

## ASSET PURCHASE AGREEMENT

AGREEMENT dated as of this 7<sup>th</sup> day of May, 2003, by and between **CHELSEY BROADCASTING COMPANY OF CASPER, LLC**, a Delaware limited liability company having its principal place of business at 2500 Cy Avenue, Casper, WY 82604 ("Chelsey") and **MARK III MEDIA INC.**, a Wyoming corporation having its principal place of business at 2312 Sagewood, Casper, WY 82601 ("Purchaser").

### WITNESSETH:

WHEREAS, Chelsey owns and operates Television Station KGWC-TV, Channel 14, Casper and Riverton, Wyoming (the "Station") together with its satellite Television Stations KGWR-TV, Channel 13, Rock Springs, Wyoming and KGWL-TV, Channel 5, Lander, Wyoming (collectively, the "Satellites"), pursuant to licenses issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Chelsey desires to sell, transfer, convey and assign, and Purchaser desires to purchase and acquire certain assets, properties and rights of Chelsey in the Station and the Satellites on the terms and conditions hereinafter set forth; and

WHEREAS, contemporaneously with the execution of this Agreement, Chelsey and Purchaser are entering into a Time Brokerage Agreement (the "Time Brokerage Agreement") with respect to certain aspects of the operation of the Stations and the Satellites prior to the Closing Date (as defined herein).

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

#### 1. Definitions.

1.1. Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

1.1.1. The term "Affiliate" means, with respect to a Person, any other Person which, directly or indirectly, is in control of, is controlled by or is under common control with such Person. For purposes of the foregoing definition, "control" of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

1.1.2. The term "Agreement" means this agreement, including the schedules and all exhibits hereto, as the same may be amended or otherwise modified from time to time, and the terms "herein", "hereof", "hereunder" and like terms shall be taken as referring to this Agreement in its entirety and shall not be limited to any particular section or provision hereof.

1.1.3. The term "Communications Act" means the Communications Act of 1934, as amended.

1.1.4. The term "FCC Consent" means action by the FCC granting its consent to the assignment of the FCC Licenses to Purchaser as contemplated by this Agreement.

1.1.5. The term "FCC Licenses" means the licenses, permits and other authorizations issued by the FCC to Chelsey in connection with the conduct of the operation of the Station and the Satellites as listed on Schedule 7.4 annexed hereto.

1.1.6. The term "Final Order" means written action or order issued by the FCC, setting forth the FCC Consent and (i) which has not been reversed, stayed, enjoined, set aside, annulled or suspended and (ii) with respect to which no requests have been filed for administrative or judicial review, reconsideration, appeal or stay and the period provided by statute or FCC regulations for filing of any such request for administrative or judicial review, reconsideration, appeal or stay or for the FCC to set aside the action on its own motion has expired.

1.1.7. The term "knowledge" or similar words shall be deemed to mean the actual personal knowledge, as of the date specified or if no such date is specified, as of the date hereof and the Closing Date, of any officer of Chelsey or Purchaser, as the case may be.

1.1.8. The term "Lien" means any charge, lien, mortgage, pledge, security interest or other encumbrance of any nature whatsoever upon, of or in property or other assets of a Person, whether absolute or conditional, voluntary or involuntary, whether created pursuant to agreement, arising by force of statute, by judicial proceedings or otherwise.

1.1.9. The term "Permitted Liens" means any and all (i) Liens for inchoate mechanics' and materialmen's Liens for construction in progress or which will be paid for in the ordinary course of business and workmen's, repairmen's, warehousemen's and carriers' Liens arising in the ordinary course of business securing obligations not yet due and payable, (ii) Liens for taxes and other similar liabilities not yet due and payable, (iii) Liens and imperfections of title the existence of which does not materially detract from the value, of or materially interfere with the use and enjoyment, of the property subject thereto or affected thereby, for the same use and operations as currently conducted, and (iv) with respect to Real Property, provided that the following are not violated by existing improvements in any material respect and do not prohibit or materially restrict the continued use and operation of such Real Property for the same uses and operations as currently conducted, or grant any third party any option or right to acquire or lease a material portion thereof, (A) covenants, restrictions, agreements, reservations, easements, and rights of way which have been disclosed by Chelsey to Purchaser and/or would be shown by a current title report, (B) conditions that may be shown by a current survey, title report or physical inspection or (C) zoning, building or other similar restrictions imposed by applicable law.

1.1.10. The term "Person" shall include an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an estate, an unincorporated organization or association or a governmental agency.

1.2. Unless the context otherwise requires: (i) a term has the meaning assigned to it; (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles as in effect on the date of this Agreement and all accounting calculations will be determined in accordance with such principles; (iii) "or" is not exclusive; (iv) "including" means including without limitation; and (v) words in the singular include the plural and words in the plural include the singular.

## **2. Purchase and Sale of Assets.**

2.1. **Assets Purchased.** On the terms and subject to the conditions of this Agreement, Chelsey shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall

purchase, acquire and accept from Chelsey, on the Closing Date, all of the right, title and interest of Chelsey in and to the following assets, properties and rights of Chelsey pertaining to the Station and the Satellites as the same shall exist at and as of the Closing Date (the "Assets"):

2.1.1. all rights in and to the licenses, permits and other authorizations issued to Chelsey by any governmental authority and held by Chelsey and used or intended for use in the conduct of the business and operation of the Station or the Satellites (to the extent that such licenses, permits and authorizations are assignable), including the FCC Licenses listed on Schedule 7.4 annexed hereto, together with any renewals, extensions or modification thereof and additions thereto between the date hereof and the Closing Date, the goodwill and other intangible personal property associated with or related to the Station or the Satellites or the operation thereof and all of Chelsey's rights in and to the call letters "KGWC-TV", "KGWR-TV" and "KGWL-TV";

2.1.2. the land, leaseholds and other interests in real property, buildings, towers and antennae, and fixtures and improvements thereon owned by Chelsey as of the date hereof and used or held for use in connection with the operation of the Station or the Satellites and shown on Schedule 7.8 annexed hereto, and additions, improvements, replacements and alterations thereto made between the date hereof and the Closing Date other than the Excluded Lease (as defined herein);

2.1.3. the owned equipment, cameras, transmitters, antennas, office furniture and fixtures, office materials and supplies, tools, inventory, spare parts, and other tangible personal property depicted in the photographs attached to Schedule 7.9 annexed hereto or otherwise located at Chelsey's premises at 2500 CY Avenue, Casper, Wyoming, and the tangible property located at the transmitter and translator sites included with the Real Property, together with, to the extent permitted by this Agreement, any replacements thereof and additions thereto made between the date hereof and the Closing Date, and less any retirements or dispositions thereof made between the date hereof and the Closing Date which are permitted by this Agreement (the "Acquired Equipment");

2.1.4. the leases, contracts, licenses, commitments and other agreements to which Chelsey is a party or in which Chelsey has rights relating to the operation of the Station or the Satellites to the extent listed on Schedule 7.7 annexed hereto or not required by Section 7.7 hereof to be set forth on Schedule 7.7, and those leases, contracts, licenses, commitments and other agreements relating to the business and operation of the Station or the Satellites entered into by Chelsey between the date hereof and the Closing Date in accordance with Section 9.2.3 of this Agreement, except for those that expire by their terms;

2.1.5. all programs and programming materials and elements of whatever form or nature as of the date hereof and used or held for use in connection with the operation of the Station and the Satellites, whether recorded on tape or any other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights owned by or licensed to Chelsey and used or held for use in connection with the operation of the Station and the Satellites, together with all such programs, programming materials, elements and copyrights acquired by Chelsey used or held for use in connection with the business and operations of the Station or the Satellites between the date hereof and the Closing Date, except those that expire pursuant to their terms; and

2.1.6. all existing books and records, including, but not limited to, correspondence, employment, records, production records, accounting records, property records, filings with the FCC, mailing lists, customer and vendor lists and other records and files of or relating to the Assets maintained at the Station and the Satellites, other than the Excluded Records; provided, however, that such books and records shall be maintained in existence for a period of six years following the

Closing Date and shall be made available for inspection and duplication by Chelsey at its expense, upon reasonable notice during normal business hours.

2.2. **Excluded Assets.** Anything contained in Section 2.1 above to the contrary notwithstanding, Chelsey shall not transfer, convey or assign to Purchaser and the Assets shall not include the following (the "Excluded Assets"):

2.2.1. the consideration delivered by Purchaser to Chelsey pursuant to this Agreement and all other rights of Chelsey under this Agreement, any agreement, certificate, instrument or other document executed and delivered by Chelsey in connection with the transactions contemplated hereby, or any side agreement between Chelsey and Purchaser entered into on or after the date of this Agreement;

2.2.2. any prepaid expenses, advances or deposits made by Chelsey, cash or cash equivalents or money market instruments, including unprocessed checks, savings and checking accounts and other deposits, certificates of deposits, Treasury bills and other marketable securities of Chelsey;

2.2.3. accounts receivables of Chelsey;

2.2.4. the lease agreement and any and all agreements related thereto with respect to the Summit Mountain Microwave Site with Rule Communications and any tangible property located at such site (collectively the "Excluded Lease").

2.2.5. all computer software and computer software licenses used by the corporate and accounting departments of Chelsey or the parent company of Chelsey;

2.2.6. Chelsey's minute books and such other books and records as pertain to the organization, existence or ownership of Chelsey (the "Excluded Records");

2.2.7. any refunds of Federal, state, local or other taxes, including, without limitation, income, property or sales taxes, or other taxes of any kind or description which relate to periods prior to and including the Closing Date;

2.2.8. refunds paid or payable in connection with the cancellation or discontinuance of any insurance policies applicable to the Station or the Satellites following the Closing; and

2.2.9. all those other assets, properties and rights listed on Schedule 2.2 annexed hereto.

2.3. **Transfer of Assets.** The transfer of the Assets as herein contemplated shall be made free and clear of all Liens other than: (i) Liens set forth on Schedule 7.8 annexed hereto and not required to be discharged on or prior to the Closing Date pursuant to the terms of this Agreement and (ii) Permitted Liens. Chelsey will be deemed to have performed this obligation if it provides funds or documents at Closing sufficient to discharge any Liens not permitted by this Agreement. The transfer of the Assets shall be effected by delivery of (i) a bill of sale with respect to the Acquired Equipment in the form of Exhibit A annexed hereto (which shall be executed and delivered to Purchaser concurrently with the execution of this Agreement), (ii) assignment of FCC Licenses in the form of Exhibit B annexed hereto, (iii) an Assignment and Assumption Agreement in the form of Exhibit C annexed hereto, (iv) a Deed for the CY Avenue property (the "CY Avenue Property") in the form of Exhibit D annexed hereto

(which shall be executed and delivered to Purchaser concurrently with the execution of this Agreement), (v) a Deed for the Casper Mountain property (the "Casper Mountain Property") in the form of Exhibit E annexed hereto (which shall be executed and delivered to Purchaser concurrently with the execution of this Agreement) and (vi) an Assignment and Assumption of Contracts with respect to those contracts that relate to the CY Avenue Property or the Casper Mountain Property in the form of Exhibit F (which shall be executed and delivered to Purchaser concurrently with the execution of this Agreement) together with a Notice to Tenants with respect to those contracts that relate to the CY Avenue Property or the Casper Mountain Property in the Form of Exhibit G (which shall be executed and delivered to Purchaser concurrently with the execution of this Agreement) and such other endorsements, assignments, drafts, checks, deeds, affidavits of title and other instruments of transfer, conveyance and assignment, as shall be necessary or appropriate to transfer, convey and assign the Assets to Purchaser as contemplated by this Agreement and as shall be reasonably requested by Purchaser. In addition, the conveyancing documents with respect to Owned Real Property (as herein defined) shall be limited warranty deeds or their equivalent and such deeds shall be subject to any Permitted Liens although such Permitted Liens may not be set forth in the deeds themselves. The conveyancing documents shall be in form and substance reasonably satisfactory to Purchaser and Chelsey, it being understood that no such conveyancing document will have any representations or warranties in addition to or inconsistent with the terms of this Agreement. Chelsey shall, at any time and from time to time after the Closing Date, but at no cost to Chelsey, execute and deliver such other instruments of transfer and conveyance and do all such further acts and things as may be reasonably requested by Purchaser to transfer, convey, assign and deliver to Purchaser or to aid and assist Purchaser in collecting and reducing to possession, any and all of the Assets, or to vest in Purchaser good, valid title to the Assets in accordance with this Agreement. Purchaser will pay the cost of recording any instrument transferring an interest in Real Property. The delivery of the books and records shall not be effected by physical delivery at the Closing but by surrendering access to the premises containing the foregoing to Purchaser. Purchaser will not sell, assign, lease or otherwise convey the CY Avenue Property or the Casper Mountain Property or any interest therein to Sunbelt Communications Company ("Sunbelt") or any of its Affiliates unless prior thereto Sunbelt satisfies in full its outstanding payment obligations to Chelsey, which amount at April 30, 2003 was \$19,324.90.

### 3. Assumption of Liabilities.

3.1. Assumed Contracts. Subject to the terms and conditions of this Agreement and the performance by the parties hereto of their respective obligations hereunder, on the Closing Date, simultaneously with the transfer, conveyance and assignment by Chelsey to Purchaser of the Assets, Purchaser shall assume or otherwise be liable for, subject to the limitations contained herein, all the liabilities and obligations of Chelsey, incurred in the ordinary course of business under (collectively, the "Assumed Contracts") (i) the contracts, agreements and commitments set forth on Schedule 7.7 hereof to the extent the liabilities and obligations thereunder arise on or after the Closing Date, (ii) any other contracts, agreements and commitments with respect to the operation of the Station or the Satellites to which Chelsey is a party and which is not required to be set forth on Schedule 7.7 hereof to the extent the liabilities and obligations thereunder arise on or after the Closing Date, (iii) contracts, agreements and commitments with respect to the operation of the Station or the Satellites with customers and advertising agencies accepted in the ordinary course of business for the sale of advertising time to the extent the liabilities and obligations thereunder arise on or after the Closing Date; and (iv) any other contract, agreement and commitment with respect to the operation of the Station or the Satellites to which Chelsey becomes a party pursuant to Section 9.2.3 hereof, subsequent to the date of this Agreement and prior to the Closing Date.

3.2. Instruments of Assumption. The assumption by Purchaser of the Assumed Contracts shall be effected by such an Assignment and Assumption Agreement in the form of Exhibit C

annexed hereto and such other instruments of assumption delivered to Chelsey on the Closing Date as shall be reasonably satisfactory to Purchaser and Chelsey. Purchaser shall, at any time and from time to time after the Closing Date, execute and deliver such other instruments of assumption and do all such further acts and things as may be reasonably requested by Chelsey to implement the assumption of each such Assumed Contract.

4. **Purchase Price; Adjustments; and Allocation.**

4.1. **Purchase Price.** The purchase price (the "Purchase Price") for the Assets shall be One Million Two Hundred Fifty Thousand Dollars (\$1,250,000), plus the assumption of the Assumed Contracts as herein provided. The Purchase Price shall be payable as follows: (i) Four Hundred Seventy Five Thousand Dollars (\$475,000) upon execution of this Agreement in partial consideration for the Acquired Equipment and the Casper Mountain Property being conveyed to Purchaser concurrently herewith, (ii) Three Hundred Seventy Five Thousand Dollars (\$375,000) at the Closing (as defined herein), in each case by wire transfer of immediately available funds to the account designated on Schedule 4.1 annexed hereto and (iii) Four Hundred Thousand Dollars (\$400,000) payable one year after the date hereof by wire transfer of immediately available funds to the account designated by Chelsey, which post Closing obligation shall be evidenced by a promissory note (the "Promissory Note") in the form of Exhibit H annexed hereto. The Promissory Note shall be secured by a Mortgage and Security Agreement in the form of Exhibit I annexed hereto and pursuant to which the Purchaser is also executing a Financing Statement in the form of Exhibit J annexed hereto.

4.2. **Intentionally Omitted.**

4.3. **Closing Adjustments.** All income and expenses arising from the conduct of the business and operation of the Station and the Satellites shall be prorated between the parties in accordance with the Time Brokerage Agreement.

4.4. **Allocation of Purchase Price.** As promptly as practicable, but in any event, within 30 calendar days of the date hereof, Chelsey shall cause to be prepared and deliver to Purchaser a schedule of its proposed allocation (the "Allocation Schedule") for tax purposes of the Purchase Price among the Assets acquired by Purchaser. The Allocation Schedule shall be conclusive and binding on Chelsey and Purchaser, unless Purchaser provides Chelsey with a notice of objection (the "Objection Notice") within 30 calendar days after Purchaser's receipt of the Allocation Schedule, which notice shall state the allocation proposed by Purchaser (the "Purchaser Allocation Schedule"). Chelsey shall have 15 calendar days from receipt of the Objection Notice to accept or reject the Purchaser Allocation Schedule. The Purchaser Allocation Schedule shall be conclusive and binding on Chelsey and Purchaser unless Chelsey provides Purchaser with notice of objection within 15 calendar days after receipt of the Purchaser Allocation Schedule. In the event that the parties are unable to agree on an allocation after good faith negotiations, then the parties agree to be bound by an appraisal of such assets by an independent nationally recognized firm of valuation experts mutually acceptable to Chelsey and Purchaser. The cost of such appraisal shall be borne equally by Chelsey and Purchaser. Such appraisal shall be conclusive and binding for the purposes of this Section on Chelsey and Purchaser. Purchaser and Chelsey shall report this transaction for all applicable tax purposes (including income tax reporting on IRS Form 8594) in accordance with the allocation in the Allocation Schedule.

5. **Closing.**

5.1. **Time of Closing.** The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. local time on a date which is fifth day (unless the fifth day is not a business day then it shall take place the next business day thereafter) following (i) the date of public

notice of the FCC Consent unless a petition to deny has been timely filed with respect to the FCC Application (as herein defined), in which event the Closing shall take place at 10:00 a.m. local time, on a date within five business days following the date on which the FCC Consent shall have become a Final Order (or if such date is a Saturday, Sunday, or Federal holiday, on the next business day thereafter) and (ii) the date on which all other conditions to the obligations of the parties hereunder shall have been satisfied or waived in writing. The Closing shall take place at such place as may be agreed to by Purchaser and Chelsey. The date of the Closing is hereinafter referred to as the "Closing Date."

5.2. **Time Brokerage Agreement.** On the date hereof, the parties are entering into a Time Brokerage Agreement, substantially in the form of Exhibit K attached hereto, with respect to the Station and the Satellites. Unless otherwise set forth herein, the parties agree that the following matters relating to the Station and the Satellites shall be governed in accordance with the Time Brokerage Agreement: (i) employees; (ii) accounts receivables; and (iii) prorations and adjustments of the income and expense of the Station and the Satellites.

## 6. **Governmental Consents.**

6.1. **FCC Consent.** Promptly after the execution of this Agreement, Purchaser and Chelsey shall proceed to prepare for filing with the FCC appropriate application for consent to the assignment of the FCC Licenses to Purchaser (the "FCC Application"). The FCC Application shall be filed with the FCC as soon as practicable but in no event later than five business days after the date hereof. The parties shall thereafter prosecute the FCC Application with all reasonable diligence and otherwise use their reasonable best efforts to obtain the grant of such application as expeditiously as practicable, but no party shall have any obligation hereunder to comply with any condition that would have a material adverse effect upon it, its parent entity, or any of its parent entity's subsidiaries or Affiliates, as appropriate. Purchaser and Chelsey shall each pay 50% of all filing fees payable with respect to all filings required by the FCC in connection with the transactions contemplated by this Agreement and made pursuant to this Section 6.1. The transfer of the Assets hereunder is expressly conditioned upon the grant of the FCC Consent and compliance by the parties hereto with the conditions (if any) imposed in such consent.

