effect; provided, however, that (i) Seller's representations and warranties set forth in Section 4.11 (Taxes) and Section 4.15 (Employee Benefit Plans) shall survive the Closing for the applicable statutes of limitations, after which such representations and warranties will terminate and be of no further force or effect, (ii) Seller's representations and warranties set forth in Section 4.16 (Environmental Compliance) shall survive the Closing for a period of three (3) years following the Closing Date after which such representations and warranties will terminate and be of no further force or effect, and (iii) Seller's representations and warranties set forth in Section 4.2 (Authorization; Enforceability), 4.4(a) (Tangible Personal Property) and 4.18 (Title to Assets) shall survive the Closing indefinitely. The applicable period of such survival subsequent to Closing is referred to as the "Survival Period". The covenants and agreements of the parties set forth in this Agreement to be performed after the Closing shall survive the Closing until fully performed and discharged. Any claims under the Other Station Agreement as to a breach or default of a representation, warranty, or a Pre-Closing Covenant under Section 11.2 or Section 11.3 of the Other Station Agreement must be asserted in writing with reasonable particularity by the party making such claim within the applicable Survival Period and the expiration of any covenant, representation or warranty shall have no effect on the continued validity of any claim related thereto if such written notice has been provided within the applicable Survival Period.

11.2 Exclusive Remedy. Anything to the contrary in this Agreement notwithstanding, after the Closing, the sole and exclusive remedy for Buyer for any claim or Loss (whether such claim or Loss in respect thereof is framed in tort, contract or otherwise) arising out of a breach or default of any representation, warranty, covenant or other agreement under or pursuant to this Agreement or otherwise arising out of or in connection with the transactions contemplated by this Agreement or the operations of the Station or the Business shall be a claim for indemnification pursuant to Article 11 of the Other Station Agreement.

## **ARTICLE 12: TERMINATION**

12.1 Termination. This Agreement may be terminated at any time prior to the Closing as follows:

- (a) by mutual written consent of Seller and Buyer;
- (b) automatically if the Other Station Agreement shall have been terminated in accordance with its terms; or
- (c) by either Seller or Buyer, if (i) the FCC denies the Assignment Applications in an order that has become a Final Order or designates the Assignment Applications for an evidentiary hearing, or (ii) any final order of another Governmental Authority is entered by such a Governmental Authority of competent jurisdiction having valid enforcement authority permanently restraining, prohibiting or enjoining any of Seller or Buyer from consummating the transactions contemplated hereby, with the understanding that, except as provided otherwise herein, the parties hereto shall promptly appeal any adverse determination which is not nonappealable (and pursue such appeal with reasonable diligence).

12.2 Procedure and Effect of Termination. No termination of this Agreement pursuant to Section 12.1 shall be effective until notice thereof shall be given to the non-terminating party specifying the provision hereof pursuant to which such termination is made. If validly terminated pursuant to Section 12.1, this Agreement shall become wholly void and of no further force and effect without Liability to Buyer or Seller or any of their respective Subsidiaries, Affiliates, officers, directors, employees, agents, advisors or other representatives, except that the obligations of the parties under Sections 4.17 (Seller's Broker), 5.6 (Buyer's Broker), 7.3 (Confidentiality), 7.5 (Non-Solicitation), 13.2 (Governmental Filing Fees), 13.3 (Expenses), this Article 12, Article 14, and, to the extent necessary to effectuate the foregoing enumerated provisions, Annex A of this Agreement shall remain in full force and effect.

12.3 Specific Performance. The parties recognize and agree that Buyer and Seller has both relied on this Agreement and expended considerable effort and resources related to the transactions contemplated hereunder, that the right and benefits conferred upon both Buyer and Seller herein are unique, and that damages may not be adequate to compensate either Buyer or Seller in the event the other party improperly refuses to consummate the transactions contemplated hereunder. The parties therefore agree that Buyer and Seller shall be entitled, at their option and in lieu of terminating this Agreement pursuant to Section 12.1, to have this Agreement specifically enforced by a court of competent jurisdiction; provided, however, that Buyer and Seller may not specifically enforce this Agreement if they have previously terminated this Agreement.