6.2. **Other Governmental Consents.** Promptly following the execution of this Agreement, the parties will proceed to prepare and file with the appropriate governmental authorities any other requests for approval or waiver that are required from governmental authorities in connection with the transactions contemplated hereby, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

7. **Representations and Warranties of Chelsey.** Prior to the execution hereof, Chelsey has delivered to Purchaser a set of schedules, a copy of which is annexed hereto, setting forth for the Station and the Satellites, among other things, items the disclosure of which is necessary or appropriate either (i) in response to an express informational requirement contained in or requested by a provision hereof or (ii) as an exception to one or more representations or warranties contained in Section 7; provided, that the listing of an item in one section of the schedules shall be deemed to be a listing in the other sections of the schedules to the extent that such information is reasonably determinable to be so applicable to such other section or sections of the schedules. Except as provided in the schedules annexed hereto, Chelsey hereby makes the following representations and warranties to Purchaser:

7.1. **Organization and Standing.** Chelsey is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Chelsey is duly qualified to do business and is in good standing under the laws of the State of Wyoming.

7.2. **Power and Authority.** Chelsey has all requisite power and authority to enter into this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby and, subject to obtaining FCC approvals contemplated hereunder, to assume and perform its obligations hereunder and thereunder. The execution and delivery of this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby and the performance by Chelsey of its obligations hereunder and thereunder, subject to obtaining FCC approvals contemplated hereunder, have been duly and validly authorized by all necessary action and no further action or approval is required in order to constitute this Agreement and the Time Brokerage Agreement as valid and binding obligations of Chelsey, enforceable in accordance with their terms, except as the enforceability of such agreements, documents and instruments may be limited by or subject to, any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedies of specific performance, injunction, and other forms of equitable relief are subject to certain principles of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

7.3. **No Conflicts.** Except as set forth on Schedule 7.3 and except for any consent required for the assignment to Purchaser of any contract, lease, agreement or commitment included within the Assets, the execution and delivery by Chelsey of this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby, the consummation by Chelsey of the transactions contemplated hereby and thereby and the performance by Chelsey of its obligations hereunder and thereunder:

7.3.1. do not and will not conflict with or violate any provision of the Certificate of Formation or the Operating Agreement of Chelsey;

7.3.2. do not and will not constitute or result in a breach or default or an event which with notice or lapse of time, or both, would constitute a default under, or result in the termination or suspension of, accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any agreements, contracts or instruments to which Chelsey is a party; and

7.3.3. subject to the receipt of any FCC approvals required in connection with the transfer of the Assets to Purchaser, do not and will not conflict with or result in a violation of any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any court, administrative agency or commission or other governmental authority or instrumentality, except as would not, individually or in the aggregate, have or could reasonably be expected to have, a material adverse effect upon the Assets or the operation of the Station or Satellites.

7.4. **Government Approval.** Chelsey is the authorized holder of the FCC Licenses, all of which are set forth on Schedule 7.4, which constitute all necessary authorizations issued by the FCC to enable the Station and the Satellites to broadcast and transmit the television programming of the Station in the manner and to the full extent as such operations are currently conducted. The FCC Licenses are in full force and effect and unimpaired in any material respect by any act or omission of Chelsey. None of the FCC Licenses are subject to any restrictions or conditions that would limit in any material respect the operation of the Station or any of the Satellites. Except as set forth in Schedule 7.4, Chelsey is operating the Station and the Satellites in all material respects in accordance with the FCC Licenses, and all rules, regulations and policies of the FCC (the "Communications Laws"). Other than FCC rulemaking procedures of general applicability, there are no fines, forfeitures, notices of apparent liability, orders to show cause or any other administrative or judicial orders outstanding nor any proceedings pending or, to Chelsey's knowledge, overtly threatened, the effect of which would be the revocation, cancellation, non-renewal, suspension or material adverse modification of the FCC Licenses or any material adverse consequence for the Station or the Satellites. Except as contemplated in Section 6



hereof, no action, approval consent, authorization or other action including, but not limited to, any action, approval, consent or authorization by or filing with any governmental or quasi-governmental agency, commission, board, bureau or instrumentality, is necessary or required as to Chelsey for the due execution, delivery or performance by Chelsey of this Agreement or any document or instrument contemplated hereby, except where the failure to obtain such approval, consent, authorization or filing, would not, individually or in the aggregate, have, or could reasonably be expected to have, a material adverse effect upon the Assets or the operation of the Station or the Satellites. Except as set forth in Schedule 7.4, all material reports and filings required to be filed with the FCC by Chelsey with respect to the operation of the Station and Satellites have been timely filed, and all such reports and filings are accurate and complete in all material respects.

7.5. Validity. This Agreement and the Time Brokerage Agreement constitute and the other documents and instruments contemplated hereby and thereby will, on the due execution and delivery thereof, constitute the legal, valid and binding obligations of Chelsey, enforceable in accordance with their respective terms, except as the enforceability of such agreements, documents and instruments may be limited by or subject to, any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedies of specific performance, injunction, and other forms of equitable relief are subject to certain principles of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

7.6. Taxes. Chelsey has duly filed (after taking into account any extensions therefor) all material Federal, state, county and local tax returns, including, but not limited to, income, franchise, sales, use, property, excise and payroll taxes, required to be filed by Chelsey as of the date hereof, in connection with the operation of the Station and the Satellites, and there are no amounts of taxes which Chelsey is obligated to pay which have not been paid or provided for on Chelsey's books and which, if due and not paid, would interfere with Purchaser's enjoyment or use of the Assets. Other than real and personal property taxes (the responsibility for which shall be prorated in accordance with the Time Brokerage Agreement), no event has occurred which could impose on Purchaser any liability for any taxes, penalties or interest due or to become due from Chelsey from any taxing authority

7.7. Contracts. Except as set forth on Schedule 2.2 and the Excluded Lease, Chelsey is not a party to any written or oral agreement relating to the Station or the Satellites other than (i) those described on Schedule 7.7 annexed hereto and made a part hereof (copies of which have been heretofore delivered to Purchaser or, with respect to oral agreements, written summaries of the terms of which have been heretofore delivered to Purchaser); (ii) those entered into in the ordinary course of business of the Station or the Satellites involving less than \$5,000 over their term but not more than \$25,000 in the aggregate for all such contracts, agreements or commitments or (iii) involving more than \$5,000 over their term but not more than \$25,000 in the aggregate for all such contracts, agreements or commitments; or (iv) involving sales of advertising time in accordance with the Station's customary rate practices (collectively, the "Contracts"). Except as set forth on Schedule 7.7, each of the written Contracts referred to therein is valid and existing, in full force and effect, and enforceable in accordance with its terms in all material respects except as the enforceability of such contracts and commitments may be limited by or subject to, any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally. There does not exist any material default or event that with notice or the lapse of time, or both, would constitute a material default under any of such Contracts. Except as set forth on Schedule 7.7, Chelsey has full legal power and authority to assign its rights under the Contracts to Purchaser and such assignment will not require the consent of any third party or affect the validity, enforceability or continuity of any of the Contracts.

7.8. **Real Property.**

7.8.1. Schedule 7.8 annexed hereto and made a part hereof is a complete and correct list of all real property or premises owned in whole or in part by Chelsey and used in the business and operation of the Station and the Satellites (the "Owned Real Property") and other than the Excluded Lease all real property or premises leased in whole or in part by Chelsey and used in the business and operation of the Station and the Satellites (the "Leased Real Property" and, together with the Owned Real Property, the "Real Property") to be acquired by Purchaser pursuant to this Agreement. Chelsey has delivered to Purchaser true and complete copies of all lease agreements pertaining to the leased Real Property and, with respect to oral agreements, written summaries of the terms of such oral agreements (such written and oral agreements are collectively referred to herein as the "Real Property Leases").

7.8.2. Except for Permitted Liens and as set forth on Schedule 7.8, Chelsey's interest in its Real Property is free and clear of all Liens, except for such Liens as do not materially interfere with the use thereof in the manner and for the purposes for which they are presently used by Chelsey. Except for Permitted Liens and as set forth on Schedule 7.8, Chelsey has good and marketable title and owns outright, free and clear of all Liens, each improvement, fixture and item of equipment located in or on each of the Real Properties, except for such Liens as do not materially interfere with the use thereof in the manner and for the purposes for which they are presently used by Chelsey.

7.8.3. The written Real Property Leases are valid and in full force and effect in all material respects and there does not exist any material default or event that with notice or the lapse of time, or both, would constitute a material default under any of such leases. Except as set forth on Schedule 7.8, Chelsey has full legal power and authority to assign its rights under the Real Property Leases to Purchaser and such assignment will not require the consent of any third party or affect the validity, enforceability or continuity of any of the Real Property Leases.

7.8.4. To the best of Chelsey's knowledge, Chelsey has a valid right of ingress and egress to use all Real Property in the manner heretofore used.

7.8.5. To the best of Chelsey's knowledge, Chelsey has not received any official complaint, notice of non-compliance or notice of violation with respect to any and all improvements, fixtures, or equipment in or on any Real Properties to the extent owned or occupied by Chelsey or with respect to any uses of any Real Properties, which would prevent the use of such Real Properties in the manner and for the purposes for which they are presently used, including any zoning, building, safety, health or environmental law or any applicable comprehensive plan. To Chelsey's knowledge, there is no pending condemnation or similar proceeding affecting the Real Property or any portion thereof, and, to Chelsey's knowledge, no such action is presently contemplated or threatened.

7.9. **Personal Property.** Except as set forth on Schedule 7.9 and for Permitted Liens, Chelsey's interest in the Acquired Equipment is free and clear of all Liens. Purchaser is purchasing the Acquired Equipment in "as is" condition. Chelsey makes no representation or warranty whatsoever as to the condition of any personal property. Chelsey has good and marketable title, subject to Permitted Liens, to the Acquired Equipment owned by Chelsey. Chelsey has valid and enforceable leases with respect to the Acquired Equipment leased by Chelsey.

7.10. **Antenna Structures.** Except as set forth in Schedule 7.10, all of the existing towers used in the operation of the Station and the Satellites are obstruction-marked and lighted to the extent required by, and in accordance with, the rules and regulations of the FAA and the FCC. Except as

set forth in Schedule 7.10, Chelsey has complied in all material respects with all requirements of the FCC and the FAA with respect to the construction and/or alteration of Chelsey's antenna structures, and "no hazard" determinations for each antenna structure have been obtained, where required. Chelsey has registered the towers of the Station and the Satellites with the FCC. To Chelsey's knowledge, the operations of the Station and the Satellites do not exceed permissible levels of exposure to RF radiation specified in the Communications Laws concerning RF radiation or any other applicable Environmental Laws (as defined below).

7.11. **Insurance.** Schedule 7.11 annexed hereto is a complete and correct list of all insurance policies, including, without limitation, liability, burglary, theft, fidelity, errors and omissions, life, fire, product liability, workers' compensation, health and other forms of insurance of any kind held by Chelsey in connection with the business and operation of the Stations; each such policy is in full force and effect; and each such policy is for an amount consistent with broadcasting industry standards for similar stations.

7.12. **Litigation.** No judgment is outstanding, and no action, suit, claim, investigation, proceeding or controversy, whether legal or administrative or in mediation or arbitration, is pending or, to Chelsey's knowledge, threatened, at law or in equity or admiralty or otherwise, before or by any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality against or effecting the Assets, the Station or the Satellites, which relates to or affects the Assets, the Station or the Satellites, Chelsey's title or interest in or to the Assets, or Chelsey's power or right to convey, transfer or assign the Assets to the Purchaser as contemplated herein, which would prevent or affect the operation and use of the Station, the Satellites or Assets by Purchaser or which would affect the Purchaser's ability to carry out this Agreement or the transactions contemplated hereby.

7.13. **Compliance with Law.** Chelsey is in compliance in all material respects with each law, rule, ordinance, regulation, applicable to the operation of the Station and the Satellites to the extent that the failure to so comply would have a material adverse effect upon the Assets or the operation of the Station or the Satellites.

7.14. **Environmental Matters.**

7.14.1. Except as provided below in this Section 7.14, Chelsey makes no representation or warranty, express or implied, with respect to: (i) the existence or presence on, at, under or about the Real Property of any environmental hazards, conditions, defects or hazardous materials, including but not limited to any flammables, explosives, radioactive materials, asbestos, asbestos containing material, PCBs, hazardous waste, any petroleum, petroleum product derivative, compound or mixture, and without limitation, those substances defined as "hazardous substances" or "hazardous wastes" (collectively referred to as "Hazardous Substances") under any Environmental Laws; or (ii) the Real Property's compliance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and Superfund Amendments and Preauthorization Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act of 1976, the Water Pollution Control Act, the Clean Air Act, all regulations promulgated under all such Acts, as well as any other Federal, state or local law, ordinance or regulation pertaining to health, industrial hygiene or the environment and/or applicable to the existence, removal, generation, transportation, discharge, process, storage or treatment of Hazardous Substances (collectively referred to as "Environmental Laws"). Chelsey represents that: (i) during the period that Chelsey has owned or leased the Real Property, Chelsey has not caused or knowingly permitted any Hazardous Substances to be deposited in or on the Real Property in material violation of any Environmental Laws; and (ii) as of the date of this Agreement, Chelsey is not aware of any environmental contamination at the Real Property except as may be reflected

in the environmental assessment reports listed on Schedule 7.14, complete copies of which have been delivered to Purchaser.

7.14.2. By negotiation and execution of this Agreement, the parties have expressly allocated certain environmental risks whether historical, current or prospective from Chelsey to Purchaser. In this regard, upon Closing, Chelsey shall have no liability in the future to Purchaser or to any Person claiming by, through or under Purchaser with respect to: (i) any past, present or future claim, cause of action, proceeding or otherwise, whether known or unknown, relating to or arising out of any past, present or future environmental condition at, under or about the Real Property; (ii) the presence of Hazardous Substances at, under or about the Real Property; (iii) a violation of any Environmental Law relating to the Real Property; and (iv) any losses, damages, penalties, costs (foreseen or unforeseen, known or unknown), counsel, engineering and other professional or expert fees with respect to the foregoing (the foregoing clauses (i), (ii), (iii) and (iv) are collectively referred to as "Environmental Claims"). Upon Closing: (i) Purchaser hereby unconditionally releases and discharges Chelsey from any and all Environmental Claims, whether sustained by Purchaser directly or relating to any claims by Purchaser for indemnification, contribution or otherwise with respect to Environmental Claims against Purchaser by third parties; and (ii) Purchaser hereby agrees to indemnify, defend and hold Chelsey harmless from and against all such Environmental Claims, including any and all Environmental Claims made hereafter directly against Chelsey by third parties claiming by, through or under Purchaser. Purchaser acknowledges that the terms of this Section 7.14 shall apply even if Purchaser is entitled to terminate this Agreement pursuant to Section 13.4 but elects not to so terminate the Agreement.

7.15. **Employees.** Schedule 7.15 contains a true and complete list of all persons employed at the Station (the "Station Employees"), including job titles or capacities in which employed, and descriptions of compensation arrangement. Chelsey is not a party to any agreement, written or oral, with salaried or non-salaried employees except as described in Schedule 7.15. There are no collective bargaining contracts or arrangements, labor disputes, strikes or proceedings pending or, to Chelsey's knowledge, threatened, between Chelsey and the Station Employees or any labor union or other collective bargaining unit representing or claiming to represent any of the Station Employees. Purchaser shall have no obligation to offer employment to any employee of Chelsey or the Station, and shall have no liability with respect to any such employee or for benefits of any kind or nature.

7.16. **No Insolvency.** No insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Chelsey are pending or threatened, and Chelsey has not made any assignment for the benefit of creditors or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

8. **Representations and Warranties of Purchaser.** Purchaser hereby makes the following representations and warranties to Chelsey:

8.1. **Due Organization.** Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Wyoming.

8.2. **Power and Authority.** Purchaser has all requisite power and authority to enter into this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby and, subject to obtaining FCC approvals contemplated hereunder, to assume and perform its obligations hereunder and thereunder. The execution and delivery of this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby and the performance by Purchaser of its obligations hereunder and thereunder, subject to obtaining FCC approvals contemplated hereunder, have been duly and validly authorized by all necessary action of

Purchaser and no further action or approval is required in order to constitute this Agreement and the Time Brokerage Agreement as valid and binding obligations of Purchaser, enforceable in accordance with their terms, except as the enforceability of such agreements, documents and instruments may be limited by or subject to, any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedies of specific performance, injunction, and other forms of equitable relief are subject to certain principles of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

8.3. **No Conflicts.** The execution and delivery by Purchaser of this Agreement, the Time Brokerage Agreement and the documents and instruments contemplated hereby and thereby, the consummation by Purchaser of the transactions contemplated hereby and thereby and the performance by Purchaser of its obligations hereunder and thereunder:

8.3.1. do not and will not conflict with or violate any provision of the Certificate of Incorporation or the Bylaws of Purchaser;

8.3.2. do not and will not constitute or result in a breach or default or an event which with notice or lapse of time, or both, would constitute a default under, or result in the termination or suspension of, accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any agreements, contracts or instruments to which Purchaser is a party; and

8.3.3. subject to the receipt of any FCC approvals required in connection with the transfer of the Assets to Purchaser, do not and will not conflict with or result in a violation of any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge or other restriction of any court, administrative agency or commission or other governmental authority or instrumentality applicable to Purchaser.

8.4. **Government Approval.** Purchaser is legally and financially qualified under the Communications Act to enter into this Agreement, and to consummate the transactions contemplated hereby. In connection with the transactions contemplated by this Agreement, it is not necessary for Purchaser or any Affiliate of Purchaser (or any Person in which Purchaser or any Affiliate of Purchaser has an attributable interest under the Communications Act) to seek or obtain any waiver from the FCC, dispose of any interest in any media or communications property or interest (including, without limitation, the Station; the Satellites or any part thereof), terminate any venture or arrangement, or effectuate any changes or restructuring of its ownership, including, without limitation, the withdrawal or removal of officers or directors or the conversion or repurchase of equity securities of Purchaser or any Affiliate of Purchaser or owned by Purchaser or any Affiliate of Purchaser (or any Person in which Purchaser or any Affiliate of Purchaser has any attributable interest under the Communications Act). Purchaser is able to certify on an FCC Form 314 that it is financially qualified. Additionally, except as contemplated in Section 6 hereof, no action, approval, consent or authorization or other action including, but not limited to, any action, approval, consent or authorization by or filing with any governmental or quasi-governmental agency, commission, board, bureau or instrumentality, is necessary or required as to Purchaser for the due execution, delivery and performance by Purchaser of this Agreement or any document or instrument contemplated hereby.

8.5. **Validity.** This Agreement and the Time Brokerage Agreement constitute and the other documents and instruments contemplated hereby and thereby will, on the due execution and delivery thereof by Purchaser, constitute the legal, valid and binding obligations of Purchaser, enforceable in accordance with their respective terms, except as the enforceability of such agreements, documents and instruments may be limited by or subject to, any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedies of

specific performance, injunction, and other forms of equitable relief are subject to certain principles of equity jurisdiction, equitable defenses and the discretion of the court before which any proceeding therefor may be brought.

8.6. **Litigation.** No action, suit, claim, investigation, proceeding or controversy, whether legal or administrative or in mediation or arbitration, is pending or, to Purchaser's knowledge, threatened, at law or in equity or admiralty, before or by any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality that would reasonably be expected to materially adversely affect would effect the Purchaser's ability to carry out this Agreement or the transactions contemplated hereby.

8.7. **Independent Investigation.** Purchaser has conducted an independent investigation of the Station and the Satellites and their business operations, assets, liabilities, results of operations, financial condition and prospects in making its determination as to the propriety of the transactions contemplated by this Agreement and in entering into this Agreement and the documents and instruments required hereby, has relied solely on the results of said investigation and on the representations and warranties of Chelsey expressly contained in this Agreement and the instruments, certificates or schedules furnished pursuant hereto.