## **ARTICLE 13: TRANSFER TAXES; FEES AND EXPENSES**



13.1 Transfer and Other Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees, including penalties and interest, if any, but exclusive of any income Taxes, incurred in connection with this Agreement and the transactions contemplated herein (collectively, "Transfer Taxes") shall be borne and paid equally by Seller and Buyer regardless of which party any such Transfer Tax is imposed upon. Each party agrees to cooperate with such other parties in the timely completion, execution and filing of any documentation required by any local or state Governmental Authority in connection with the Transfer Taxes.

13.2 Governmental Filing Fees. All FCC filing fees incurred pursuant to Section 3.1 shall be borne and paid equally by Buyer, on the one hand, and Seller, on the other hand. Any filing or grant fees imposed by any Governmental Authority (other than the FCC) shall be paid equally by Buyer and Seller.

13.3 Expenses. Except as otherwise provided in this Agreement, each party shall pay its own costs and expenses incurred in connection with the authorization, preparation, execution and performance of this Agreement, including all fees and expenses of counsel, accountants, agents and representatives.

## **ARTICLE 14: MISCELLANEOUS**

14.1 Entire Agreement; Amendment. This Agreement, the Other Station Agreement, the Annexes, the Schedules and Exhibits hereto, and all documents and certificates executed and delivered pursuant to this Agreement in connection with the Closing under Article 10, collectively constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other covenants or agreements between or among the parties in connection with the subject matter hereof, except as specifically set forth herein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

14.2 Waivers; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, representation, warranty, covenant, agreement or condition set forth in this Agreement may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver. Any of the conditions to Closing set forth in this Agreement may be waived at any time prior to or at the Closing hereunder by the party entitled to the benefit thereof. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 14.2.

14.3 Benefit; Assignment. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and permitted assigns. No party to this Agreement may, directly or indirectly, by merger, operation of law or otherwise, assign either this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the other party provided, however, that Buyer may assign this Agreement, in whole or in

part, to any direct or indirect wholly owned subsidiary of Buyer without Seller's prior written consent, provided Buyer agrees in writing with Seller to unconditionally guarantee all obligations of such assignee under this Agreement. No assignment consented to under this Agreement shall act as a novation and the assigning party shall not be released from, and shall remain fully liable for, all of its obligations and liabilities under this Agreement. Any assignment in violation of this Agreement shall be null and void *ab initio*.

14.4 Notices. All communications, notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) sent by confirmed facsimile (with receipt personally confirmed by telephone), delivered by personal delivery or sent by commercial delivery service or certified mail, return receipt requested, (iii) deemed to have been given on the date sent by facsimile if sent on a Business Day before 5:00 p.m. local time of the recipient, and if not then on the next Business Day immediately following, with receipt confirmed, the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (iv) addressed as follows, unless and until either of such parties notifies the other in accordance with this Section 14.4 of a change of address or change of facsimile number:

(a) If to Seller:

Spirit Television LLC  
7 Davis Road  
Port Washington, New York 11050  
Attention: Michael A. Wach  
Telephone No.: 516.883.0583  
Facsimile No.: 516.883.2668

With a required copy to:

Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, DC 20037-1526  
Attention: Lewis J. Paper, Esq.  
Telephone No.: 202.828.2265  
Facsimile No.: 202.887.0689

(b) If to Buyer:

Parker Broadcasting, Inc.  
5341 Tate Avenue  
Plano, Texas 75093  
Attention: Barry Parker  
Telephone No.: 214.704.7559  
Facsimile No.: 972.473.9912

With a required copy to:

Akin Gump Strauss Hauer & Feld LLP  
1333 New Hampshire Avenue NW  
Washington, DC 20036  
Attention: Tom W. Davidson  
Telephone No.: 202.887.4011  
Facsimile No.: 202.887.4288

14.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via e-mail or facsimile transmission, and any such counterpart executed and delivered via e-mail or facsimile transmission shall be deemed an original for all intents and purposes.

14.6 Headings. The Table of Contents and Article, Section and other headings set forth in this Agreement, the Annexes, Schedules or Exhibits hereto are inserted or used for convenience of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

14.7 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by applicable law so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.