9. **Covenants of Chelsey.** Chelsey covenants as follows:

9.1. **Access to Premises.** Between the date hereof and the Closing Date, Chelsey shall give Purchaser and its authorized representatives reasonable access, during regular business hours and upon advanced written notice, to any and all of its premises, properties, contracts, books and records relating to the business and operation of the Station and the Satellites and will cause its employees to furnish to Purchaser and its authorized representatives any and all data and information pertaining to the business and operation of the Station and the Satellites as Purchaser or its authorized representatives shall from time to time reasonably request. Purchaser agrees to abide by and be bound to the same extent and in the same manner as Mark Nalbene agreed to be bound pursuant to the Confidentiality Agreement, as defined below, as if Purchaser were a party to the Confidentiality Agreement. Unless and until the acquisition contemplated herein has been consummated, Purchaser, subject to applicable law, shall hold in confidence all information obtained pursuant to this Agreement and that certain Confidentiality Agreement dated April 18, 2002 between Mark Nalbene and Chelsey, as assignee of Benedek Broadcasting Corporation (the "Confidentiality Agreement"), and if such acquisition is not consummated, Purchaser shall return to Chelsey all documents and other materials received by it hereunder and under the Confidentiality Agreement. Such obligation of confidentiality shall not extend to any information which is shown to have been (i) previously known to Purchaser, (ii) generally known to others engaged in the trade or business of Chelsey, (iii) part of public knowledge or literature, or (iv) lawfully received by Purchaser from a third party (not including Chelsey, Benedek Broadcasting Corporation, or any of their attorneys, consultants, accountants or other representatives or agents).

9.2. **Interim Operations.** From the date hereof until the earlier of the Closing Date or the termination of this Agreement pursuant to Section 13, except as provided in the Time Brokerage Agreement or as required by this Agreement, Chelsey shall not (without the prior consent of the Purchaser, which consent shall not be unreasonably withheld):

9.2.1. sell, assign, lease, transfer or otherwise dispose of any of the Assets without the prior consent of Purchaser (which consent shall not be unreasonably conditioned, withheld or delayed);

- any of the Assets;
- 9.2.2. mortgage, pledge or grant any Lien (other than Permitted Liens) on
- the Satellites;
- 9.2.3. enter into any agreements relating to the operations, the Station or
- 9.2.4. change the compensation of any employees of Chelsey; or
- 9.2.5. commit any act, or omit to do any act which will cause breach of any material Contract.

9.3. **Discharge of Liens.** On or prior to the Closing Date, Chelsey will cause all Liens with respect to the Assets (other than Permitted Liens and the Liens set forth on Schedule 7.8 hereto which are not required to be discharged on or prior to the Closing Date pursuant to the terms of this Agreement) to be discharged.

9.4. **Maintenance of Insurance.** From the date hereof through and including the Closing Date, Chelsey will maintain in full force and effect all insurance policies listed on Schedule 7.9.

9.5. **Payment of Taxes.** Except as otherwise provided in the Time Brokerage Agreement, Chelsey shall be responsible for all Federal, state, county, local, income, property, sales, use, intangibles and other taxes attributable to the operation or ownership of the Station and the Satellites or the Assets for all periods prior to the Closing Date. Thereafter, Purchaser shall be responsible for all such taxes. Any taxes paid by either party pertaining to the operation of the Station or the Satellites which relate to periods both before and after the Closing shall be prorated in accordance with the Time Brokerage Agreement. Chelsey shall file all Federal, state, county and local income and other tax returns and reports required to be filed by it pertaining to the operation of the Station and the Satellites until the Closing Date and shall pay (if then due and subject to proration as provided in this Section 9.5) all taxes, interest and penalties shown on such returns or reports.

9.6. **Licenses.** Chelsey will take all reasonable actions to avoid the suspension, revocation, or adverse modification of the FCC Licenses and any other material governmental licenses, permits and other authorizations listed on Schedule 7.4. Chelsey shall not fail to prosecute with due diligence any pending application to any governmental authority, or take any action within its control which would result in the Station or the Satellites being in material non-compliance with the requirements of the Communications Act or the rules and regulations of the FCC to the extent material to the transactions contemplated by this Agreement. Chelsey shall deliver to Purchaser, promptly after filing, copies of any material reports, applications or responses to the FCC or any communications from the FCC or any other party directed to the FCC related to the Station and Satellites which are filed between the date of this Agreement and the Closing Date. Chelsey will not file any application to modify the facilities of the Station or either of the Satellites without Purchaser's prior written consent, which consent shall not be unreasonably conditioned, withheld or delayed.

9.7. **Compliance with Laws.** Chelsey shall use its reasonable best efforts to comply in all material respects with Communications Laws, and with all other applicable laws, rules, ordinances and regulations to which the Station and the Satellites are subject to the extent that the failure to so comply would have a material adverse effect upon the Assets or the operation of the Station or the Satellites.

9.8. **FCC Consent.** Chelsey shall diligently prosecute the FCC Application and use all reasonable efforts to obtain the FCC Consent as promptly and expeditiously as possible. Chelsey shall

not intentionally take or omit to take any action that will cause the FCC to deny, delay or fail to approve the FCC Application or cause the FCC Consent not to be granted.

9.9. **Time Brokerage Agreement.** Anything to the contrary contained in this Agreement notwithstanding, Chelsey shall not be deemed to have breached or failed to comply with any of its covenants under this Agreement with respect to the Station or the Satellites if such breach or failure is due or caused by any act, omission or instruction of the Purchaser under or in connection with the Time Brokerage Agreement or any activities or transactions in furtherance thereof or in connection therewith.

9.10. **Notification of Certain Matters.** Upon knowledge, Chelsey shall give prompt notice to Purchaser, of: (i) any material inaccuracy in any representation or warranty made by Chelsey, or (ii) any failure of Chelsey to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by Chelsey under this Agreement; provided, however, that no such notification or failure to give notice shall affect the representations or warranties or covenants or agreements of the parties or the conditions to the obligations of the parties hereunder.

9.11. **Consents.** Chelsey shall use its commercially reasonable efforts to obtain any and all consents of third parties necessary for assignment to Purchaser of any of the Contracts listed in Schedule 7.7, which efforts shall not require Chelsey to incur any expense to obtain such consent. In the event that any such consent or waiver required with respect to any of such Contracts has not been obtained as of the Closing Date, Chelsey shall use diligent efforts to provide Purchaser with the benefits of any such Contract, and Purchaser shall, to the extent it has received such benefits, perform all obligations of Chelsey thereunder.

9.12. **Environmental Audits.**

9.12.1. Until July 1, 2003 (the "Environmental Audit Period"), Purchaser shall have the right, at its own expense, to engage a nationally recognized environmental engineering firm reasonably acceptable to Chelsey (the "Consultant") to conduct a Phase I Environmental Assessment, as such term is commonly understood (a "Phase I Environmental Assessment"), with respect to the Real Property, and Chelsey shall provide Consultant reasonably detailed information and access to the Real Property, provided such inspections and interviews shall be conducted only (i) during regular business hours upon reasonable notice to Chelsey; (ii) in a manner which will not unduly interfere with the operation of the Stations and/or the use of, access to or egress from the Real Property (iii) without damage to any property of Chelsey, (iv) the Phase I Environmental Assessment is furnished simultaneously to Chelsey and Purchaser and (v) Chelsey can rely on the Phase I Environmental Assessment.

9.12.2. If the assessment conducted in connection with Section 9.12.1 above details a Recognized Environmental Condition (as such term is defined in the American Society of Testing and Materials Standard for Phase I Environmental Assessments) (a "Recognized Environmental Condition") in connection with the Real Property, the Consultant reasonably recommends further investigatory action with respect to such Recognized Environmental Condition and the Environmental Audit Period has not expired, Purchaser shall have the right, until the expiration of the Environmental Audit Period, to conduct the investigation so recommended (the "Phase II Inspection"); provided, however, Chelsey shall have the right to review and approve the work plan for any Phase II Inspection so proposed; and provided further, such Phase II Inspection shall be conducted only (i) during regular business hours upon reasonable notice to Chelsey; (ii) in a manner which will not unduly interfere with the operation of the Station and/or the use of, access to or egress from the Real Property; (iii) without damage to any property of Chelsey, (iv) any report delivered with respect to a Phase II Inspection is so furnished simultaneously to Chelsey and Purchaser and (v) Chelsey can rely on such report. Any damage



caused by Purchaser or its agents in the course of the Phase I Environmental Assessment or any Phase II Inspection shall be promptly repaired by Purchaser, at its sole cost and expense.

9.12.3. If applicable, the Consultant shall estimate the cost and expense of clean up, removal, remedial, corrective or responsive action necessary to address such Recognized Environmental Condition the (the "Environmental Work"), which estimate shall set forth in reasonable detail the basis for those estimates; provided, however, the Environmental Work shall be designed to meet the least stringent standards or requirements so as not to be a violation under applicable Environmental Law (taking into account the zoning of the applicable Real Property and the current uses of resources thereon), and the estimate shall be reduced by any Environmental Work reasonably allocable to any third party that is required to participate in any Environmental Work.

9.12.4. The parties understand and agree that the procedures outlined in this Section 9.12 shall in no event delay the Closing beyond the date on which the Closing would occur but for such procedures.

9.13. **Title Work.** To the extent not inconsistent with any other provision of this Agreement, Chelsey shall, at the Closing, deliver to the title company selected by Purchaser an affidavit, in form reasonably acceptable to Chelsey, sufficient to omit from the title policies insuring Purchaser's title to Chelsey Owned Real Property those "standard" exceptions customarily so omitted by title insurers in Wyoming. The parties understand and agree that the procedures outlined in this Section 9.13 shall in no event delay the Closing beyond the date on which the Closing would occur but for such procedures.

9.14. **Survey.** Purchaser may, at its own expense, obtain before the Closing Date an as-built survey of the Owned Real Property (the "Survey") which shall (i) be prepared by a registered land surveyor, (ii) be certified to Chelsey, the Title Company and Purchaser and (iii) show with respect to the Owned Real Property: (a) the legal description of such parcel of property (which shall be the same as the Title Policy pertaining thereto); (b) all buildings, structures and improvements thereon and all plottable easements or rights of way; (c) no material encroachments upon such parcel or adjoining parcels by buildings, structures or improvements (unless valid easements or leases have been obtained with respect thereto); and (d) access to such parcel from a public street or valid easements or rights of way. The parties understand and agree that the procedures outlined in Section 9.14 shall in no event delay the Closing beyond the date on which the Closing would occur but for such procedures.

9.15. **Compliance.** Chelsey shall use its reasonable efforts to take or cause to be taken all action and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, to obtain all consents, approvals and authorizations of third parties and to make all filings with and give all notices to third parties which may be necessary or required in order to effectuate the transactions contemplated hereby.

10. **Covenants of Purchaser.** Purchaser covenants as follows:

10.1. **Compliance.** Purchaser shall use its reasonable best efforts to take or cause to be taken all action and do or cause to be done all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, using its reasonable best efforts to obtain all consents, approvals and authorizations of third parties and to make all filings with and give all notices to third parties which may be necessary or required in order to effectuate the transactions contemplated hereby.

10.2. **Control of the Station.** Prior to the Closing, Purchaser shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise or direct, the operations of the

Station or the Satellites, such operations, including complete control and supervision of all the Station's programs, employees and policies, shall be the sole responsibility of Chelsey until the consummation of the Closing hereunder.

10.3. **FCC Consent.** Purchaser shall diligently prosecute the FCC Application and use all reasonable efforts to obtain the FCC Consent as promptly and expeditiously as possible. Purchaser shall not intentionally take or omit to take any action that will cause the FCC to deny, delay or fail to approve the FCC Application or cause the FCC Consent not to be granted.

10.4. **FCC Compliance.** Between the date hereof and the Closing Date, Purchaser agrees that it will not take or fail to take any action within its control which would result in material noncompliance by Purchaser with the requirements of the Communications Act and the Communications Laws material to the transactions contemplated by this Agreement. Between the date hereof and the Closing Date, Purchaser will take no action that Purchaser knows, or has reason to know, would disqualify Purchaser from being the assignee of the FCC Licenses or the owner or operator of the Station or the Satellites.

10.5. **Books and Records.** If the acquisition contemplated herein is consummated, Purchaser covenants and agrees that it shall use commercially reasonable efforts to preserve and keep the records of Chelsey delivered to it hereunder for a period of six years after the Closing Date and make such records available to Chelsey and its authorized representatives as reasonably required by Chelsey in connection with any legal proceedings brought by or against Chelsey or in connection with any tax examination or governmental investigation of Chelsey. No such records shall be intentionally destroyed or discarded during such period without first advising Chelsey in writing and giving Chelsey a reasonable opportunity to obtain possession thereof.

10.6. **Notification of Certain Matters.** Upon knowledge, Purchaser shall give prompt notice to Chelsey of: (i) any material inaccuracy in any representation or warranty made by Purchaser, or (ii) any failure of Purchaser to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by Purchaser under this Agreement; provided, however, that no such notification or failure to give notice shall affect the representations or warranties or covenants or agreements of the parties or the conditions to the obligations of the parties hereunder.

## 11. **Conditions of Closing.**

11.1. **Obligation of Purchaser to Close.** The obligation of Purchaser to close hereunder shall be subject to the fulfillment and satisfaction, prior to or at the Closing, of the following conditions or the written waiver thereof by Purchaser:

11.1.1. **Representations.** The representations and warranties of Chelsey in this Agreement shall be true and correct in all material respects when made and shall be true and correct in all material respects on and as of the Closing Date (other than any representation or warranty that is expressly made as of a specific date which shall be true and correct in all material respects as of such specified date only) except for any changes permitted by the terms of this Agreement and except for changes permitted by the Time Brokerage Agreement or any act or omission or instruction by Purchaser in the course of its authority or activities under or in connection with the Time Brokerage Agreement.

11.1.2. **Covenants.** Each of the agreements and covenants of Chelsey to be performed under this Agreement at or prior to the Closing Date shall have been duly performed in all material respects in each case except for failures arising out of, in connection with or as a result of any act

or omission or instruction by Purchaser in the course of its authority or activities under or in connection with such time Brokerage Agreement.

11.1.3. **No Injunction.** No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the transactions contemplated by this Agreement and no Federal, state or local statute, rule or regulation shall have been enacted which prohibits, restricts or delays the consummation hereof.

11.1.4. **CBS Consent.** CBS Television Network, a division of CBS Inc. ("CBS"), shall have consented to the assignment of each of the Affiliation Agreements dated as of January 31, 1995, as amended, with respect to KGWC-TV, dated as of July 20, 1982, as amended, with respect to KGWR-TV, and dated as of May 12, 1982, as amended with respect to KGWL-TV, each of which is between Chelsey, as successor-in-interest, and CBS (the "Affiliation Agreements").

11.1.5. **FCC Licenses.** Chelsey shall be the holder of the FCC Licenses listed on Schedule 7.4, and there shall not have been any modification of any of such licenses, permits and other authorizations which has a material adverse effect on the Station or the Satellites. No proceeding shall be pending (other than rule making proceedings of general applicability to the broadcast industry) which seeks or the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any of the FCC Licenses or any other material governmental licenses, permits or other authorizations.

11.1.6. **FCC Consent.** The FCC Consent shall have been granted and, if a petition to deny has been timely filed with respect to the FCC Application, such FCC Consent shall have become a Final Order.

11.1.7. **Instruments of Transfer.** Purchaser shall have received the deeds, bills of sale, endorsements, assignments, drafts, checks and other documents of transfer, conveyance and assignment contemplated by Section 2.3.

11.1.8. **Liens.** There shall not be any Liens on the Assets other than those permitted in this Agreement.

11.1.9. **Other Closing Deliveries.** At Closing, Chelsey shall deliver or cause to be delivered to Purchaser the following: (i) certified copies of the resolutions of the members of Chelsey authorizing and approving the execution and delivery of this Agreement and each of the other documents to be delivered in connection herewith and authorizing the consummation of the transactions contemplated hereby and thereby; (ii) a certificate of good standing for Chelsey from the Secretary of State of Delaware and a certificate of foreign qualification from the Secretary of State of Wyoming; (iii) a certificate, dated the Closing Date, executed by an appropriate officer of Chelsey certifying the fulfillment of the conditions set forth in Sections 11.1.1-11.1.2 hereof; (iv) third party consents that have been obtained referenced in Section 9.11 hereof; and (v) Lien releases for all Liens, other than Permitted Liens, or payoff statements from secured parties agreeing to amendment or termination of the Liens upon receipt of payment at Closing.

11.2. **Obligation of Chelsey to Close.** The obligation of Chelsey to close hereunder shall be subject to the fulfillment and satisfaction, prior to or at the Closing, of the following conditions or the written waiver thereof by Chelsey:

11.2.1. **Representations.** The representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects when made and shall be true and

correct in all material respects on and as of the Closing Date (other than any representation or warranty that is expressly made as of a specific date, which shall be true and correct in all material respects as of such specified date only).

11.2.2. **Covenants.** Each of the agreements and covenants of Purchaser to be performed under this Agreement at or prior to the Closing Date shall have been duly performed in all material respects.

11.2.3. **No Injunction.** No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the transactions contemplated by this Agreement and no Federal, state or local statute, rule or regulation shall have been enacted which prohibits, restricts or delays the consummation hereof.

11.2.4. **CBS Consent.** CBS shall have consented to the assignment of each of the Affiliation Agreements and shall have agreed to extend the term of the Affiliation Agreements by at least three years on substantially similar terms except without any requirement that CBS pay any network compensation.

11.2.5. **FCC Consent.** The FCC Consent shall have been granted and, if a petition to deny has been timely filed with respect to the FCC Application, such FCC consent shall have to become a Final Order.

11.2.6. **Receipt of Purchase Price Payable at Closing.** Chelsey shall have received the Purchase Price in accordance with Section 4.1 hereof.

11.2.7. **Assumption Agreements.** Purchaser shall have executed and delivered the instruments of assumption contemplated by Section 3.2 hereof.

11.2.8. **Other Closing Deliveries.** At Closing, Purchaser shall deliver or cause to be delivered to Chelsey the following: (i) certified copies of the resolutions of the Board of Directors of Purchaser authorizing and approving the execution and delivery of this Agreement and each of the other documents to be delivered in connection herewith and authorizing the consummation of the transactions contemplated hereby and thereby; (ii) a certificate of good standing for Purchaser from the Secretary of State of Wyoming; and (iii) a certificate, dated the Closing Date, executed by an appropriate officer of Purchaser certifying the fulfillment of the conditions set forth in Sections 11.2.1 - 11.2.2 hereof;

## 12. **Remedies for Breach.**

12.1. **Purchaser Declines to Close.** If Purchaser shall be entitled to decline to close, and shall decline to close, the transactions contemplated by this Agreement, or if Purchaser terminates this Agreement pursuant to Sections 13.2 or 13.4, Purchaser shall have no liability to Chelsey under or in any way by reason hereof, and Purchaser shall, subject to the terms and conditions of this Agreement, have all such rights and remedies against Chelsey as may be available to it in law or equity or otherwise.

12.2. **Purchaser Elects to Close.** If Purchaser shall be entitled to decline to close the transactions contemplated by this Agreement but Purchaser shall elect nevertheless to close, Purchaser shall be deemed to have waived any claims of which it has knowledge arising from the failure of Chelsey to comply with any of the terms and conditions of this Agreement if by reason of the existence of such claim Purchaser would have been entitled to decline to complete the transactions contemplated by this Agreement. For purposes of this Section 12.2, Purchaser shall be deemed to have knowledge of instruments which are filed of or recorded as a public record.

12.3. **Chelsey Declines to Close.** If Chelsey shall be entitled to decline to close, and shall decline to close, the transactions contemplated by this Agreement, or if Chelsey terminates this Agreement pursuant to Section 13.2, Chelsey shall have no liability to Purchaser under or in any way by reason hereof. If this Agreement fails to close or is terminated by reason of or under circumstances arising from a breach by Purchaser of its representations, warranties, or covenants hereunder in any material respect, or if Purchaser refuses or fails to close after the conditions to its Closing have been satisfied, in either case without Chelsey being in breach of any of its representations, warranties or covenants hereunder in any material respect, then, in that event Chelsey shall, subject to the terms and conditions of this Agreement, have all such rights and remedies against Purchaser as may be available to it in law or equity or otherwise.