14.8 No Reliance. Except as expressly set forth in this Agreement (including the parties successors and permitted assigns under Section 14.3 and, as to Section 14.14, those Persons described in Section 14.14), no Person other than the parties hereto is entitled to rely on any of the representations, warranties, covenants, agreements, rights or remedies of Buyer or Seller under or by virtue of this Agreement. Buyer and Seller assume no liability to any such Person because of any reliance on the representations, warranties, agreements, rights or remedies of Buyer or Seller under or by virtue of this Agreement.

14.9 Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York applicable to contracts made and performed in that State without giving effect to any choice or conflict of law principle, provision or rule (whether the State of New York or any other jurisdiction), including all matters of construction, interpretation, validity and performance.

14.10 Consent to Jurisdiction and Service of Process. **BUYER AND SELLER HEREBY CONSENT AND AGREE THAT THE STATE OR FEDERAL COURTS LOCATED IN THE**

STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH OF BUYER AND SELLER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH OF BUYER AND SELLERS HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH OF BUYER AND SELLER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN SECTION 14.4 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAELS, PROPER POSTAGE PREPAID.

14.11 No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any Person by virtue of the authorship of any of the provisions of this Agreement.

14.12 Saturdays, Sundays and Legal Holidays. If the time period by which any acts or payments required hereunder must be performed or paid expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled Business Day.

14.13 Incorporation of Annexes, Exhibits and Schedules.

(a) The Schedules, Exhibits, Annexes and other agreements specifically referred to in and delivered pursuant to, this Agreement are an integral part of it. Any disclosure that is made in any of the Schedules delivered pursuant to this Agreement shall be deemed responsive to any other applicable disclosure obligation hereunder.

(b) The following are the Annexes, Exhibits and Schedules annexed hereto and incorporated by reference and deemed to be part of this Agreement:

(i) Annexes:

Annex A	--	Definitions
---------	----	-------------

(ii) Exhibits:

Exhibit A	--	Assignment and Assumption of Contracts
Exhibit B	--	Assignment and Assumption of Station Licenses
Exhibit C	--	Assignment and Assumption of Intangibles
Exhibit D	--	Assumption Agreement
Exhibit E	--	Bill of Sale
Exhibit F	--	Legal Opinion of Seller's Counsel

(iii) Schedules:

Schedule I	--	Pro Forma Working Capital
Schedule II	--	Other Permitted Existing Liens
Schedule 2.2(e)	--	Excluded Contracts
Schedule 2.2(m)	--	Excluded Assets
Schedule 4.3	--	Conflicting Agreements
Schedule 4.4	--	Tangible Personal Property Exceptions
Schedule 4.4(e)	--	Personal Property Leases
Schedule 4.5	--	Assumed Contracts
Schedule 4.6	--	Intangibles
Schedule 4.7(a)	--	Owned Real Property and Easement Interests
Schedule 4.7(b)	--	Real Property Leases
Schedule 4.8	--	Changes Since KXJB Closing
Schedule 4.9	--	Litigation
Schedule 4.11	--	Taxes
Schedule 4.12(a)	--	Station Licenses
Schedule 4.12(b)	--	FCC Proceedings
Schedule 4.12(c)	--	FCC Filings
Schedule 4.12(d)	--	Station License Exceptions
Schedule 4.12(e)	--	DTV Authorizations
Schedule 4.12(f)	--	Market Cable Systems
Schedule 4.13	--	Insurance
Schedule 4.14(a)	--	Exceptions to At Will Employment
Schedule 4.14(b)	--	Labor Matters
Schedule 4.15	--	Employee Benefit Plans
Schedule 4.16	--	Environmental Matters
Schedule 4.19	--	Sufficiency of Assets
Schedule 4.20	--	Undisclosed Liabilities
Schedule 7.1(e)	--	Employment Agreements

Schedule 8.2	--	Required Consents
--------------	----	-------------------

The information and disclosures contained in the Schedules attached hereto shall be deemed amended and modified by, and Seller shall be permitted to amend and supplement the information and disclosures made in such schedules in respect of events, information, circumstances, occurrences or changes occurring or obtained between the date of this Agreement and five (5) business days thereafter so long as such events, information circumstances, occurrences or changes (i) are in the ordinary course of business and do not violate any covenants or agreements made by Seller in this Agreement, (ii) do not have or are not reasonably likely to have a Material Adverse Effect, or (iii) are not caused solely by or result solely from Seller's actions, omissions, activities or operations in respect of the Station.