12.4. **Chelsey Elects to Close.** If Chelsey shall be entitled to decline to close the transactions contemplated by this Agreement but Chelsey shall elect nevertheless to close, Chelsey shall be deemed to have waived any claims of which it has knowledge arising from the failure of the Purchaser to comply with any of the terms and conditions of this Agreement.

12.5. **Remedies Cumulative.** Except as provided in Section 12.3, the specific remedies to which any party may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which such party may lawfully be entitled in case of any breach, threatened breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made hereunder or relating hereto or by reason of any such representation, warranty, covenant, agreement or commitment being untrue or incorrect.

12.6. **Specific Performance.** Chelsey acknowledges that the Station and Satellites are unique assets not readily obtainable on the open market and that, in the event that Chelsey wrongfully refuses to close the transaction contemplated by this Agreement, or if Chelsey fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Purchaser for its injury. Therefore, Chelsey agrees and acknowledges that in the event of Chelsey's wrongful refusal to close or failure to perform its obligation to consummate the transaction contemplated hereby, Purchaser shall be entitled, in addition to any other rights and remedies on account of such wrongful refusal or failure, to specific performance of the terms of this Agreement and of Chelsey's obligation to consummate the transaction contemplated hereby. If any action is brought by Purchaser to enforce this Agreement, Chelsey shall waive the defense that there is an adequate remedy at law and shall waive any requirement that Purchaser post any bond or provide any security.

13. **Termination Rights.** This Agreement may be terminated by either Purchaser or Chelsey, if such terminating party is not then in material default, upon written notice to the other party upon the occurrence of any of the following:

13.1. If the purchase of the Assets by Purchaser pursuant to this Agreement shall not have been effected within two years after the date that the FCC accepts the FCC Application for filing;

13.2. If any party defaults in any material respect in the observance or in the due and timely performance of any of (i) its covenants herein contained other than the obligation to close on the Closing Date or (ii) its covenants under the Time Brokerage Agreement; provided, however, that termination pursuant to this Section shall not be effective unless the terminating party shall have given to the party in default at least 30 days advance written notice of its claim of default so as to afford the other party the opportunity to cure; provided, however, Purchaser's failure to pay the Purchase Price in full to Chelsey at the Closing shall be an incurable breach of this Agreement;

13.3. If the FCC denies the FCC Application; or

13.4. By Purchaser on or before July 1, 2003 if the reasonable estimate of costs and expenses of the Environmental Work, if any, pursuant to Section 9.12, exceeds Twenty-Five Thousand Dollars (\$25,000), unless Chelsey agrees to pay the amount of such excess, in which event, Purchaser may not elect to terminate this Agreement under this Section 13.4.

14. **Effect of Termination.** If this Agreement is terminated pursuant to Section 13 hereof, this Agreement shall become null and void and neither party hereto shall have any further liability hereunder except that (i) the provisions of Sections 10.2, 12, 13, 14 and 19.6 hereof shall remain in full force and effect and (ii) each party hereto shall remain liable to the other party hereto for any willful breach of its obligations under this Agreement prior to such termination subject to the provisions of Section 12.

15. **Indemnification.**

15.1. **Indemnification of Chelsey.** Following the Closing, Purchaser shall defend and promptly indemnify Chelsey and save and hold it harmless from, against, for and in respect of and shall pay any and all damages, losses, obligations, liabilities, claims, encumbrances, deficiencies, costs and expenses, including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any action, investigation, claim or proceeding (all hereinafter collectively referred to as "Losses") suffered, sustained, incurred or required to be paid by Chelsey by reason of (i) any breach or failure of observance or performance of any covenant, agreement or commitment made by Purchaser hereunder or under any document or instrument relating hereto or executed pursuant hereto; (ii) the Assumed Contracts following the Closing Date; (iii) any representation or warranty of Purchaser herein being untrue or incorrect in any material respect; or (iv) the operation of the Station or the Satellites after the Closing Date. In addition, Purchaser shall indemnify Chelsey with respect to any Environmental Claims as provided in Section 15.3; provided such indemnification shall be governed by the procedures set forth in Section 17.3 hereof.

15.2. **Indemnification of Purchaser.** Following the Closing, Chelsey shall defend and promptly indemnify Purchaser, and save and hold it harmless from, against, for and in respect of and pay any and all Losses suffered, sustained, incurred or required to be paid by Purchaser by reason of (i) any breach or failure of observance or performance of any covenant, agreement or commitment made by Chelsey hereunder or under any document or instrument relating hereto or executed pursuant hereto; (ii) the operation of the Station or the Satellites on or prior to the Closing Date (other than the Assumed Contracts to the extent that the obligations arise thereunder after the Closing), except for any act, omission or instruction by Purchaser under or in connection with the Time Brokerage Agreement or any activities or transactions in furtherance thereof or in connection therewith; (iii) the Contracts to the extent that the obligations arose thereunder prior to the Closing or (iv) any representation or warranty of Chelsey contained herein being untrue or incorrect in any respect. Notwithstanding the foregoing, Chelsey shall be required to indemnify and hold Purchaser harmless under this Section 15.2 only to the extent the aggregate amount of such Losses exceeds \$30,000, and Chelsey's obligation to indemnify and hold Purchaser harmless under this Section 15.2 shall not exceed the Purchase Price.

15.3. **Procedures.** For purposes of this Section, the party entitled to indemnification shall be known as the "Indemnified Party" and the party required to indemnify shall be known as the "Indemnifying Party." In the event that the Indemnifying Party shall be obligated to the Indemnified Party pursuant to this Section or in the event that a suit, action, investigation, claim or proceeding is begun, made or instituted as a result of which the Indemnifying Party may become obligated to the Indemnified Party hereunder, the Indemnified Party shall give written notice to the Indemnifying Party of the occurrence of such event promptly after the Indemnified Party learns of such event. The

Indemnifying Party agrees to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding with counsel (that is reasonably satisfactory to the Indemnified Party) chosen by the Indemnifying Party at the Indemnifying Party's own cost and expense. The Indemnifying Party may settle or compromise any such suit, action, investigation, claim or proceeding at its sole cost and expense; provided, that the Indemnifying Party shall have obtained from any third party claimant an unconditional release of the Indemnified Party. The Indemnified Party shall have the right but not the obligation to participate fully at its own expense in the defense thereof by counsel of its own choice. In the event that the Indemnifying Party fails timely to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding, the Indemnified Party shall have the right to defend, contest or otherwise protect against the same and may make any compromise or settlement thereof and recover the entire cost thereof from the Indemnifying Party including without limitation, reasonable attorneys' fees, disbursements and all amounts paid as a result of such suit, action, investigation, claim or proceeding or compromise or settlement thereof.

15.4. **Limitation.** Except for any claim for indemnification relating to title to the Assets or arising from a claim by the United States of America, the State of Wyoming, or any other governmental unit, body or agency with taxing authority relating to taxes or interest or penalties in connection therewith, no party shall be entitled to indemnification hereunder with respect to the breach of any representation, warranty or covenant contained herein unless such claim for indemnification is asserted in writing to the party from whom indemnification is sought within one year after the Closing Date.

16. **Bulk Sales Law.** Purchaser hereby waives compliance by Chelsey with the provisions of all bulk sales laws, or other similar provisions, but Chelsey agrees to indemnify and hold Purchaser harmless for any claims arising thereunder.

17. **Brokers.** Chelsey and Purchaser covenant and represent to each other that they had no dealings with any broker or finder in connection with this Agreement or the transactions contemplated hereby and no broker, finder or other Person is entitled to receive any broker's commission or finder's fee or similar compensation in connection with any such transaction. Each of the parties agrees to defend, indemnify and hold harmless the other from, against, for and in respect of any and all losses sustained by the other as a result of any liability or obligation to any broker or finder on the basis of any arrangement, agreement or acts made by or on behalf of such Indemnifying Party with any Person whatsoever.

18. **Risk of Loss.** Except to the extent of any loss or damage caused by acts or omissions of Purchaser, its agents, employees or representatives under the Time Brokerage Agreement, risk of loss or damage to the Assets shall remain with Chelsey until the Closing. Risk of loss with respect to the Acquired Equipment shall be the responsibility of Purchaser from and after the date it acquires title thereto.

19. **Miscellaneous.**

19.1. **Entire Agreement.** This Agreement and the Time Brokerage Agreement constitute the entire agreement of the parties (and supersedes any prior understanding of the parties) with respect to the subject matter hereof. The representations, warranties, covenants and agreements set forth in this Agreement, the Time Brokerage Agreement, schedules or exhibits delivered pursuant hereto and thereto constitute all the representations, warranties, covenants and agreements of the parties hereto and upon which the parties have relied and except as may be specifically provided herein, no change, modification, amendment, addition or termination of this Agreement, the Time Brokerage Agreement, or any part thereof shall be valid unless in writing and signed by or on behalf of the party to be charged therewith.

19.2. **Notices.** Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or made for all purposes if sent by certified or registered mail, return receipt requested and postage prepaid, hand delivery or overnight delivery service for next business day delivery:

If to Purchaser, at:

Mark III Media Inc.  
2312 Sagewood  
Casper, WY 82601  
Attention: Mark Nalbene

With a copy to:

Borsari & Assoc., PLC  
P.O. Box 29  
Arlington, VA 22201  
Attention: John A. Borsari, Esq.

Overnight Mail:

2111 Wilson Blvd., #700  
Arlington, VA 22201

If to Chelsey Broadcasting Company of Casper, LLC, at:

c/o Chelsey Broadcasting Company, LLC  
500 Old Country Road  
Garden City, New York 11530  
Attention: Paul S. Goodman

With a copy to:

Wachtel & Masyr, LLP  
110 East 59<sup>th</sup> Street  
New York, New York 10022  
Attention: Scott Lesser, Esq.

or at such other address as any party may specify for itself by notice given to the other party in accordance with this Section 19.2. The date of the giving of any notice sent by mail shall be three business days following the date of the posting of the mail, if delivered in person, the date delivered in person, or the next business day following delivery to an overnight delivery service.

19.3. **Public Announcement.** Except for any disclosures or announcements which Chelsey or Purchaser shall be required to make pursuant to the Communications Act or the rules and regulations of the FCC, or disclosures or announcements required to be made pursuant to the rules and regulations of the Securities and Exchange Commission or any other Federal or state governmental agency, Purchaser and Chelsey will jointly prepare and determine the timing of any press release or other announcement to the public (including any announcement to the employees of each Station) concerning the execution of this Agreement and the transactions contemplated herein. Except as provided for in the



preceding sentence, no party hereto will issue any press release or make any other public announcement relating to the execution of this Agreement or the transactions contemplated herein, except that any party may make any disclosure required to be made by it under applicable law if it determines in good faith that it is appropriate to do so and gives prior notice and a reasonable time to comment to the other party hereto.

19.4. **No Waiver.** No waiver of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly so stated in writing.

19.5. **Governing Law.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New York applicable to contracts to be performed entirely within that State. Should any clause, section or part of this Agreement be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Agreement which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.

19.6. **Expenses.** Except as otherwise provided in Section 6.1, filing and recordation fees and any other fees incurred in connection with the transfer of title to the property being conveyed hereunder, and any applicable transfer, sale or use taxes, and all expenses incurred in connection with such filing or recordation shall be borne by Purchaser. Except as otherwise provided herein, Purchaser and Chelsey shall each bear their own expenses in connection with this transaction.

19.7. **Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party.

19.8. **Good Faith.** Recognizing the complex nature of the transactions contemplated in this Agreement, the parties hereto agree to cooperate in good faith to effectuate the transactions set forth herein in accordance with the intent of the parties as expressed herein.

19.9. **Headings.** The headings or captions under sections of this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or effect any of the provisions of this Agreement.

19.10. **Counterparts.** This Agreement may be executed in one or more counterparts each of which when taken together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed on the date and year first above written.

CHELSEY BROADCASTING COMPANY OF  
CASPER, LLC

By: 

Name: Paul S. Goodman

Title: Chief Executive Officer

MARK III MEDIA INC.

By: 

Name:

Title:

See 17ies

## SCHEDULES

<u>Schedule Number</u>	<u>Description</u>
2.2	Excluded Assets
4.1	Wire Instructions
7.3	Conflicts of Chelsey
7.4	FCC Licenses
7.7	Contracts
7.8	Real Property
7.9	Personal Property
7.14	Environmental Matters
7.15	Employees

## EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A	Bill of Sale
Exhibit B	Assignment of FCC Authorizations
Exhibit C	Assignment and Assumption Agreement
Exhibit D	Deed CY Avenue
Exhibit E	Deed Casper Mountain
Exhibit F	Assignment and Assumption of Leases
Exhibit G	Notice to Tenants
Exhibit H	Promissory Note
Exhibit I	Mortgage and Security Agreement
Exhibit J	Financing Statement
Exhibit K	Time Brokerage Agreement

**BILL OF SALE**

KNOWN ALL MEN BY THESE PRESENTS, that CHELSEY BROADCASTING COMPANY OF CASPER, LLC ("Chelsey") pursuant to the terms of that certain Asset Purchase Agreement (the "Purchase Agreement") dated as of May 7, 2003 between Chelsey and Mark III Media Inc. ("Purchaser") (defined terms not defined herein are used as defined in the Purchase Agreement), for good and valuable consideration, does hereby transfer, convey, assign and deliver unto Purchaser, its successors and assigns, and Purchaser hereby acquires and accepts, all of Chelsey's right, title and interest in and to the Acquired Equipment.

This Bill of Sale is subject to the Purchase Agreement in all respects, and nothing contained herein shall be deemed or construed to grant any greater right or greater obligations on the parties than are provided for in the Purchase Agreement.

IN WITNESS WHEREOF, Chelsey has duly executed this Bill of Sale on this 7<sup>th</sup> day of May, 2003 effective as of 11:59 p.m. on the day prior to such date.

**CHELSEY BROADCASTING COMPANY OF  
CASPER, LLC**

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

Name: Paul S. Goodman

Title: Chief Executive Officer

**ACCEPTED AND AGREED TO:**

**MARK III MEDIA INC.**

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

Name:

Title:

Sec / TRES

**Exhibit D**

**DEED CY AVENUE**

**CHELSEY BROADCASTING COMPANY OF CASPER, LLC**

**TO**

**MARK III MEDIA INC.**

**DEED**

---

**Property Location:**

**Natrona County,  
Wyoming**

**This Deed was prepared by and  
when recorded should be mailed to:**

**Rick A. Thompson  
Hathaway & Kunz, P.C.  
P.O. Box 1208  
Cheyenne, WY 82003-1208**

(Wyoming/Natrona)

**SPECIAL WARRANTY DEED**

**CHELSEY BROADCASTING COMPANY OF CASPER, LLC**, a Delaware limited liability company, having an address at 2500 Cy Avenue, Casper, WY 82604, GRANTOR, for and in consideration of TEN DOLLARS and other valuable consideration in hand paid, receipt whereof is hereby acknowledged, CONVEYS and WARRANTS to **MARK III MEDIA INC.**, a Wyoming corporation, having an office at 2312 Sagewood, Casper, Wyoming 82601, GRANTEE, the real estate situate in Natrona County and State of Wyoming and described on Schedule "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD said property, together with all and singular rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular said property, subject to (i) any and all exceptions, reservations, restrictions, easements, rights-of-way and other matters of records, (ii) conditions contained in prior deeds of conveyance in this chain of title, (iii) taxes and assessments not yet due and payable, and (iv) any leases in existence as of the date of transfer, against every person whosoever lawfully claiming or to claim the same or any part hereof by, through, or under Grantor, but not otherwise.

Executed as of May 7, 2003

**CHELSEY BROADCASTING COMPANY  
OF CASPER, LLC**

By: 

Name: Paul S. Goodman

Title: Chief Executive Officer



STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

On the   7   day of May 2003, before me, the undersigned, a notary public in and for said state, personally appeared **PAUL S. GOODMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Chief Executive Officer, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual(s) acted, executed the instrument.



\_\_\_\_\_  
Notary Public

My Commission Expires:

**ALLAN J. WEISS**  
**Notary Public, State of New York**  
**No. 02WE6015884**  
**Qualified in Nassau County**  
**Commission Expires November 8, 2006**

KGWC Studio(46)

**SCHEDULE A**

Lot 646, Subdivision No. 2, Commercial Tract No.1, Westwood Addition No. 2 to the City of Casper, Natrona County, Wyoming, according to the Plat recorded May 28, 1974, in Book 253 of Deeds, Page 159.

**Exhibit E**

**DEED CASPER MOUNTAIN**

**CHELSEY BROADCASTING COMPANY OF CASPER, LLC**

**TO**

**MARK III MEDIA INC.**

**DEED**

---

**Property Location:**

**Natrona County,  
Wyoming**

**This Deed was prepared by and  
when recorded should be mailed to:**

**Rick Thompson  
Hathaway & Kunz, P.C.  
P.O. Box 1208  
Cheyenne, WY 82003-1208**

(Wyoming/Natrona)

**SPECIAL WARRANTY DEED**

**CHELSEY BROADCASTING COMPANY OF CASPER, LLC**, a Delaware limited liability company, having an address at 2500 Cy Avenue, Casper, WY 82604, GRANTOR, for and in consideration of TEN DOLLARS and other valuable consideration in hand paid, receipt whereof is hereby acknowledged, CONVEYS and WARRANTS to **MARK III MEDIA INC.**, a Wyoming corporation, having an office at 2312 Sagewood, Casper, Wyoming, 82601, GRANTEE, the real estate situate in Natrona County and State of Wyoming and described on Schedule "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD said property, together with all and singular rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular said property, subject to (i) any and all exceptions, reservations, restrictions, easements, rights-of-way and other matters of records, (ii) conditions contained in prior deeds of conveyance in this chain of title, (iii) taxes and assessments not yet due and payable, and (iv) any leases in existence as of the date of transfer, against every person whosoever lawfully claiming or to claim the same or any part hereof by, through, or under Grantor, but not otherwise.

Executed as of May 7, 2003

**CHELSEY BROADCASTING COMPANY  
OF CASPER, LLC**

By: 

Name: Paul S. Goodman

Title: Chief Executive Officer

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On the 7 day of May 2003, before me, the undersigned, a notary public in and for said state, personally appeared **PAUL S. GOODMAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Chief Executive Officer, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual(s) acted, executed the instrument.



\_\_\_\_\_  
Notary Public

My Commission Expires:

**ALLAN J. WEISS**  
Notary Public, State of New York  
No. 02WE6015884  
Qualified in Nassau County  
Commission Expires November 9, 2006

**SCHEDULE A**

A parcel of land, being a portion of Lot 6, Aspen Meadows Subdivision, with the buildings and improvements thereon erected, situated in Natrona County, Wyoming, and more particularly described as follows:

The point of beginning being the most Northerly corner of said Lot 6, and common to the Southeasterly corner of Lot 5, and the Southwesterly corner of Lot 7, of said Subdivision; thence S.  $11^{\circ} 39 \frac{1}{2}'$  W. a distance of 313.03 feet to a point, said point being on the Southerly boundary of said Lot 6 and on the centerline of an across road whose width is 60 feet and lying 30 feet each side of centerline; thence along the centerline of said road, said line being on the arc of a concave Southwesterly curve whose radius is 286.48 feet and bearing in a Southeasterly direction a distance of 153.87 feet to a point, said point being a common corner of Lots 6, 10 and 13 of said Subdivision; thence N.  $37^{\circ} 18'$  E. along a line common to Lots 6 and 10, a distance of 158.22 feet; thence N.  $18^{\circ} 41'$  E. a distance of 112.33 feet, said line being common to Lots 6 and 10 of said Subdivision; thence N.  $03^{\circ} 52'$  E. a distance of 50.65 feet to a point being a common corner of Lots 6, 9 and 10 of said Subdivision; thence N.  $22^{\circ} 40'$  E. a distance of 104.38 feet to a point, said point being the most Northeasterly corner of said Lot 6 and common to Lots 9 and 7 of said Subdivision thence N.  $78^{\circ} 26'$  W. along a line common to Lots 6 and 7 of said Subdivision a distance of 216.36 feet to the point of beginning.