14.14 Non-Recourse. Notwithstanding any term or provision of this Agreement, (i) except as set forth in Section 12.3 relating to specific performance, none of Seller, Buyer and their respective past, present or future directors, managers, officers, employees, incorporators, members (direct or indirect), partners, equityholders (direct or indirect), Affiliates, agents, attorneys, consultants, trustees or representatives of Buyer or its Affiliates, or of Seller or its Affiliates (it being acknowledged and agreed that, for the avoidance of doubt, the foregoing shall include and apply to, with respect to Seller, Barry Parker, and, with respect to Buyer, Michael Wach) shall have any liability for any obligations or liabilities of Buyer or Seller, as applicable, under or with respect to this Agreement or the other agreements, instruments and documents contemplated by this Agreement, as applicable, of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby, and (ii) the terms and provisions of this Section 14.14 shall survive the termination of this Agreement or the Closing indefinitely and without limitation as to time. The parties acknowledge and agree that the terms and provisions of this Section 14.14 are a material inducement for each of them to enter into and to perform this Agreement and that each would not enter into this Agreement but for this Section 14.14.

\* \* \* \* \*

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE NEXT PAGE IS THE SIGNATURE PAGE]*

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

BUYER:

**PARKER BROADCASTING, INC.**

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

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

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

SELLER:

**SPIRIT TELEVISION LLC**

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

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

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

## ANNEX A

### Defined Terms

Capitalized terms used in the Agreement to which this Annex A is attached shall have (unless the context shall otherwise require) the following respective meanings, and all references to Sections, Exhibits, Schedules or Annexes in the following definitions shall refer to Sections, Exhibits, Schedules or Annexes of or to the Agreement:

“Accounts Receivable” shall mean all accounts receivable, billed and unbilled, with respect to the Business as of the Effective Time, including all rights to receive payments under any notes, bonds and other evidences of indebtedness and all other rights to receive payments with respect to the Business, including network compensation or the provision of production services, prior to the Effective Time; provided, however, that Accounts Receivable shall exclude (i) all Intercompany Accounts, and (ii) all insurance proceeds receivables.

“Adjustment Report” shall have the meaning set forth in Section 2.5(c).

“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

“Agreement” shall mean this Asset Purchase Agreement, together with the Schedules, the Exhibits and Annexes attached hereto, as the same shall be amended and/or supplemented from time to time in accordance with the terms hereof.

“Assets” shall have the meaning set forth in Section 2.1.

“Assignment Applications” shall mean application(s) to be filed by Buyer and Seller with the FCC requesting its consent to the assignment of the Station Licenses from Seller to Buyer.

“Assumed Contracts” shall mean: (i) all contracts listed on Schedule 4.5, Schedule 4.7(b) and Schedule 4.14(a), including the Programming Contracts and all Contracts of the type described in Sections 4.5, 4.7(b) and 4.14(a) that are not required to be listed thereon pursuant to the exceptions set forth in such Sections; (ii) Contracts entered into with advertisers for the sale of advertising time or production services in the ordinary course of business; (iii) Contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume; and (iv) other Contracts entered into by Seller between the date of this Agreement and the Closing Date in compliance with Section 6.3; provided, however, that Assumed Contracts shall not include Excluded Contracts.

“Assumed Liabilities” shall have the meaning set forth in Section 2.4.

“Audited Balance Sheet” shall mean the balance sheet contained in the Audited Financial Statements, as such term is used in the Other Station Agreement.

“Base Purchase Price” shall have the meaning set forth in Section 2.3.

“Business” shall mean the ownership and operation (subject to the Other Agreements) of the Station upon completion of the KXJB Closing.



“Business Days” shall mean any day excluding Saturdays, Sundays and any day that is a legal holiday under the laws of the United States or is a day on which banking institutions located in New York City, New York are authorized or required by law or other governmental action to close.

“Buyer” shall have the meaning set forth in the introductory paragraph.

“Cash Equivalents” shall mean all cash, cash equivalents and cash items of any kind whatsoever, money market instruments, marketable securities, other securities, commercial paper, short-term investments or deposits in banks or other financial institution accounts of any kind, and rights in and to all such accounts.

“Catamount” shall mean Catamount Broadcasting of Fargo LLC, a Delaware limited liability company.

“Closing” shall have the meaning set forth in Section 10.1.

“Closing Balance Sheet” shall have the meaning set forth in Section 2.6(b) of the Other Station Agreement.

“Closing Date” shall mean the date on which the Closing occurs, as determined pursuant to Section 10.1.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Communications Act” shall mean the Communications Act of 1934, as amended and in effect from time to time.

“Consents” shall mean the consents, permits or approvals of Government Authorities and other Persons necessary to transfer the Assets to Buyer or otherwise to consummate the transactions contemplated by this Agreement.

“Contracts” shall mean all contracts, leases, non-governmental licenses and other agreements (including leases for personal or real property and employment agreements), written or oral (including any amendments, supplements, restatements, extensions and other modifications thereto) of Seller or to which Seller is a party or that are binding upon Seller and that relate to or affect the Assets or the Business, and (i) that are in effect upon completion of the KXJB Closing or (ii) that are entered into by Seller between the completion of the KXJB Closing and the Closing Date, but excluding any Contracts that terminate or expire between the completion of the KXJB Closing and the Closing Date.

“Control” (including, with correlative meanings, the terms “controlled by,” “controlling” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Deferred Consent” shall have the meaning set forth in Section 2.7.

“DTV” shall have the meaning set forth in Section 4.12(e).

“Effective Time” shall mean 12:01 a.m., local Station time, on the Closing Date.

“Employee Benefit Plans” shall have the meaning set forth in Section 4.15.

“Environmental Laws” shall mean any and all federal, state and local laws, rules and regulations, including statutes, regulations, ordinances, codes and rules, as amended, relating to the pollution or protection of the environment, including the discharge or removal of air pollutants, water pollutants or process waste water or hazardous or toxic substances including the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Occupational Safety and Health Act of 1970, each as amended, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, regulations of the Occupational Safety and Health Administration and regulations of any state department of natural resources or state environmental protection agency, now in effect.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Estimated Net Working Capital” shall mean, subject to Section 2.5 (with, for this purpose, the date of the Preliminary Balance Sheet deemed substituted for the “Effective Time” set forth in such Section 2.5), the Net Working Capital determined as of the date of the Preliminary Balance Sheet (as though such date were substituted for the Effective Time in the definition of Net Working Capital and all components thereof).

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Contracts” shall have the meaning set forth in Section 2.2(e).

“Exhibits” shall mean those exhibits referenced in this Agreement, which exhibits are hereby incorporated and made a part hereof.

“FCC” shall mean the Federal Communications Commission or any successor agency.

“FCC Consents” shall mean the actions by the FCC granting the Assignment Applications.

“Final Closing Balance Sheet” shall have the meaning set forth in Section 2.5(c).

“Final Order” shall mean action by the FCC (including any action taken by FCC staff pursuant to delegated authority): (i) that has not been vacated, reversed, enjoined, stayed, set aside, annulled or suspended (whether under Section 402 or 405 of the Communications Act or otherwise); (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion is pending; and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by any party or by the FCC on its own motion under the Communications Act and the rules and regulations of the FCC has expired or otherwise terminated.

“Final Tax Allocations” shall have the meaning set forth in Section 2.7.

“GAAP” shall mean United States generally accepted accounting principles, as in effect as of the date hereof.

“Governmental Authority” shall mean any government, any governmental entity, department, commission, board, agency or instrumentality and any court, tribunal or judicial or arbitral body, whether federal, state or local.

“Hazardous Material” shall mean any substance or waste containing any hazardous substance, pollutant or contaminant, as those terms are currently defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and any other substance similarly currently defined or identified in any applicable Environmental Laws, including toxic materials or harmful physical agents, as defined in the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq.

“Independent Auditor” shall have the meaning set forth in Section 2.5(d).

“Intangibles” shall mean all copyrights, trademarks, trade names, service marks, service names, licenses, computer programs and computer license interests to the extent owned by and transferable by Seller, patents, permits, internet domain names, jingles, proprietary information, trade secrets, technical information and data and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) applied for, issued to or owned by Seller or under which Seller is licensed or franchised and that are used or useful in the Business, together with any additions thereto between the date of this Agreement and the Closing Date, provided that Intangibles shall not include the Licenses, the Station Licenses or the Excluded Assets.