**Exhibit F**

**ASSIGNMENT AND ASSUMPTION OF LEASES**



## ASSIGNMENT AND ASSUMPTION OF CONTRACTS

This Assignment and Assumption of Contracts (this "Agreement") is made and entered into as of May 1, 2003 by and between Chelsey Broadcasting Company of Casper, LLC, a Delaware limited liability company ("Assignor") and Mark III Media Inc., a Wyoming corporation ("Assignee").

WHEREAS, Assignee and Assignor are parties to an Asset Purchase Agreement dated as of the date hereof (the "Purchase Agreement") and all capitalized term not otherwise defined herein shall have the meaning set forth in the Purchase Agreement;

WHEREAS, pursuant to the Purchase Agreement, Assignor agreed to sell and assign the CY Avenue Property and the Casper Mountain Property and to transfer and assign any contracts with respect thereto to Assignee; and

WHEREAS, the parties hereto desire to execute this Agreement to further evidence Assignor's assignment and Assignee's assumption of all of Assignor's rights, title and interest under certain contracts, described in Exhibit A attached hereto and by reference made a part hereof (the "Contracts").

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree as follows:

1. Assignment of Contracts. The Assignor does hereby grant, assign, transfer, convey, bargain, set over, release, deliver, vest and confirm unto the Assignee, its successors and assigns forever, the entire right, title and interest of the Assignor in and to the Contracts.

2. Assumption of Contracts. On and subject to the terms and conditions contained in the Purchase Agreement, Assignee hereby expressly succeeds to, is substituted for, and accepts, assumes and undertakes to pay, perform and discharge, all of the Assignor's obligations under the Contracts assigned hereby.

3. Conflicts with Purchase Agreement. Assignor's assignment and Assignee's assumption of the Contracts set forth in this Agreement shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of Assignor or Assignee under the terms and provisions of the Purchase Agreement. In the event of a conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in the Purchase Agreement, or the interpretation and application thereof, the terms and conditions set forth in the Purchase Agreement shall prevail, govern and control in all respects.

4. Successors and Assigns. This Agreement shall be enforceable against, and shall inure to the benefit of, the respective successors and assigns of each Assignor and Assignee.

5. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of Wyoming, without giving effect to any conflicts of law rule or principle that might require application of the laws of another jurisdiction.

6. Counterparts. This Agreement may be executed in one or more counterparts (or by signing separate counterpart signature pages) for the convenience of the parties hereto, all of which together shall constitute one and the same instrument.

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

**CHELSEY BROADCASTING COMPANY  
OF CASPER, LLC,**  
a Delaware limited liability company

Attest:

  
\_\_\_\_\_

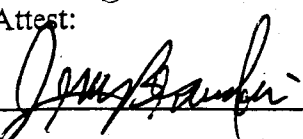
By: 

Name: Paul S. Goodman

Title: Chief Executive Officer

**MARK III MEDIA INC.,**  
a Wyoming corporation

Attest:

  
\_\_\_\_\_

By: 

Name:

Title:

Sec / Tres

### Exhibit A

1. Lease Agreement dated January 26, 2001 between Sweetwater Broadcasting Company and Assignor, successor-in-interest to Benedek License Corporation [sic]. [46]
2. Two-Line Lease dated March 22, 1999 between Assignor, successor-in-interest to Benedek Broadcasting Corporation, and BCL Capital.\* [46]
3. Conditional Use Permit dated June 21, 1983 between the Board of County Commissioners, Natrona County, WY and Assignor, successor-in-interest to Henry Ort. [47]
4. Tower Lease Agreement dated December 8, 2000 between Assignor, successor-in-interest to Benedek Broadcasting Corporation, Inc. [sic], and Sunbelt Communications Company. [47]
5. Oral Tower Lease between Assignor and Educational Media Foundation K-Love/Air 1 Radio Networks. [47]

**Exhibit H**

**PROMISSORY NOTE**

\$400,000.00  
Original Principal Amount

May 7, 2003  
Casper, Wyoming

## PROMISSORY NOTE

FOR VALUE RECEIVED, Mark III Media Inc., a Wyoming corporation, having its principal place of business at 2312 Sagewood, Casper, WY 82601 ("Borrower"), promises to Chelsey Broadcasting Company of Casper, LLC, a Delaware limited liability company, having its principal place of business at 2500 Cy Avenue, Casper, WY 82604 ("Chelsey") as follows:

1. Principal and Interest. Borrower promises to pay to Chelsey or its order at its address set forth above, in lawful money of the United States of America, the principal sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) together with interest on the unpaid principal balance from the date hereof until paid in full at a fixed rate of eight percent (8%) per annum.

Notwithstanding any of the foregoing, in the Event of Default under the terms of this Note, the Mortgage (as defined herein), or any other loan document executed by Borrower in connection herewith (collectively the "Loan Documents") and as a result of such default Chelsey elects to accelerate the entire unpaid principal balance, or initiates legal action to collect any monies due hereunder, then the interest rate shall increase from the date of acceleration or initiation of legal action until paid in full, both before and after judgment, to the lesser of a rate equal to five percentage points (5%) above the interest rate of this Note otherwise in effect, or the maximum rate permitted to be charged for similar loans in the State of Wyoming (the "Post-Default Interest Rate").

2. Repayment. Borrower shall pay principal and interest to Chelsey as follows:

a. A balloon payment of the entire outstanding principal balance and all unpaid accrued interest and any other charges under this Note, shall be due and payable in full on the Maturity Date (as defined below) of this Note.

3. Maturity Date. The maturity date of this Note shall be one year from date of this Note (the "Maturity Date").

4. Collateral. As collateral for the performance of all obligations and liabilities hereunder, Borrower has granted and shall grant or shall cause to be granted to Chelsey a first lien and security interest in: (a) certain real property and improvements thereon located in Natrona County, Wyoming, as more particularly described in that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith (the "Mortgage"), and all amendments or substitutions thereof; (b) all rents, leases, fixtures, and other property associated with the real property described above, as more fully described in the Mortgage; and (c) a security interest in certain personal property of the Borrower as more fully described in the Mortgage. All of the foregoing is collectively referred to as the "Collateral". Chelsey's security

interest shall be further evidenced by and subject to the terms of the Mortgage and other documents executed by Borrower in connection with this Note.

5. Prepayment Privilege. Prepayment of all or part of this Note may be made at any time without a prepayment charge.

6. Insurance, Etc. Borrower shall maintain the policies of insurance set forth in the Mortgage or otherwise reasonably required by Chelsey, in amounts, form, content and through an insurer or insurers that are all satisfactory to Chelsey, and as otherwise required under the provisions of the Mortgage.

7. Events of Default. An event of default under this Note ("Event of Default") shall occur if any of the following events shall occur and continue unremedied for a period of ten (10) days following written notice to Borrower:

a. Failure to pay any principal or interest hereunder within 10 days after such payment becomes due.

b. Any representation or warranty made by Borrower in this Note or the Mortgage shall prove to have been false or misleading in any material respect at the time when made.

c. This Note or the Mortgage executed and delivered in connection herewith shall for any reason cease to be in full force and effect.

d. Filing by Borrower or a guarantor of this Note (a "Guarantor") if any, of a voluntary petition in bankruptcy or a voluntary petition seeking reorganization, adjustment, readjustment of debts or any other relief under the Bankruptcy Code as amended or any insolvency act or law, state or federal, now or hereafter existing; or filing of an involuntary petition against Borrower or a Guarantor in bankruptcy or seeking reorganization, arrangement, readjustment of debts or any other relief under the Bankruptcy Code as amended or under any other insolvency act or law, state or federal, now or hereafter existing, and the continuance thereof for 45 days undismissed, unbonded or undischarged.

e. All or any substantial part of the property of Borrower or a Guarantor of this Note, if any, shall be condemned, seized or otherwise appropriated or custody or control of such property shall be assumed by any governmental agency or any court of competent jurisdiction and shall be retained for a period of 30 days.

f. The Borrower shall fail to observe or perform any term, condition, or covenant contained in this Note or the Mortgage given in connection herewith.

8. Remedies. Upon an Event of Default as defined above, Chelsey may declare the entire unpaid principal balance, together with accrued interest, to be immediately due and payable without presentment, demand, protest or other notice of any kind. To the extent permitted by law, and except where specifically provided for herein, Borrower waives any rights

to presentment, demand, protest, or notice of any kind in connection with this Note. No failure or delay on the part of Chelsey in exercising any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege provided at law, in equity, or by contract. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies. Borrower agrees to pay all costs of collection incurred by reason of the default, including court costs and reasonable attorney's fees including such expenses incurred before legal action or bankruptcy proceedings, during the pendency thereof, and continuing to all such expenses in connection with appeals to high courts arising out of matters associated herewith.

9. Acceleration of Note. Notwithstanding any other provisions of this Note, in the event that Borrower sells, leases or otherwise conveys an interest in all or any part of the real property described in Tract I on Schedule I of the Mortgage, Chelsey may accelerate the amounts owed under this Note and require Borrower to pay the entire outstanding principal balance of this Note, together with all accrued interest and other charges due under this Note or the Mortgage, immediately and without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

10. Notices. Any notice required to be given to any party pursuant to any provision of this Note shall be in writing, shall be given by certified mail, return receipt requested, or delivered by hand, and, if mailed, shall be deemed received on the day after having been deposited in a receptacle for United States mail, postage prepaid, addressed as follows:

- (a) If to Borrower: Mark III Media Inc.  
2312 Sagewood  
Casper, WY 82601  
Attn: Mark Nalbone
- (b) If to Chelsey: Chelsey Broadcasting Company of  
Casper, LLC,  
500 Old Country Road, Suite 314  
Garden City, NY 11530  
Attn: Paul Goodman

Either party may change its address for the giving of notice by notice hereunder.

11. General Provisions. The undersigned acknowledge that this Note shall be binding upon their heirs, executors, administrators, successors and assigns. This Note shall be governed by and construed and interpreted in accordance with the laws of the State of Wyoming. Time is of the essence hereof.

12. Entire Agreement in Writing. This written agreement and any other documents executed in connection herewith, are the final expression of the agreement and understanding of Borrower and Chelsey with respect to the general subject matter hereof and supersede any previous understanding, negotiations or discussions, whether written or oral. This written

agreement, and any other documents executed in connection herewith, may not be contradicted by evidence of any alleged oral agreement.

DATED as of the date first above written.

BORROWER:

MARK III MEDIA INC.

[CORPORATE SEAL]

By:

Title:

Mark Mallone  
Sec / Tres

ATTESTED:

By:

Title:

[Signature]  
\_\_\_\_\_



**Exhibit I**

**MORTGAGE AND SECURITY AGREEMENT**

This Mortgage was prepared by and  
when recorded should be mailed to:  
Rick A. Thompson  
Hathaway & Kunz, P.C.  
P.O. Box 1208  
Cheyenne, WY 82003-1208

---

Space above this line for recorder's use

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY  
AGREEMENT AND FIXTURE FILING

KNOW ALL PERSONS BY THESE PRESENTS:

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING (this "Mortgage") is made as of the 7<sup>th</sup> day of May, 2003 by  
Mark III Media Inc., a Wyoming corporation having its address at 2312 Sagewood, Casper, WY  
82601, (the "Mortgagor"), in favor of Chelsey Broadcasting Company of Casper, LLC, a  
Delaware limited liability company having its principal place of business at 500 Old Country  
Road, Garden City, NY 11530 (the "Mortgagee"). .

WITNESSETH:

WHEREAS, the Mortgagor and the Mortgagee, are parties to an Asset Purchase Agreement dated as of May 1, 2003 (said Asset Purchase Agreement, as amended, modified and supplemented and in effect from time to time, being herein called the "Purchase Agreement"; except as otherwise herein expressly provided, all terms defined in the Purchase Agreement being used herein as defined therein), which Purchase Agreement provides for a loan to be made by the Mortgagee to the Mortgagor in the principal amount of \$400,000, with interest thereon as evidenced by Mortgagor's Promissory Note dated the date hereof, and all extensions, renewals and modifications thereof (the "Note"), providing for payment of principal and interest; and

WHEREAS, it is a condition to the obligation of the Mortgagee to extend credit to the Mortgagor pursuant to the Purchase Agreement that the Mortgagor execute and deliver this Mortgage;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and FOR THE PURPOSE OF SECURING the following (collectively, the "Obligations"):

(a) the payment of all indebtedness under the Note, and any and all reborrowings, future advances and readvances thereunder and modifications, extensions, substitutions, exchanges and renewals of the Note (each of which reborrowings, future advances, readvances, modifications, extensions, substitutions, exchanges and renewals shall enjoy the same priority as the initial loan under the Note),

(b) the performance and payment of the covenants, agreements and obligations hereinafter contained and all other monies secured hereby, including, without limitation, any and all sums expended by the Mortgagee pursuant to Section 2.10, together with interest thereon, and

(c) the payment of all other obligations of the Mortgagor to the Mortgagee under the Purchase Agreement and the Note,

the Mortgagor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto the Mortgagee, with POWER OF SALE, under and subject to the terms and conditions hereinafter set forth, the following described property:

(a) all of the Mortgagor's right title and interest in and to the land and premises (collectively, the "Property") more particularly described in Schedule I; and

(b) all of the Mortgagor's right, title and interest in and to all existing and future leases (the "Leases"), including without limitation the right to receive rental payments thereunder, covering or affecting the Property, (provided that any Lease which by its terms or by operation of law cannot be mortgaged, pledged or assigned hereunder without the consent of the lessee thereunder is expressly excepted and excluded from the

lien and terms of this Mortgage until such time as the Mortgagor shall have obtained from such lessee such a consent;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, that the Mortgagor now has or may hereafter acquire in (a) the Property, (b) all easements, rights-of-way and rights used in connection therewith or as a means of access thereto and (c) all tenements, hereditaments and appurtenances in any manner belonging, relating or appertaining thereto (all of the foregoing interests, estates and other claims being herein after collectively called "Easements and Rights of Way"); and

TOGETHER WITH all estate, right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any streets, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection therewith (all of the foregoing estate, right, title and interest being hereinafter called "Adjacent Rights"); and

TOGETHER WITH all estate, right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to any and all buildings and other improvements now or hereafter located on the Property and all building materials, building equipment and fixtures of every kind and nature located on the Property or, attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof (all of the foregoing estate, right, title and interest being hereinafter collectively called, "Improvements"); and

TOGETHER WITH all estate, right, title and interest of the Mortgagor in and to all such tangible property now owned or hereafter acquired by the Mortgagor (including, without limitation, all machinery, apparatus, equipment, fittings and articles of personal property) and now or hereafter located on or at or attached to the Property that an interest in such tangible property arises under applicable real estate law, and any and all products and accessions to any such property that may exist at any time (all of the foregoing estate, right, title and interest, and products and accessions, being hereinafter called "Fixtures"); and

TOGETHER WITH all estate, right, title and interest of the Mortgagor in and to all rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances on or in the Property, development rights or credits, air rights, water, water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant) and water stock (all of the foregoing estate, right, title and interest being hereinafter collectively called "Mineral and Related Rights"); and

TOGETHER WITH all reversion or reversions and remainder or remainders of the Property and Improvements and all estate, right, title and interest of the Mortgagor in and to any and all present and future leases of space in the Property and Improvements, and all rents, revenues, proceeds, issues, profits, royalties, income and other benefits now or hereafter derived from the Property, the Improvements and the Fixtures, subject to the right, power and authority

hereinafter given to the Mortgagor to collect and apply the same (all of the foregoing re-versions, remainders, leases of space, rents, revenues, proceeds, issues, profits, royalties, income and other benefits being hereinafter collectively called "Rents"); and

TOGETHER WITH all estate, right, title and interest and other claim or demand that the Mortgagor now has or may hereafter acquire with respect to any damage to the Property, the Improvements or the Fixtures and any and all proceeds of insurance in effect with respect to the Improvements or the Fixtures, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the Property, the Improvements or the Fixtures, including, without limitation, any awards resulting from a change of grade of streets or as the result of any other damage to the Property, the Improvements or the Fixtures for which compensation shall be given by any governmental authority (all of the foregoing estate, right, title and interest and other claims or demand, and any such proceeds or awards, being hereinafter collectively, called "Damage Rights"); and

TOGETHER WITH all the estate, right, title, interest and other claim of the Mortgagor with respect to any parking facilities located other than on the Property and used or intended to be used in connection with the operation, ownership or use of the Property, any and all replacements and substitutions for the same, and any other parking rights, easements, covenants and other interests in parking facilities acquired by the Mortgagor for the use of tenants or occupants of the Improvements (all of the foregoing estate, right, title, interest and other claim being hereinafter collectively called "Parking Rights"); and

TOGETHER WITH all estate, right, title and interest of the Mortgagor in respect of any and all air rights, development rights, or credits, zoning rights or other similar rights or interests that benefit or are appurtenant to the Property or the Improvements (all of the foregoing estate, right, title and interest being hereinafter collectively called "Air and Development Rights");

All of the foregoing Easements and Rights of Way, Adjacent Rights, Improvements, Fixtures, Minerals and Related Rights, Rents, Damage Rights, Parking Rights and Air and Development Rights being sometimes hereinafter referred to collectively as the "Ancillary Rights and Properties" and the Leases, Property and Ancillary Rights and Properties being sometimes hereinafter referred to collectively as the "Mortgage Estate";

TO HAVE AND TO HOLD the Mortgage Estate with all privileges and appurtenances thereunto belonging, to the Mortgagee and its successors and assigns, forever, upon the terms and conditions and for the uses hereinafter set forth;

PROVIDED ALWAYS, that if the principal of and interest on the Loan under the Purchase Agreement and Note and all of the other Obligations shall be paid and satisfied in full, then this Mortgage and the estate hereby granted shall cease, terminate and become void.

This Mortgage, the Purchase Agreement, Note and any other instrument given to evidence or further secure the payment and performance of any Obligation are sometimes hereinafter collectively referred to as the "Loan Instruments".

TO PROTECT THE SECURITY OF THIS MORTGAGE, THE MORTGAGOR  
HEREBY COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE 1

### Definitions

Section 1.01. Certain Defined Terms. As used herein, the following terms shall have the following meanings (all terms defined in this Section 1.01 or in other provisions of this Mortgage in the singular to have the same meanings when used in the plural and vice versa):

“Default” shall have the meaning set forth in Section 5.01 hereof.

“Good Faith Dispute” shall mean, with respect to the payment of taxes or any other claims or liabilities by any Person, the satisfaction of each of the following conditions: (i) the validity or amount thereof is being diligently contested in good faith by such Person by appropriate proceedings timely instituted, (ii) if the amount in dispute is greater than \$50,000, such Person has posted a bond or other security acceptable to Mortgagee, or established adequate cash reserves with respect to the contested items in accordance with GAAP, (iii) during the period of such contest, the enforcement of any contested item is effectively stayed and (iv) such contest and any resultant failure to pay or discharge the claimed or assessed amount could not reasonably be expected to have a Material Adverse Effect.

“Governmental Authority” shall mean any national, state, county, city, town, village, municipal or other local governmental department, commission, board, bureau, agency, authority or instrumentality of the United States of America or any political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any of the foregoing entities, including, without limitation, all commissions, boards, bureaus, arbitrators and arbitration panels, and any authority or other Person controlled by any of the foregoing:

“Lien” means, with respect to any Property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such Property. For purposes of this Mortgage and the other Loan Instruments, a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property.

“Loan” means the loan described in the Purchase Agreement and the Note.

“Material Adverse Effect” means a material adverse effect on (a) the Property, business, operations, financial condition, prospects, liabilities or capitalization of the Mortgagees, (b) the ability of any of the Mortgagees to perform the obligations under any of the Loan Instruments to which they are a party, (c) the validity or enforceability of any of the Loan Instruments, (d) the rights and remedies of the Mortgagee under any of the Loan Instruments or,

(e) the timely payment of the principal of or interest on the Loan or other amounts payable in connection therewith.

"Person" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Post-Default Interest Rate" means an interest rate per annum equal to 5.0% above the interest rate otherwise in effect under the Note, as more fully provided in the Note.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

## ARTICLE 2

### Particular Covenants and Agreements of the Mortgagor

Section 2.01. Title, Etc. The Mortgagor represents and warrants that it has good and marketable fee simple title in and to the Fee Property, and good and marketable title to the related Ancillary Rights and Properties, in each case subject to no mortgage, deed of trust, lien, pledge, charge, security interest or other encumbrance or adverse claim of any nature, except those listed as exceptions to title in the title policy insuring the lien or estate created by this Mortgage.

The Mortgagor represents and warrants that it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto the Mortgagee the Mortgage Estate as hereinabove provided and warrants that it will forever defend the title to the Mortgage Estate and the validity and priority of the lien or estate hereof against the claims and demands of all persons whomsoever.

### Section 2.02. Further Assurances; Filing; Re-Filing; Etc.

(a) The Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as the Mortgagee may reasonably require to accomplish the purposes of this Mortgage.

(b) The Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be filed, registered or recorded and refiled, re-registered or re-recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and perfect the lien or estate of this Mortgage upon the Mortgage Estate.

(c) The Mortgagor shall pay all filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement or

mortgage supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of this Mortgage or any of the other Loan Instruments, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

Section 2.03. Liens. Except as approved by Mortgagee in writing, but without limiting the obligations of the Mortgagor under Section 2.05 of this Mortgage, the Mortgagor shall not create or suffer to be created any lien upon the Mortgage Estate prior to, on a parity with, or subordinate to the Lien of this Mortgage. The Mortgagor shall pay and promptly discharge at the Mortgagor's cost and expense, any such Lien upon the Mortgage Estate or any portion thereof or interest therein.

Section 2.04. Insurance.

(a) The Mortgagor will procure and maintain (or cause to be procured and be maintained) in full force and effect (i) a policy of insurance insuring the Mortgage Estate against fire, extended hazard and other casualty losses, in the amount of at least \$600,000, naming Mortgagee as loss payee, in form, content and through an insurer that are all satisfactory to Mortgagee; and (ii) a policy of comprehensive general liability insurance with respect to the Mortgage Estate in the amount of at least \$2,000,000 per occurrence, issued by an insurer acceptable to Mortgagee. The Mortgagor expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Mortgage Estate from any fire or other casualty whatsoever, whether or not insurable or insured against.

(b) In the event of a loss, Mortgagor shall give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by the Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee, jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness under the Loan Instruments or to the restoration or repair of the Property damaged.

(c) In the event of foreclosure of the lien of this Mortgage or other transfer of title or assignment of the Mortgage Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of the Mortgagor in and to all policies of casualty insurance covering all or any part of the Mortgage Estate shall, subject to the rights of the lessee under the Leases, inure to the benefit of and pass to the successors in interest to the Mortgagor or the purchaser or grantee of the Mortgage Estate or any part thereof.

Section 2.05. Impositions.

(a) The Mortgagor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments, water and sewer rates, utility charges and all other governmental or nongovernmental charges or levies now or hereafter assessed or levied against any part of the Mortgage Estate (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or



charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgage Estate) or upon the lien or estate of the Mortgagee therein (collectively, "Impositions"), as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien thereon, and within 10 days after request by the Mortgagee will exhibit receipts showing payment of any of the foregoing; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the Mortgagor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty or cost attaches thereto.

(b) To the extent not inconsistent with the provisions of the Purchase Agreement, the Mortgagor at its expense may, after prior notice to the Mortgagee, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, and may withhold payment of the same pending such proceedings if permitted by law, so long as (i) in the case of any Impositions or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or lien thereof, such proceedings shall suspend the collection thereof from the Mortgage Estate, (ii) neither the Mortgage Estate nor any part thereof or interest therein will be sold, forfeited or lost if the Mortgagor pays the amount or satisfies the condition being contested, and the Mortgagor would have the opportunity to do so, in the event of the Mortgagor's failure to prevail in the contest, (iii) the Mortgagee would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which the Mortgagor has not furnished additional security as provided in clause (iv) below, or to any risk of criminal liability, and neither the Mortgage Estate nor any interest therein would be subject to the imposition of any lien for which the Mortgagor has not furnished additional security as provided in clause (iv) below, as a result of the failure to comply with such law or of such proceeding and (iv) the Mortgagor shall have furnished to the Mortgagee additional security in respect of the claim being contested or the loss or damage that may result from the Mortgagor's failure to prevail in such contest in such amount as may be reasonably requested by the Mortgagee.

Section 2.06. Maintenance of the Improvements and Fixtures. The Mortgagor shall not permit the Improvements or Fixtures to be removed or demolished, shall maintain the Mortgage Estate in good repair, working order and condition, except for reasonable wear and use; and, shall restore and repair the Improvements and Fixtures or any part thereof now or hereafter affected by any loss of or damage to the Property, unless the loss or damage is fully covered by a policy of insurance and the insurance proceeds are applied to the reduction of the indebtedness hereby secured.

Section 2.07. Limitations of Use. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Property and the Improvements or any part thereof that would have a material adverse effect on the value of the Property or the Improvements. The Mortgagor shall comply with the provisions of all leases, licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Mortgage Estate, except where such compliance is the subject of a Good Faith Dispute.

Section 2.08. Inspection of the Property. The Mortgagor shall permit the Mortgagee and its authorized representatives to enter and inspect the Property during regular business hours and upon reasonable prior notice, to examine the records and books of account of the Mortgagor with respect thereto and make copies or extracts thereof, all at such reasonable times as may be requested by the Mortgagee.

Section 2.09. Actions to Protect Mortgage Estate. If the Mortgagor shall fail to (a) perform and observe any of the terms, covenants or conditions required to be performed or observed by it under the Leases, (b) effect the insurance required by Section 2.04, (c) make the payments required by Section 2.05 or (d) perform or observe any of its other covenants or agreements hereunder, the Mortgagee may, without obligation to do so, and upon notice to the Mortgagor (except in an emergency) effect or pay the same. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the lien or estate of this Mortgage or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Obligations, shall be a lien on the Mortgage Estate, shall be deemed to be added to the Obligations secured hereby, and shall be paid by the Mortgagor within 10 days after demand therefor, together with interest thereon at the Post-Default Interest Rate.

Section 2.10. Condemnation Proceeds.

(a) Should the Mortgage Estate or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding (a "Condemnation"), or should the Mortgagor receive any notice or other information regarding any such proceeding, the Mortgagor shall give prompt notice thereof and such information related thereto to the Mortgagee.

(b) The Mortgagee shall be entitled to all proceeds resulting from any Condemnation relating to the Mortgage Estate or any part thereof (collectively, "Condemnation Proceeds"), and all such Condemnation Proceeds, together with all rights and causes of action relating thereto or arising out of any Condemnation, are hereby assigned to the Mortgagee. The Mortgagor shall execute such further assignments of the Condemnation Proceeds as the Mortgagee may from time to time require. All Condemnation Proceeds shall be applied to the reduction of the indebtedness under the obligations or otherwise applied in accordance with the Purchase Agreement.

Section 2.11. Leasehold Interests.

(a) The Mortgagor shall (i) promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the Mortgagor under the Leases and do all things necessary to preserve and to keep unimpaired its rights thereunder, (ii) promptly notify the Mortgagee of any default by the Mortgagor under the Leases in the performance of any of the terms, covenants or conditions on the part of the Mortgagor to be performed or observed thereunder or of the giving of any notice by a lessee of the Mortgagor of any default under the Leases or of any lessee's intention to exercise any remedy reserved to a lessee thereunder and (iii) promptly cause a copy of each such notice given by a lessee under the Leases to the Mortgagor to be delivered to the Mortgagee.

(b) If the Mortgagor shall fail promptly to perform or observe any of the terms, covenants or conditions required to be performed by it under the Leases, including, without limitation, payment of all rent, royalties and other charges due thereunder, the Mortgagee may, without obligation to do so, and upon reasonable prior notice to the Mortgagor (except in an emergency), take such action as is appropriate to cause such terms, covenants or conditions to be promptly performed or observed on behalf of the Mortgagor but no such action by the Mortgagee shall release the Mortgagor from any of its obligations under this Mortgage. Upon receipt by the Mortgagee from a lessee under the Leases of any notice of default by the Mortgagor thereunder, the Mortgagee may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by the Mortgagor or by any party on behalf of the Mortgagor.

(c) Except in the case of any surrender, termination, cancellation, modification, change, supplement, alteration or amendment permitted under the Purchase Agreement, the Mortgagor shall not surrender its leasehold estate and interests under the Leases, nor terminate or cancel the Leases, and the Mortgagor shall not modify, change, supplement, alter or amend the Leases orally or in writing, and the Mortgagor does hereby expressly release, relinquish and surrender unto the Mortgagee all its right, power and authority, if any, to modify, change, supplement, alter or amend the Leases in any way, and any attempt on the part of the Mortgagor to exercise any such right without the consent of the Mortgagee shall be null and void.

(d) No release or forbearance of any of the Mortgagor's obligations under the Leases, pursuant to the terms thereof or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage.

(e) Neither the fee title to the property demised by the Leases nor the leasehold estates created by the Leases shall merge, but shall always remain separate and distinct, notwithstanding the union of the aforesaid estates either in a lessee or the Mortgagor under the Leases or in a third party by purchase or otherwise, unless the Mortgagee shall, at its option, execute and record a document evidencing its intent to merge such estates. The Mortgagor shall promptly notify the Mortgagee of any such acquisition and, on written request by the Mortgagee, shall cause to be executed and recorded all such other and further assurances or other instruments in writing as may in the opinion of the Mortgagee be required to carry out the intent and meaning hereof.

(f) The Mortgagor shall enforce the obligations of the lessees under the Leases to the end that the Mortgagor may enjoy all of the rights granted to it under the Leases and shall promptly notify the Mortgagee of any default by a lessee under the Leases, in the performance or observance of any of the terms, covenants and conditions on the part of a lessee to be performed or observed under the Leases and the Mortgagor shall promptly advise the Mortgagee of the occurrence of any event of default under the Leases.

(g) The Mortgagor shall promptly notify the Mortgagee of any change in the rent, royalties or other charges payable under the Leases, except for changes made pursuant to the provisions of the Leases.

(h) In the event that any proceeds of insurance on any part of the Mortgage Estate, or any Condemnation Proceeds, shall be deposited with any person pursuant to the requirements of the Leases, the Mortgagor shall promptly notify the Mortgagee of the name and address of the person with whom such proceeds have been deposited and of the amount so deposited.

### ARTICLE 3

#### Assignment of Rents, Issues and Profits

Section 3.01. Assignment of Rents, Issues and Profits. The Mortgagor hereby assigns and transfers to the Mortgagee, FOR THE PURPOSE OF SECURING the Obligations, all Rents, and hereby gives to and confers upon the Mortgagee the right, power and authority to collect the same and apply them in payment of the Obligations as provided herein. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney-in-fact, at its option at any time and from time to time following the occurrence and during the continuance of a Default, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of the Mortgagor or otherwise, for Rents and apply the same to the Obligations as provided in paragraph (a) of Section 5.03 hereof; provided, however, that the Mortgagor shall have the right to collect Rents at any time prior to the occurrence of a Default (but not more than one month in advance, except in the case of security deposits).

Section 3.02. Collection Upon Default. To the extent permitted by law, upon the occurrence and continuance of any Default, the Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations or the solvency of the Mortgagor, enter upon and take possession of the Property, the Improvements and the Fixtures or any part thereof, in its own name, sue for or otherwise collect Rents including those past due and unpaid, and, apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and disbursements, to the payment of the Obligations as provided in paragraph (a) of Section 5.03, and in such order as the Mortgagee may determine. The collection of Rents or the entering upon and taking possession of the Property, the Improvements or the Fixtures or any part thereof, or the application thereof as aforesaid, shall not cure or waive any Default or notice thereof or invalidate any act done in response to such Default or pursuant to notice thereof.

### ARTICLE 4

#### Security Agreement

Section 4.01. Creation of Security Interest. The Mortgagor hereby grants to the Mortgagee a security interest in the Fixtures and all other tangible personal property conveyed by Mortgagee to Mortgagor under the Purchase Agreement for the purpose of securing the Obligations. The Mortgagee shall have, in addition to all rights and remedies provided herein

and in the other Loan Instruments, all the rights and remedies of a secured party under the Uniform Commercial Code of the state in which the applicable portion of the Fixtures is located.

Section 4.02. Warranties, Representations and Covenants. The Mortgagor hereby warrants, represents and covenants that: (a) all covenants and obligations of the Mortgagor contained herein relating to the Mortgage Estate shall be deemed to apply to the Fixtures whether or not expressly referred to herein and (b) this Mortgage constitutes a security agreement and "fixture filing" as those terms are used in the applicable Uniform Commercial Code. Information relative to the security interest created hereby may be obtained by application to the Mortgagee (secured party). The mailing addresses of the Mortgagor and the Mortgagee are set forth on Page 1 hereof.

## ARTICLE 5

### Defaults; Remedies

Section 5.01. Defaults. If any Event of Default (herein, a "Default") under the Purchase Agreement or the Note shall occur, the principal of and accrued interest on, the loans and other indebtedness constituting the Obligations hereunder may be declared, or may become, due and payable, without presentment, demand, protest or other formalities of any kind, all of which have been waived pursuant to the Note.

### Section 5.02. Default Remedies.

(a) If a Default shall have occurred, this Mortgage may, to the maximum extent permitted by law, be enforced, and the Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Purchase Agreement or under any of the other Loan Instruments or by law, and, without limiting the generality of the foregoing, the Mortgagee may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Mortgage Estate or any part thereof, exclude the Mortgagor and all persons claiming under the Mortgagor whose claims are junior to this Mortgage, wholly or partly therefrom, and use, operate, manage and control the same either in the name of the Mortgagor or otherwise as the Mortgagee shall deem best, and upon such entry, from time to time at the expense of the Mortgagor and the Mortgage Estate, make all such repairs, replacements, alterations, additions or improvements to the Mortgage Estate or any part thereof as the Mortgagee may deem proper and, whether or not the Mortgagee has so entered and taken possession of the Mortgage Estate or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that the Mortgagee may be authorized to make under this Mortgage, the remainder to be applied to the payment of the Obligations until the same shall have been repaid in full; if the Mortgagee demands or attempts to take possession of the Mortgage Estate or any portion thereof in the exercise of any rights hereunder, the Mortgagor shall promptly turn over and deliver complete possession thereof to the Mortgagee; and

(ii) personally or by agents, with or without entry, if the Mortgagee shall deem it advisable:

(w) foreclose this Mortgage by advertisement and sale of the Mortgage Estate, at public venue, in accordance with Wyoming statutes governing foreclosure by advertisement and sale through a power of sale and cause to be executed and delivered to the purchaser or purchasers at any such sale a certificate of purchase as provided by law;

(x) sell the Mortgage Estate at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner as may be required by law, or, in the absence of any such requirement, as the Mortgagee may deem appropriate, and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce its rights under this Mortgage, by suit for specific performance of any covenant contained herein or in the Loan Instruments or in aid of the execution of any power granted herein or in the Loan Instruments, or for the foreclosure of this Mortgage (as a mortgage or otherwise) and the sale of the Mortgage Estate under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Mortgagee shall deem most effectual for such purpose, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgage Estate, this Mortgage shall continue as a lien on, and security interest in, the remaining portion of the Mortgage Estate; or

(z) exercise any or all of the remedies available to a secured party under the applicable Uniform Commercial Code, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Fixtures and exclude therefrom the Mortgagor and all persons claiming under the Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Mortgagor in respect of the Fixtures or any part thereof; if the Mortgagee demands or attempts to take possession of the Fixtures in the exercise of any rights hereunder, the Mortgagor shall promptly turn over and deliver complete possession thereof to the Mortgagee;

(2) without notice to or demand upon the Mortgagor, make such payments and do such acts as the Mortgagee may deem necessary to protect its security interest in the Fixtures, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith;

(3) require the Mortgagor to assemble the Fixtures or any portion thereof, at a place designated by the Mortgagee and reasonably convenient to both parties, and promptly to deliver the Fixtures to the Mortgagee, or an agent or representative

designated by it; the Mortgagee, and its agents and representatives, shall have the right to enter upon the premises and property of the Mortgagor to exercise the Mortgagee's rights hereunder; and

(4) sell, lease or otherwise dispose of the Fixtures, with or without having the Fixtures at the place of sale, and upon such terms and in such manner as the Mortgagee may determine (and the Mortgagee may be a purchaser at any such sale).

(b) If a Default shall have occurred, the Mortgagee, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Mortgage Estate, without notice or demand, and without regard to the adequacy of the security for the Obligations or the solvency of the Mortgagor. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Mortgagee in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgage Estate, unless such receivership is sooner terminated.

(c) If a Default shall have occurred, the Mortgagor shall, to the maximum extent permitted by law, pay monthly in advance to the Mortgagee, or to any receiver appointed at the request of the Mortgagee to collect Rents, the fair and reasonable rental value for the use and occupancy of the Property, the Improvements and the Fixtures or of such part thereof as may be in the possession of the Mortgagor. Upon default in the payment thereof, the Mortgagor shall vacate and surrender possession of the Property, the Improvements and the Fixtures to the Mortgagee or such receiver, and upon a failure so to do may be evicted by summary proceedings.

(d) In any sale under any provision of this Mortgage or pursuant to any judgment or decree of court, the Mortgage Estate, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as the Mortgagee may elect, without regard to the right of the Mortgagor or any person claiming under the Mortgagor to the marshalling of assets. The purchaser at any such sale shall take title to the Mortgage Estate or the part thereof so sold free and discharged of the estate of the Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Mortgagee, may purchase at any such sale. Upon the completion of any such sale by virtue of this Section 5.02 the Mortgagee shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of the Mortgagor's estate, right, title, interest, property, claim and demand in and to the Mortgage Estate or portion thereof so sold, but without any covenant or warranty, express or implied. The Mortgagee is hereby irrevocably appointed the attorney-in-fact of the Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Mortgage Estate or any portions thereof so sold and, for that purpose, the Mortgagee may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the

Mortgagee, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in, to and under the Mortgage Estate, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under the Mortgagor. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) All rights of action under the Loan Instruments and this Mortgage may be enforced by the Mortgagee without the possession of the Loan Instruments and without the production thereof at any trial or other proceeding relative thereto.

#### Section 5.03. Application of Proceeds.

(a) The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Mortgage, or of any monies held by the Mortgagee hereunder shall (after reimbursement to the Mortgagee of all costs and expenses of administration collection and realization including, without limitation, actual and reasonable attorney's fees and expenses), to the maximum extent permitted by applicable law, be applied in accordance with the Purchase Agreement.

(b) No sale or other disposition of all or any part of the Mortgage Estate pursuant to Section 5.02 shall be deemed to relieve the Mortgagor of its obligations under the Purchase Agreement or any other Loan Instrument except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Mortgage Estate are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, the Mortgagor shall remain liable for any deficiency.

Section 5.04. Right to Sue. The Mortgagee shall have the right from time to time to sue for any sums required to be paid by the Mortgagor under the terms of this Mortgage as the same become due, without regard to whether or not the Obligations shall be, or have become, due and without prejudice to the right of the Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Default existing at the time such earlier action was commenced.

Section 5.05. Powers of the Mortgagee. The Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of the Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release any portion of the Mortgage Estate or any other security, and grant such extensions and indulgences in relation to the Obligations, or release any person liable therefor as the Mortgagee may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Mortgage on or in any part of the Mortgage Estate, and without affecting the liability of any other person liable for any of the Obligations.



Section 5.06. Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage, or under applicable law, whether now or hereafter existing; the failure of the Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) The Mortgagee shall be entitled to enforce payment and performance of any of the obligations of the Mortgagor and to exercise all rights and powers under this Mortgage or under any Loan Instrument or any laws now or hereafter in force, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being stipulated that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may determine; every power or remedy given by the Purchase Agreement, this Mortgage or any of the other Loan Instruments to the Mortgagee, or to which the Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee, and the Mortgagee may pursue inconsistent remedies.