“Intercompany Accounts” shall have the meaning set forth in Section 2.2(j).

“IRS” shall mean the Internal Revenue Service.

“Knowledge of Seller” shall mean the actual knowledge, without independent investigation or inquiry, of Wach and the Station’s general manager after due inquiry of those individuals that directly report to Wach or the Station’s general manager.

“KXJB Agreement” shall mean the Asset Purchase Agreement entered into between Catamount, as seller, and Spirit Media, as buyer, pursuant to the Option Agreement.

“KXJB Closing” shall mean the closing of the KXJB Transaction.

“KXJB Transaction” shall mean the transaction to be completed under the KXJB Agreement.

“Leases” shall have the meaning set forth in Section 4.7(b).

“License Renewal” means the applications filed with the FCC with respect to the Station Licenses seeking renewal of the Station Licenses (including all associated broadcast auxiliary licenses).

“Licenses” shall mean all licenses, permits, construction permits and other authorizations issued by Governmental Authorities to Seller, currently in effect and used in connection with the Business, together with any additions (including renewals or modifications of such licenses, permits and authorizations and applications therefor) thereto between the date of this Agreement and the Closing Date.

“Lien” shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property.

“Losses” shall mean all losses, liabilities, damages and all out-of-pocket costs and expenses, including reasonable attorneys’ fees and expenses, incident to any action, suit, proceeding, claim, demand, assessment or judgment incident to the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing any indemnity under this Agreement.

“Market Cable Systems” shall mean all U.S. cable television systems with at least One Thousand (1,000) subscribers located within the Station’s market, as defined in Section 76.55 of the FCC regulations.

“Material Adverse Effect” shall mean a material adverse effect on the financial condition, business, assets, operations or results of operations of the Business and the Other Stations, in each case taken as whole, exclusive of the effects of the transactions contemplated by this Agreement, the KXJB Agreement and the Other Station Agreement, including the effects of the announcement of such transactions and the effects of taking or not taking any action expressly required or contemplated by this Agreement, the KXJB Agreement and the Other Station Agreement.

“Material Contracts” shall have the meaning set forth in Section 4.5(a).

“Net Working Capital” shall mean, subject to Section 2.4, the net working capital of the Business as of the Effective Time defined as an amount equal to the difference of (i) the aggregate amount of the Accounts Receivable, net of reserves for doubtful accounts (and any Accounts Receivable that are more than one hundred twenty (120) days old or with counterparties that are insolvent or bankrupt will not be counted in the calculation of Net Working Capital) and the prepaid expenses and deposits of the Business (current and long-term), if any, as of the Effective Time minus (ii) the accounts payable and accrued current liabilities of the Business as of the Effective Time, all as determined and calculated in accordance with GAAP consistent with Seller’s (or its predecessor’s) past practices. For illustrative purposes, Schedule I contains a pro forma calculation of Net Working Capital. Net Working Capital shall not take into account or include any item that is an Excluded Asset, an Excluded Contract or a Retained Liability and shall take into account adjustments of the type and nature described in such Schedule I.

“Option Agreement” shall mean the Option Agreement, dated as of April 24, 2003, by and between Catamount and North Dakota Television, L.L.C., as assigned by North Dakota Television, L.L.C. to Seller.

“Other Agreements” shall mean (i) the Outsourcing Agreement, dated as of April 24, 2003, by and between Catamount and NDTV and (ii) the Facilities Lease Agreement, dated as of April 24, 2003, by and between Catamount and North Dakota Television, L.L.C.

“Other Station Agreement” shall mean the Asset Purchase Agreement, dated as of July 14, 2006, by, between and among North Dakota Television, L.L.C., a Delaware limited liability company, North Dakota Television License Sub, L.L.C., Delaware limited liability company, South Dakota Television, L.L.C., a Delaware limited liability company, South Dakota Television License Sub, L.L.C., Delaware limited liability company; and Hoak Media LLC, a Delaware limited liability company.