Section 5.07. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, the Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Mortgage; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Mortgage Estate or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 5.02; and the Mortgagor, to the extent that it lawfully may, hereby waives all benefit or advantage of any such law or laws. The Mortgagor for itself and all who may claim under it, hereby waives, to the maximum extent permitted by applicable law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any order or decree of foreclosure of this Mortgage and (if a Default shall have occurred) all notice or notices of seizure, and all right to have the Mortgage Estate marshalled upon any foreclosure hereof. The Mortgagee shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Mortgage Estate and the Mortgagor hereby waives any right or claim of right to have the Mortgagee proceed in any particular order.

## ARTICLE 6

### Miscellaneous

Section 6.01. Release by Mortgagee. Upon the payment in full of the Obligations, the Lien of this Mortgage shall terminate and the Mortgagor may request the Mortgagee to, and upon such request and such termination expiration and payment the Mortgagee shall at the Mortgagee's expense promptly (but in any event within 10 Business Days of such request) execute and deliver to the Mortgagee an appropriate written release of the lien of this Mortgage, or upon the request of the Mortgagor, and at the Mortgagor's expense, assign this Mortgage without recourse to the Mortgagor's designee, or to the person or persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

Section 6.02. Notices. All notices, demands, consents, requests or other communications (collectively, "notices") that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in the Purchase Agreement.

Section 6.03. Amendments; Waivers; Etc. This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the Mortgagor and the Mortgagee.

Section 6.04. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds the Mortgagor and the Mortgagee and their respective successors and assigns and shall run with the Property.

Section 6.05. Captions. The captions or headings at the beginning of Articles and Sections hereof are for convenience of reference and are not a part of this Mortgage.

Section 6.06. Severability. If any term or provision of this Mortgage or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Mortgage Estate, then any payments made in respect of the Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (i) first, in respect of the portion of the Obligations not secured by the lien of this Mortgage, (ii) second, in respect of the portion of the Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Mortgage Estate, and (iii) last, to the portion of the Obligations secured by the lien of this Mortgage, and which lien is on all of the Mortgage Estate.

- 18 -

## SCHEDULE I

### DESCRIPTION OF REAL PROPERTY

#### Tract I:

Lot 646, Subdivision No. 2, Commercial Tract No.1, Westwood Addition No. 2 to the City of Casper, Natrona County, Wyoming, according to the Plat recorded May 28, 1974, in Book 253 of Deeds, Page 159.

#### Tract II:

A parcel of land, being a portion of Lot 6, Aspen Meadows Subdivision, with the buildings and improvements thereon erected, situated in Natrona County, Wyoming, and more particularly described as follows:

The point of beginning being the most Northerly corner of said Lot 6, and common to the Southeasterly corner of Lot 5, and the Southwesterly corner of Lot 7, of said Subdivision; thence S.  $11^{\circ} 39 \frac{1}{2}'$  W. a distance of 313.03 feet to a point, said point being on the Southerly boundary of said Lot 6 and on the centerline of an across road whose width is 60 feet and lying 30 feet each side of centerline; thence along the centerline of said road, said line being on the arc of a concave Southwesterly curve whose radius is 286.48 feet and bearing in a Southeasterly direction a distance of 153.87 feet to a point, said point being a common corner of Lots 6, 10 and 13 of said Subdivision; thence N.  $37^{\circ} 18'$  E. along a line common to Lots 6 and 10, a distance of 158.22 feet; thence N.  $18^{\circ} 41'$  E. a distance of 112.33 feet, said line being common to Lots 6 and 10 of said Subdivision; thence N.  $03^{\circ} 52'$  E. a distance of 50.65 feet to a point being a common corner of Lots 6, 9 and 10 of said Subdivision; thence N.  $22^{\circ} 40'$  E. a distance of 104.38 feet to a point, said point being the most Northeasterly corner of said Lot 6 and common to Lots 9 and 7 of said Subdivision thence N.  $78^{\circ} 26'$  W. along a line common to Lots 6 and 7 of said Subdivision a distance of 216.36 feet to the point of beginning.

## **LEASE AND USE AGREEMENT**

**LEASE AND USE AGREEMENT** dated as of May 7, 2003 between Chelsey Broadcasting Company of Casper, LLC, a Delaware limited liability company ("Chelsey") and Mark III Media, Inc., a Wyoming corporation ("MMI").

### **WITNESSETH:**

**WHEREAS**, reference is made to that certain Asset Purchase Agreement (the "APA") dated as of the date hereof between Chelsey and MMI (all capitalized terms not otherwise defined herein shall have the meaning set forth in the APA);

**WHEREAS**, as provided in the APA and simultaneously with the execution of this Lease and Use Agreement, Chelsey and MMI have entered into (i) Bill of Sale, (ii) Deed with respect to the 2500 CY Avenue Property, (iii) Deed with respect to the Casper Mountain Property (iv) Assignment and Assumption of Contracts and (v) Time Brokerage Agreement (collectively, the "Signing Documents");

**WHEREAS**, pursuant to the Signing Documents, Chelsey has assigned to MMI the Acquired Equipment, the real estate set forth in Schedule A of each of the Deeds and the Contracts set forth on Exhibit A to the Assignment and Assumption of Contracts (collectively, the "Use Agreement Assets"); and

**WHEREAS**, in consideration of the assignment of the Use Agreement Assets to MMI, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MMI will permit Chelsey to use the Use Agreement Assets to broadcast commercial television after the execution of this Use Agreement until the Closing.

**NOW, THEREFORE**, it is agreed as follows:

1. MMI hereby agrees to lease and license to Chelsey and, in connection therewith, permit Chelsey to use the Use Agreement Assets to broadcast commercial television at any time and from time to time from the date hereof until Closing; provided, however, nothing herein shall prohibit MMI from disposing of any Use Agreement Assets except such Use Agreement Assets as are necessary for Chelsey to continue to broadcast commercial television.

2. Pursuant to Section 12 of the Time Brokerage Agreement, Chelsey shall retain full authority, power and control over the management and operations of the Station and the Satellites, including without limitation, control over the personnel, programming and finances of the Station and the Satellites.

3. This Lease and Use Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

4. This Lease and Use Agreement shall be construed in accordance with the laws of the State of Wyoming applicable to agreements executed and to be wholly performed therein. No amendment to this Lease and Use Agreement shall be effective unless in writing and signed by each party hereto.

**IN WITNESS WHEREOF**, the undersigned have executed this Lease and Use Agreement as of the day and year first above written.

**CHELSEY BROADCASTING COMPANY OF  
CASPER, LLC**

By: \_\_\_\_\_  
Name: Paul S. Goodman  
Title: Chief Executive Officer

**MARK III MEDIA INC.**

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

## TIME BROKERAGE AGREEMENT

**THIS TIME BROKERAGE AGREEMENT** (the "Agreement") is made as of this 7<sup>th</sup> day of May, 2003 by and between **CHELSEY BROADCASTING COMPANY OF CASPER, LLC**, a Delaware limited liability company ("Chelsey") and **MARK III MEDIA INC.**, a Wyoming corporation ("Programmer").

**WHEREAS**, Chelsey is the owner, operator and licensee of television broadcast station KGWC-TV, Channel 14, Casper and Riverton, Wyoming, together with its satellite television broadcast stations KGWR-TV, Channel 13, Rock Springs, Wyoming and KGWL-TV, Channel 5, Lander, Wyoming (collectively, the "Stations");

**WHEREAS**, Chelsey and Programmer have entered into as of the date hereof that certain Asset Purchase Agreement (the "Asset Purchase Agreement") relating to the sale by Chelsey and the purchase by Programmer of all licenses, permits and other authorizations for the Stations issued by the Federal Communications Commission ("FCC") to Chelsey and certain other assets related to the Stations; and

**WHEREAS**, Chelsey holds an affiliation agreement authorizing it to broadcast programming of the CBS Television Network and various syndication agreements authorizing it to broadcast entertainment and news programming (the "Programming Agreements") and also provides locally produced news and public affairs programming for its community of license (collectively with the Programming Agreements, the "Chelsey Programming"); and

**WHEREAS**, commencing upon the Commencement Date (as herein defined) Programmer wishes to provide programming for broadcast on the Stations, which may include, without limitation, original programs, syndicated programs, barter programs, paid-for programs, locally produced programs and advertising (the "Purchaser Programming") and related management services, and Chelsey desires to accept and broadcast the programming supplied by Programmer on the Stations and such services, subject to the terms and conditions hereof.

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

1. Programming and Transmission Services.

(a) Subject to the provisions of this Agreement, on the Commencement Date Chelsey agrees to make available to Programmer air time and transmission capabilities for the broadcast of Purchaser Programming on the Stations for up to twenty-four (24) hours per day, seven (7) days a week during periods when Chelsey is not broadcasting Chelsey Programming. Although Programmer is not assuming Chelsey Programming, Programmer agrees to use its best efforts to fulfill all of Chelsey's rights and obligations under the Programming Agreements and any other contract to which Chelsey is a party and Programmer is providing management services. All material furnished by Programmer for broadcast on any of the Stations shall be delivered to Chelsey on tape cartridges, or other mutually agreeable method, in a format to be agreed upon by Programmer and Chelsey, in a form ready for broadcast on Chelsey's existing playback equipment, and with quality suitable for television broadcast. Chelsey shall not be required to provide production services or to copy, reformat, or otherwise manipulate material furnished by Programmer other than inserting tape cartridges into machinery for broadcast. All material furnished by Chelsey for broadcast on any of the Stations shall be delivered to the Stations in the same manner as it was furnished by Chelsey to the Stations prior to the Commencement Date (as defined herein).

(b) Programmer shall assure that no contract or commitment for Purchaser Programming arranged by Programmer shall give rise to any liability or obligation of Chelsey; provided that Programmer shall promptly inform Chelsey of each such contract and commitment and of the terms thereof and, if Chelsey shall elect to assume any such contract or commitment, Programmer shall, in the event that the Asset Purchase Agreement terminates without a Closing (as defined in the Asset Purchase Agreement), upon the termination of the term of this Agreement arrange for the immediate assignment to Chelsey of such contract or commitment and for the concurrent consent of each other party thereto to such assignment.

2. Advertising Sales. Programmer shall timely fulfill all orders for advertising on the Stations applicable to any of the Chelsey Programming and Purchaser Programming. To the extent any orders for advertising on the Stations are combined with orders for Chelsey's affiliated station in Cheyenne, Wyoming, such orders shall be allocated on the basis specified in the applicable order. Chelsey has provided to Programmer copies of all orders as of April 17, 2003. In the event any such order calls for the placement of any advertising on the Stations after the termination of the term of this Agreement without the consummation of the Asset Purchase Agreement, Programmer shall if, and only if, and to the extent Chelsey elects to fulfill such order, cooperate with Chelsey to enable such advertising to be broadcast on the Stations in accordance with the terms of such order and all revenues and accounts receivable relating to or arising from such orders shall be the sole and exclusive asset of Chelsey.

3. Payments. As consideration for the rights granted hereunder, Programmer hereby agrees to pay to Chelsey in a timely manner the amounts referred to on Attachment I annexed hereto (the "Fee"), in each case on the dates specified in said Attachment I. Anything to the contrary contained in this Agreement notwithstanding, in no event shall Programmer be entitled to delay payment of, reduce, or set off any claim against, any amount payable by Programmer under this Agreement, whether by reason of a breach or default by Chelsey or otherwise.

4. Term. The term of this Agreement shall begin on the Commencement Date, and shall continue in force from that date until the earlier of the occurrence of (a) the Closing or (b) the termination of the Asset Purchase Agreement pursuant to Section 13 thereof; provided, however, that in the event the Asset Purchase Agreement is terminated or fails to close for any reason other than a default by Programmer thereunder, then Programmer may elect to extend the term of this Agreement for a period of 10 years, such election to be made within 30 days after the termination of the Asset Purchase Agreement by written notice accompanied by payment of a fee for such extended term in the amount of Three Hundred Seventy Five Thousand Dollars (\$375,000). The term "Commencement Date" shall mean a date specified by Programmer, with at least 5 business days prior written notice to Chelsey. In no event shall the Commencement Date be later than the earlier of (i) the date the traffic equipment necessary for Programmer's operation of the Stations is installed (which equipment Programmer will order promptly after the execution of this Agreement and which Programmer shall use its best efforts to install at the earliest practicable date) or (ii) June 18, 2003.

5. Purchaser Programming. Purchaser Programming shall comply with the Stations' Policy Guidelines as set forth in Exhibit A annexed hereto, as the same may be reasonably amended by Chelsey from time to time, and with the provisions of this Agreement, and, provided such compliance obligations are satisfied, shall be entertainment programming of Programmer's own selection, together with commercial matters, news, public service announcements and other programming suitable for broadcast on the Stations. All actions or activities of Programmer under this Agreement, and Purchaser Programming shall be in accordance with: (a) the Communications Act of 1934, as amended; (b) the rules, requirements and policies of the FCC, including, without limitation, the FCC's rules on children's television programming, plugola/payola, lotteries and contests, hoaxes, station identification, minimum operating schedule, sponsorship identification, political programming and political advertising rates; (c) all applicable federal, state and local laws, regulations and policies (collectively, "Applicable Government Regulations") and (d) generally accepted quality standards of the television broadcast industry. In the event that Chelsey determines, based on the exercise of Chelsey's good faith reasonable business



judgment, that Programmer has failed to comply in any material respect with any of the standards provided for in this Agreement, Chelsey may suspend or cancel any Purchaser Programming not in compliance. In the event of any such suspension or cancellation, Programmer shall retain the right to use the Purchaser Programming and to authorize the use of such Purchaser Programming in any manner and in any media whatsoever. In the event of any wrongful suspension or cancellation by Chelsey of Purchaser Programming, Chelsey will reimburse Programmer for its costs, expenses and losses arising therefrom.

6. Preemption. Chelsey reserves the right in its sole discretion, and without liability, to preempt, delay or delete any of the broadcasts of the Purchaser Programming and to broadcast in substitution such other programming which, in Chelsey's sole judgment, is of greater local or national importance. In all such cases (except for those involving breaking news), Chelsey shall use reasonable efforts to provide Programmer with at least twenty-four (24) hours notice of Chelsey's intention to preempt, delay or delete such Purchaser Programming. Programmer agrees to cooperate in the airing of Chelsey's substitute programming, including the use of Programmer's personnel and equipment as reasonably required.

7. Advertising and Programming Revenues. Programmer shall be entitled to all advertising and promotion-related revenues, and all accounts receivable, in respect thereof, arising from the sale of advertising time on the Purchaser Programming and the Chelsey Programming and in fact broadcast during the term hereof. Programmer shall be responsible for payment of all agency commissions and the commissions payable to any sales representative engaged by Programmer for the purpose of selling advertising within the Purchaser Programming. Programmer shall collect all such advertising and promotion-related revenues in such manner as it may determine. Chelsey and Programmer each shall have the right, at its own expense, to seek copyright royalty payments for its own programming. Subject to compliance with applicable laws, Programmer may sell advertising on the Stations in combination with the sale of advertising on other television or radio stations.

8. Chelsey Station Facilities. Subject to the terms and conditions set forth in this Agreement, Chelsey hereby agrees to make the facilities of the Stations that are owned or leased by Chelsey ("Chelsey Station Facilities") available to Programmer twenty-four (24) hours a day, seven (7) days per week for operation and broadcast. Chelsey shall perform reasonable and customary maintenance of all Chelsey Station Facilities and equipment and in furtherance of its obligations to comply with applicable FCC rules, regulations and policies, and Chelsey's obligations set forth in this Section. Any downtime in the Chelsey Station Facilities occasioned by any such maintenance shall not be deemed to be a default or violation by Chelsey.

9. Right of Access. Chelsey shall provide Programmer with access at all times to its owned and leased property used for the Stations' operations to conduct, at Programmer's expense, all activities for which such property is currently used and permitted to be used. Chelsey shall have access at all times to its equipment and facilities used in conjunction with the production and broadcast of the Chelsey Programming so as to permit Chelsey to operate and control the Stations and to broadcast the Purchaser Programming and Chelsey Programming as provided herein. Programmer shall have the right, upon Chelsey's express prior written consent, to install and maintain at the Chelsey Station Facilities, at Programmer's expense, any microwave studio/transmitter relay equipment, telephone lines, transmitter remote control, monitoring devices or any other equipment necessary for the proper transmission of the Purchaser Programming on the Stations, and Chelsey and Programmer shall take, at Programmer's expense, all steps reasonably necessary to prepare and file any applications with the FCC to effectuate such proper transmission. Programmer shall have the right, at its sole cost and expense, to relocate such equipment as is necessary to implement the license modifications contemplated by the Modification Application.

10. Force Majeure. Any failure or impairment of the Chelsey Station Facilities or any Stations equipment or services or any delay or interruption in the broadcast of the Purchaser Programming, or failure at any time by Chelsey to furnish the Chelsey Station Facilities, or any Stations' equipment or services, in whole or in part, for the broadcast of the Purchaser Programming or otherwise, due to acts of God, war, terrorism, strikes, or threats thereof or *force majeure*, or due to causes beyond the control of Chelsey, shall not constitute a breach of this Agreement, and Chelsey shall not be liable to Programmer and Programmer shall not be liable to Chelsey for payment of the Fee in respect of any period as to which a *force majeure* event shall have occurred and be continuing.

11. Equipment. The parties agree that Chelsey shall retain title to all of the Assets (as defined in the Asset Purchase Agreement) until the Closing of the Asset Purchase Agreement. Programmer shall hold title to any new equipment or assets purchased or otherwise acquired by Programmer for the Stations during the term of this Agreement; provided that in the event the term of this Agreement shall end and the Closing under the Asset Purchase Agreement shall not then have occurred, any equipment or asset obtained as a replacement for any equipment or assets of Chelsey, without the express written consent of Chelsey, automatically shall become and hereinafter be deemed owned by Chelsey, and, in the case of any such replacement items so consented to, Chelsey shall have the right to purchase the same at the net book value thereof, in each case free and clear of all Liens (as defined in the Asset Purchase Agreement). Programmer shall execute and deliver to Chelsey all instruments necessary to effectuate the foregoing.

12. Chelsey Control of Stations. Notwithstanding anything to the contrary in this Agreement, Chelsey shall have full authority, control and power over the operation of the Stations during the term of this Agreement. Chelsey shall retain control over the policies, programming, finances, personnel and operations of the Stations, including, without limitation, the right to accept or reject any Purchaser Programming or advertisements, and the right to take any other actions necessary for compliance with Applicable Government Regulations. Chelsey shall be responsible to the FCC for the Stations' compliance with all Applicable Government Regulations, including, but not limited to, FCC requirements with respect to ascertainment of the problems, needs and interests of the community, public service programming, children's programming, political broadcasting, main studio staffing, maintenance of public inspection files, and maintenance of appropriate Emergency Alert System equipment, in all cases without intending to limit any compensation, reimbursement or other obligations of Programmer under this Agreement. Programmer shall provide Chelsey with all necessary information with respect to the Purchaser Programming that is responsive to the problems, needs and interests of the community, and shall use its best efforts to assist Chelsey in all respects requested by Chelsey in the preparation of information to enable Chelsey to prepare records, reports and logs required by the FCC or other local, state or federal governmental agencies. All correspondence (including e-mail) from members of the public concerning the Stations' programming shall be provided to Chelsey.