“Other Stations” shall mean the “Stations”, as defined and used in the Other Station Agreement.

“Parker Broadcasting” shall have the meaning set forth in the first paragraph of this Agreement.

“Permitted Liens” shall mean: (i) Liens imposed by any Governmental Authority for Taxes or assessments that are not yet due and payable or that are being contested in good faith and by appropriate proceedings; (ii) liens securing the claims of materialmen, landlords and others provided payment is not yet delinquent; (iii) pledges or deposits in connection with worker’s compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of any or all of the following: bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) any and all matters and encumbrances (including, without limitation, fee mortgages or ground leases) affecting any real property as to which Seller holds a leasehold or easement interest therein and not created or granted by Seller; (vi) restrictions or rights granted to or otherwise held by Governmental Authorities under applicable law; (vii) all matters of record disclosed on Schedule 4.7(a) or on Schedule 4.7(b) as “continuing,” including leasehold interests (and obligations thereunder) in real property owned by others and operating leases for personal property and leased interests in property leased to others; (viii) easements, rights-of-way, covenants, restrictions and other similar encumbrances on real property and encroachments that, in the aggregate, are not substantial in amount or effect, and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business thereon; (ix) standard printed exceptions set forth in title policies, reports or commitments; (x) liens arising from filed financing statements related to personal property leases; (xi) any zoning, building or similar law or right reserved to or vested in any Governmental Authority that is not violated in any material respect by any existing improvement or use and that does not prohibit the use of the Real Property or the Leases as currently used by Seller or the Station; (xii) any other Liens disclosed in the Schedules hereto or Schedule I; and (xiii) the Assumed Liabilities.

“Person” shall mean any natural person, general or limited partnership, corporation, firm, limited liability company or partnership, association or other legal entity.

“Pre-Closing Covenants” shall have the meaning set forth in Section 11.1.

“Programming Contracts” shall mean, upon completion of the KXJB Closing, all Contracts of Seller listed on Schedule 4.5 pursuant to which the Station is licensed, authorized or obligated to air or broadcast certain programs and films.

“Purchase Price” shall have the meaning set forth in Section 2.3.

“Real Property” shall mean fee and or easement estates in real property and buildings and other improvements thereon, owned or held by Seller that are used or held for use in the Business all of which are disclosed on Schedule 4.7(a).

“Records” shall mean all books of account and other records in Seller’s possession, including schematics, technical information, engineering data, programming information, original executed copies, if available, or true and correct copies of all Assumed Contracts, employment records (to the extent permitted by applicable law), customer files, lists, plats, architectural plans, drawings, and specifications, purchase and sales records, advertising records, creative materials, advertising and promotional material, and FCC logs, files and records of Seller relating primarily to the Business.

“Required Consents” shall have the meaning set forth in Section 8.2.

“Retained Liabilities” shall have the meaning set forth in Section 2.4.

“Schedules” shall mean the schedules referred to in this Agreement (as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms of this Agreement), which schedules are hereby incorporated herein and made a part hereof.

“Seller” shall have the meaning set forth in the introductory paragraph hereof.

“Station Licenses” shall mean the Licenses issued by the FCC in respect of the Station.

“Station” shall have the meaning set forth in the recitals.

“Survival Period” shall have the meaning set forth in Section 11.1.

“Tangible Personal Property” shall mean all broadcasting and other machinery, equipment, tools, vehicles, furniture, office equipment, plant, inventory (including all programs, records, tapes, recordings, compact discs and cassettes), spare parts, office materials and supplies, tubes, and other tangible personal property owned by Seller that, upon completion of the KXJB Closing, are used or held for use in the Business, together with any additions thereto between the date of this Agreement and the Closing Date.

“Tax” shall mean any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“Termination Date” shall mean March 31, 2007 if a third Person has not filed an objection or petition to deny with respect to the Assignment Applications, or June 30, 2007 if a third Person has filed an objection or petition to the Assignment Application(s) or License Renewal(s).

“Tolling Agreements” shall have the meaning set forth in Section 3.1(e).

“Transfer Taxes” shall have the meaning set forth in Section 13.1.

“Transferred Employee” shall have the meaning set forth in Section 7.1.

“Wach” shall have the meaning set forth in Section 6.1.