13. Responsibility for Employees and Expenses. During this term of this Agreement, Chelsey hereby agrees to employ no fewer than two full-time employees for the Stations, one of whom shall be a management level employee, both of whom shall report to and be accountable solely to Chelsey, and who shall be ultimately responsible for the day-to-day operations of the Stations. The rate of compensation for such employees shall be no greater than the rates currently in effect, provided, however, that if the term of this Agreement is extended beyond December 31, 2003, such rate of compensation may be increased thereafter with the consent of Programmer, such consent not to be unreasonably withheld. Programmer shall not employ or seek to employ any of Chelsey's current employees without Chelsey's express written consent. Chelsey shall be responsible for paying the salaries, payroll taxes, health insurance and other employment related costs for all personnel employed by Chelsey with respect to the Stations. Effective the date of this Agreement, Programmer shall employ and be responsible for all personnel, equipment and facilities used in the production of the Purchaser

Programming (including, without limitation, sales, traffic and programming personnel). All Programmer personnel shall be subject to the supervision and the direction of Chelsey's designated personnel in connection with the performance of their duties at the Stations. Chelsey shall be responsible for all expenses of Chelsey related to the operation of the Stations and the Chelsey Station Facilities and the Stations' equipment. Chelsey shall also be responsible for income taxes relating to Chelsey's earnings from this arrangement. Programmer shall pay promptly when due all copyright fees attributable to Purchaser Programming broadcast on the Stations during the term of this Agreement.

14. Compliance with Law; Licenses. Programmer agrees that, throughout the term of this Agreement, Programmer shall comply with all laws and regulations applicable to the conduct of Programmer's business and activities, including all Applicable Government Regulations. Promptly after the execution of this Agreement, Chelsey shall prepare and file with the FCC an application for consent to modify the license identified in Attachment II in the manner described therein (the "Modification Application"). Chelsey shall diligently prosecute the Modification Application and Programmer shall cooperate with Chelsey in the filing and prosecution of the Modification Application. Chelsey shall timely file any required application for an extension of the time during which the Stations may complete the construction of their digital transmission facilities. Programmer acknowledges that the parties intend that Programmer shall complete such construction after the closing under the Asset Purchase Agreement and that Programmer shall bear the entire cost of the construction and installation of such digital transmission facilities. Notwithstanding the foregoing, Programmer may elect to commence such construction and installation during the term of this Agreement. If Programmer so elects and Chelsey wrongfully refuses to complete the transactions contemplated by the Asset Purchase Agreement, Chelsey shall reimburse Programmer for the reasonable out-of-pocket costs incurred by Programmer in the construction and installation of such digital transmission facilities.

15. Payola/Plugola/EEO. Programmer agrees that it shall not accept, and shall not permit any of its employees to accept, any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, materials, supplies or other merchandise, services or labor, whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the Purchaser Programming as having paid for or furnished such consideration, in accordance with FCC requirements. Programmer agrees that, on an annual basis, or more frequently at the request of Chelsey, it will execute and provide Chelsey with affidavits regarding payola/plugola compliance in such form and substance as Chelsey shall reasonably require. Programmer shall comply with all equal employment opportunity regulations and policies (including, but not limited to, those of the FCC) to the extent such regulations and policies apply, or may in the future be deemed to apply, to the employment practices of Programmer's personnel assigned to duties in connection with the operation of the Stations; and Programmer shall timely provide Chelsey with all information that may be necessary or appropriate to comply with any reporting obligations of the FCC pursuant to such regulations or policies.

16. Political Advertising. Chelsey shall retain full responsibility for overseeing compliance with the FCC's political programming policies and regulations, including setting political advertising rates for the Stations and determining which legally qualified political candidates and races shall have reasonable access to political advertising on the Stations. At least 90 days prior to the beginning of any primary or general election period, Chelsey will set the rates to be charged legally qualified political candidates to ensure that the rate conforms with applicable election law and policies. Programmer agrees to provide Chelsey with access to its documentation concerning the pricing of advertising sold on the Stations as is necessary to permit Chelsey to ascertain that the political rate is appropriate. Within 24 hours of any request to purchase time on the Stations on behalf of a legally qualified candidate, Programmer will report the request and its disposition to Chelsey and obtain Chelsey's written approval

to such disposition. Chelsey shall be responsible for placing appropriate records in the Stations' political file.

17. Indemnification. Programmer hereby agrees to indemnify and hold harmless Chelsey and all of its members, officers, affiliates, agents, employees, successors, and assigns or any of the foregoing against all liability, damages, cost and expense (including, without limitation, reasonable attorney's fees) suffered or incurred by any of them for, or arising out of, or by reason of (a) libel, slander, illegal competition or trade practice, infringement of trade marks, trade names, or program titles, violation of rights of privacy, infringement of copyrights and proprietary rights and other liabilities resulting from or relating to the broadcast of any Purchaser Programming; and (b) all other matters arising out of or related to Programmer's activities involving the Stations or use of any of the Chelsey Station Facilities and/or any equipment or assets of the Stations. Chelsey hereby agrees to indemnify and hold harmless Programmer and all of its stockholders, directors, officers, affiliates, agents, employees, successors, and assigns against all liability arising out of liabilities of the type described in clause (a) of the first sentence of this Section that arise as a result of Chelsey's alteration of any Purchaser Programming prior to broadcast by Chelsey, which alteration is not consented to by Programmer. Programmer's and Chelsey's obligations under this Section 17 shall survive any termination of this Agreement until the expiration of all applicable statutes of limitation.

18. Events of Default; Cure Periods and Remedies.

(a) Events of Default. The following shall, after the expiration of the "applicable cure periods," constitute events of default under the Agreement (each an "Event of Default"):

(i) Programmer's failure to timely pay any consideration provided for in this Agreement or any amount then due under this Agreement or the Asset Purchase Agreement;

(ii) The default by any party hereto in the material observance or performance of any material covenant or agreement contained herein; provided, however, that any failure of Chelsey to comply with Applicable Government Regulations shall not be deemed to be a default of a material covenant or agreement by Chelsey, if Programmer has failed to provide information or cooperation to Chelsey concerning Purchaser Programming that could have allowed Chelsey to avoid such noncompliance, or any other act or omission, or any instruction or request to Stations' personnel, by Programmer is a basis or cause of such failure to comply with Applicable Government Regulations;

(iii) The default by any party hereto (after the expiration of all applicable cure periods) in the material observance or performance of any material covenant or agreement contained in the Asset Purchase Agreement which entitles the other party to terminate the Asset Purchase Agreement.

(b) Cure Periods. An Event of Default under 18(a) above shall not be deemed to have occurred until 30 days after the non-defaulting party has provided the defaulting party with written notice specifying the event or events that if not cured would constitute an Event of Default; provided, however, Programmer's failure to pay any consideration provided for in this Agreement or any amount due under this Agreement or the Asset Purchase Agreement shall not be subject to a cure period and shall be an incurable breach of this Agreement. The Event of Default which is subject to a cure period hereunder shall not be deemed to have occurred if actions necessary and sufficient to cure are taken during the relevant cure period.

(c) Right of Termination. In addition to other remedies available at law or equity, but subject to the requirements and limitations set forth herein, this Agreement may be terminated as set forth below by either Chelsey or Programmer by written notice to the other upon the occurrence of the following:

(i) this Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review;

(ii) an Event of Default by the other party has occurred and the party seeking to terminate is not then in material default or breach hereof;

(iii) the termination of the Asset Purchase Agreement pursuant to Section 13 thereof;

(iv) the mutual consent of all parties; or

(v) there has been a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof and such change is in effect and not the subject of a timely appeal or further administrative review; provided, however, that in such event the parties shall first negotiate in good faith and attempt to agree on an amendment to this Agreement that will provide the parties with a valid, binding and enforceable agreement that conforms to the new FCC rules, policies or precedent.

(d) Termination Requirements and Procedures. Unless otherwise mutually agreed by Programmer and Chelsey, any termination of this Agreement shall, at the election of Chelsey, not become effective until the effective date specified by Chelsey which shall not be more than 90 days after notice of termination is provided by Programmer or Chelsey.

(e) Liabilities Upon Termination. Upon termination of this Agreement for any reason, Programmer shall be responsible for all liabilities, debts and obligations of Programmer accrued from the purchase of air time and/or transmission services and all Purchaser Programming, including, without limitation, accounts payable, barter agreements and unaired advertisements, but not for Chelsey's federal, state, and local tax liabilities associated with Programmer's payments to Chelsey as provided for herein. With respect to Programmer's obligations to broadcast programming, advertisements and other material over the Stations after termination hereunder, Chelsey may propose compensation to Chelsey for meeting these obligations, but Chelsey shall be under no duty to propose such compensation or to perform such obligations and Programmer shall accept any such proposal by Chelsey which is reasonable and equitable under the circumstances and cooperate with Chelsey to effectuate such performance. In no event shall Chelsey be under any obligation to make available to Programmer any broadcast time or broadcast transmission facilities and all amounts accrued or payable to Chelsey up to the date of termination which have not been paid shall immediately become due and payable.

(f) Survival. Anything to the contrary contained in this Agreement notwithstanding, all obligations under this Agreement accrued or arising prior to or by reason of the termination of this Agreement shall survive such termination.

19. Responsive Programming. Programmer and Chelsey mutually acknowledge their interest in ensuring that the Stations serve the needs and interests of the residents of their communities of license, and the surrounding service areas and agree to cooperate in doing so. Chelsey may request, and Programmer shall provide, information concerning such of Purchaser Programming that is responsive to community issues so as to assist Chelsey in the satisfaction of its public service programming obligations.

20. Time Brokerage Challenge. If this Agreement is challenged in whole or in part at the FCC or in another administrative or judicial forum, whether or not in connection with the Stations' license renewal application, counsel for Chelsey and counsel for Programmer shall, at their joint expense, jointly defend the Agreement and the parties' performance hereunder throughout all such proceedings. If portions of this Agreement do not receive the approval of the FCC's staff, or the Agreement receives such approval with conditions that are adverse to Chelsey or Programmer, then the parties shall endeavor in good faith to reform the Agreement as necessary to satisfy the FCC staff's concerns, while preserving the respective benefits to and without increasing the respective obligations of the parties, or seek reversal of the staff decision and approval from the full Commission on appeal.

21. Programmer's Representations, Warranties and Covenants. Programmer makes the following additional representations, warranties and covenants:

(a) Compliance with Applicable Law. Programmer's performance of its obligations under this Agreement and its furnishing of Purchaser Programming shall be in compliance with, and shall not violate or cause Chelsey to violate any Applicable Government Regulations.

(b) Handling of Complaints. Programmer shall promptly advise Chelsey of any public or FCC complaint or inquiry that Programmer receives concerning the Purchaser Programming and shall cooperate with Chelsey and take all actions as may be reasonably requested by Chelsey in responding to any such complaint or inquiry.

(c) Copyright and Licensing. Programmer shall not broadcast on the Stations any material in violation of the Copyright Act.

(d) Insurance. Programmer shall maintain throughout the term of this Agreement general liability insurance and other insurance customarily maintained by broadcasters transmitting similar programming, and shall name Chelsey as an additional insureds on such insurance policies.

(e) Information for FCC Reports. Upon request by Chelsey, Programmer shall provide in a timely manner any such information in its possession that shall enable Chelsey to prepare, file or maintain the records and reports required by the FCC.

22. Miscellaneous.

(a) Certain Limitations. Anything to the contrary contained in the Agreement notwithstanding:

(i) in the event the Closing under the Asset Purchase Agreement shall occur, Chelsey shall have no liability or obligation whatsoever under this Agreement, whether for matters arising prior to such Closing or otherwise;

(ii) Programmer's sole remedy for any breach or default by Chelsey under this Agreement shall be such rights as Programmer may have under the Asset Purchase Agreement upon the termination thereof; and

(iii) nothing herein, express or implied, is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights, remedies or other benefits under or by reason of this Agreement.

(b) Amendment; Waiver. No modification, amendment or waiver of any provision of this Agreement shall in any event be effected unless the same shall be in writing and signed by the party adversely affected by the waiver or modification, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

(c) Governing Law. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New York, excluding the choice of law rules thereof, applicable to contracts to be performed entirely within that State. Should any clause, section or part of this Agreement be held or declared to be void, illegal or unenforceable for any reason, all other clauses, sections or parts of this Agreement which can be effected without such void, illegal or unenforceable clause, section or part shall nevertheless continue in full force and effect.

(d) Headings. The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement shall be assignable only to the same extent as and solely in connection with any assignment of the Asset Purchase Agreement permitted pursuant to the terms thereof.

(f) Notices. Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be deemed to have been duly given or made for all purposes if sent by certified or registered mail, return receipt requested and postage prepaid, hand delivery or overnight delivery service:

If to Programmer, at:

Mark III Media Inc.  
2312 Sagewood  
Casper, WY 82601  
Attention: Mark Nalbene

With a copy to:

Borsari & Assoc., PLC  
P.O. Box 29  
Arlington, VA 22201  
Attention: John A. Borsari, Esq.

Overnight Mail:  
2111 Wilson Blvd., #700  
Arlington, VA 22201

If to Chelsey Broadcasting Company of Casper, LLC, at:

c/o Chelsey Broadcasting Company, LLC  
500 Old Country Road  
Garden City, New York 11530  
Attention: Paul S. Goodman

With a copy to:

Wachtel & Masyr.  
110 East 59<sup>th</sup> Street  
New York, New York 10022  
Attention: Scott Lesser, Esq.

or at such other address as any party may specify by notice given to the other party in accordance with this Section 22(f). The date of the giving of any notice sent by mail shall be three business days following the date of the posting of the mail, if delivered in person, the date delivered in person or the next business day following delivery to an overnight delivery service.

(g) Entire Agreement. This Agreement, together with the Asset Purchase Agreement constitutes the entire agreement of the parties (and supersedes any prior understanding of the parties) with respect to the subject matter hereof. The representations, warranties, covenants and agreements set forth in this Agreement, schedules or exhibits delivered pursuant hereto constitute all the representations, warranties, covenants and agreements of the parties hereto and upon which the parties have relied.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which when taken together shall constitute one agreement.



IN WITNESS WHEREOF, the parties have executed this Time Brokerage Agreement as of the date first above written.

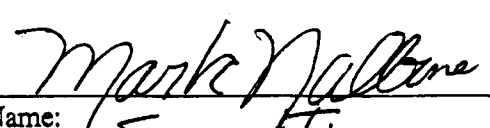
CHELSEY BROADCASTING COMPANY OF  
CASPER, LLC

By: 

Name: Paul S. Goodman  
Title: Chief Executive Officer

MARK III MEDIA INC.

By: 

Name:   
Title: Sec / Tres

## **TIME BROKERAGE AGREEMENT**

### **EXHIBIT A**

#### **BROADCAST STATION PROGRAMMING POLICY STATEMENT**

The following sets forth the policies generally applicable to the presentation of programming and advertising over Television Station KGWC-TV, Casper and Riverton, Wyoming, KGWR-TV, Rock Springs, Wyoming and KGWL-TV, Lander, Wyoming (collectively, the "Stations"). All programming and advertising broadcast by the Stations must conform to these policies and to the provisions of the Communications Act of 1934, as amended (the "Act"), and the rules and regulations of the Federal Communications Commission ("FCC").

##### **Station Identification**

The Stations must broadcast the Stations' identification announcement once an hour as close to the hour as feasible in a natural break in the programming. The announcement must include (1) the Stations' call letters; followed immediately by (2) the Stations' city of license.

##### **Broadcast of Telephone Conversations**

Before recording a telephone conversation for broadcast or broadcasting such a conversation simultaneously with its occurrence, any party to the call must be informed that the call will be broadcast or will be recorded for later broadcast, and the party's consent to such broadcast must be obtained. This requirement does not apply to calls initiated by the other party which are made in a context in which it is customary for the Stations to broadcast telephone calls.

##### **Sponsorship Identification**

When money, service, or other valuable consideration is either directly or indirectly paid or promised as part of an arrangement to transmit any programming, the Stations at the time of broadcast shall announce (1) that the matter is sponsored, either whole or in part; and (2) by whom or on whose behalf the matter is sponsored. Products or services furnished to the Stations in consideration for an identification of any person, product, service, trademark or brand name shall be identified in this manner.

In the case of any political or controversial issue broadcast for which any material or service is furnished as an inducement for its transmission, an announcement shall be made at the beginning and conclusion of the broadcast stating (1) the material or service that has been furnished; and (2) the person(s) or association(s) on whose behalf the programming is transmitted. However, if the broadcast is 5 minutes in duration or less, the required announcement need only be made either at its beginning or end.

Prior to any sponsored broadcast involving political matters or controversial issues, the Stations shall obtain a list of the chief executive officers, members of the executive committee or board of directors of the sponsoring organization and shall place this list in the Stations' public inspection file.

The Stations, its personnel, or its programmers shall not accept or agree to accept from any person any money, service, or other valuable consideration for the broadcast of any matter unless such fact is disclosed to the Stations so that all required Stations' identification announcements can be made. All persons responsible for the Stations' programming must, from time to time, execute such documents as

may be required by Stations' management to confirm their understanding of and compliance with the FCC's sponsorship identification requirements.

### **Rebroadcasts**

The Stations shall not rebroadcast the signal of any other broadcast station without first obtaining such station's prior written consent to such rebroadcast.

### **Fairness**

The Stations shall seek to afford coverage to contrasting viewpoints concerning controversial issues of public importance.

### **Personal Attacks**

The Stations shall not air attacks upon the honesty, character, integrity or like personal qualities of any identified person or group. If such an attack should nonetheless occur during the presentation of view on a controversial issue of public importance, those responsible for programming shall submit a tape or transcript of the broadcast to the Stations' management and to the person attacked within 48 hours, and shall offer the person attacked a reasonable opportunity to respond.

### **Political Editorials**

Unless specifically authorized by the Stations' management, the Stations shall not air any editorial which either endorses or opposes a legally qualified candidate for public office.

### **Political Broadcasting**

All "uses" of the Stations by legally qualified candidates for elective office shall be in accordance with the Act and the FCC's rules, regulations and policies, including, without limitation, equal opportunities requirements, reasonable access requirements, lowest unit charge requirements and similar rules and regulations.

### **Obscenity and Indecency**

The Stations shall not broadcast any obscene material. Material is deemed to be obscene if the average person, applying contemporary community standards in the local community, would find that the material, taken as a whole, appeals to the prurient interest; depicts or describes in a patently offensive way sexual conduct specifically defined by applicable state law; and taken as a whole, lacks serious literary artistic, political or scientific value.

The Stations shall not broadcast any indecent material outside of the periods of time prescribed by the FCC. Material is deemed to be indecent if it includes language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.

### **Billing**

No entity which sells advertising for airing on the Stations shall knowingly issue any bill, invoice or other document which contains false information concerning the amount charged or the broadcast of advertising which is the subject of the bill or invoice. No entity which sells advertising for airing on the

Stations shall misrepresent the nature or content of aired advertising, nor the quantity, time of day, or day on which such advertising was broadcast.

### **Contests**

Any contests conducted on the Stations shall be conducted substantially as announced or advertised. Advertisements or announcements concerning such contests shall fully and accurately disclose the contest's material terms. No contest description shall be false, misleading or deceptive with respect to any material term.

### **Hoaxes**

The Stations shall not knowingly broadcast false information concerning a crime or catastrophe.

### **Emergency Information**

Any emergency information which is broadcast by the Stations shall be transmitted both aurally and visually or only visually.

### **Lottery**

The Stations shall not advertise or broadcast any information concerning any lottery (except any state lottery). The Stations may advertise and provide information about lotteries conducted by non-profit groups, governmental entities and in certain situations, by commercial organizations, if and only if there is no state or local restriction or ban on such advertising or information and the lottery is legal under state or local law. Any and all lottery advertising must first be approved by the Stations' management.

### **Advertising**

The Stations shall comply with all federal, state and local laws concerning advertising, including, without limitation, all laws concerning misleading advertising, and the advertising of alcoholic beverages.

### **Programming Prohibitions**

Knowing broadcast of the following types of programs and announcements is prohibited:

False Claims. False or unwarranted claims for any product or service.

Unfair Imitation. Infringement of another advertiser's rights through plagiarism or unfair imitation of either program idea or copy, or any other unfair competition.

Commercial Disparagement. Any unfair disparagement of competitors or competitive goods.

Profanity. Any programs or announcements that are slanderous, obscene, profane, vulgar, repulsive or offensive, as evaluated by the Stations' management.

Violence. Any programs which are excessively violent.

Unauthenticated Testimonials. Any testimonials which cannot be authenticated.