

ASSET PURCHASE AGREEMENT

dated as of October 29, 2002

by and between

BAUER PROPERTIES, LLC (Seller)

and

BEACON BROADCASTING, LLC (Buyer)

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Exhibit 9.1(g)	Seller's Business Counsel Opinion
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SCHEDULES

Schedule 1.9	-	FCC Licenses
Schedule 2.1(a)	-	Personal Property
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Schedule 2.2(a)	-	Miscellaneous Excluded Assets
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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into this 29th day of October, 2002, between Bauer Properties, LLC ("Seller"), and Beacon Broadcasting, LLC ("Buyer").

RECITALS

WHEREAS, Seller is the licensee and operator of KVAZ-FM 105.7, Lamar, Colorado (the "Station"), serving the Lamar, Colorado radio market, pursuant to licenses issued by the FCC;

WHEREAS, Seller desires to sell or assign to Buyer the Station and all of the assets, licenses and authorizing orders of the FCC of Seller related thereto, and Buyer desires to purchase and receive an assignment of the same from Seller, all on the terms and subject to the conditions set forth herein; and

WHEREAS, in order to induce Buyer to enter into this Agreement, Seller is willing to make certain representations and warranties to, and covenants and agreements with, Buyer:

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

As used herein the following terms shall have the following meanings:

1.1 "Closing" shall mean the consummation of the transactions contemplated by this Agreement

1.2 "Closing Date" shall mean the date no later than five (5) business days immediately following the date upon which there is an FCC Final Order authorizing, without materially adverse conditions to either Buyer or Seller, the assignment of the FCC Licenses to Buyer.

1.3 "Confidential Information" shall mean any information concerning the business or affairs of the Station that is not already generally available to the public.

1.4 "Contracts" shall mean, whether oral or written, all contracts, leases, agreements and similar documents (i) pursuant to which commercial air time on the Station has been sold, traded or bartered in consideration for any property or services in lieu of or in addition to cash; (ii) pursuant to which commercial air time has been sold on the Station for cash; (iii) pursuant to which Seller is authorized to broadcast programs on the Station; (iv) relating to the Station Assets or the business or operation of the Station (including all employment agreements and talent contracts, all leases and subleases, all agreements relating to any motor vehicles, all network affiliation agreements, and all national and local advertising representation agreements for the Station); (v) related to the Real

Property as defined in Section 3.16(a); and (vi) which relate to the Station or the Station Assets as of the date of this Agreement.

1.5 "Diligence Review" shall have the meaning set forth in Section 4.1(a)

1.6 "Intellectual Property" shall have the meaning set forth in Section 2.1(f)

1.7 "FCC" shall mean the Federal Communications Commission or its successor

1.8 "FCC Application" shall have the meaning set forth in Section 8.5

1.9 "FCC Licenses" shall mean the licenses and authorizing orders which are attached as Schedule 1.9 hereto.

1.10 "Final Order" shall mean an action or decision that has been granted as to which (i) no request for a stay or any similar request is pending, no stay is in effect, the action or decision has not been vacated, reversed, set aside, annulled or suspended and any deadline for filing such a request that may be designated by statute or regulation has passed; (ii) no petition for rehearing or reconsideration or application for review is pending, and the time for the filing of any such petition or application has passed; (iii) no governmental authority has undertaken to reconsider the action on its own motion, and the time within which it may effect such reconsideration has passed; and (iv) no appeal is pending (including either administration or judicial review) or in effect, and any deadline for filing any such appeal that may be specified by statute or rule has passed.

"Financial Statement Date" shall have the meaning set forth in Section 3.10.

1.12 "Station" means commercial FM broadcast station KVA Y-FM serving the Lamar, Colorado radio market.

"Station Assets" means the property described in Section 2 hereof.

"Tower" is described on Schedule 2.1(g).

ARTICLE II PURCHASE AND SALE OF STATION ASSETS

2.1 Purchase of Station Assets. On the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, and convey to Buyer, and Buyer shall purchase and acquire from Seller, all the assets (except for the Excluded Assets), free and clear of all liens, charges, pledges, security interests, mortgages or other encumbrances of any nature whatsoever, used or held for use by Seller or useful in operating the Station, including the following:

(a) **Personal Property**. All tangible personal property, whether owned or leased (leased assets to be transferred by an assignment of the lease) by Seller or affiliated entities which is located in or used in the ownership or operation of the Station, including all broadcasting and office equipment, furniture, vehicles, furnishings, machinery, installations and fixtures currently used in or needed for such operation, including all replacements and additions thereto between the date of this Agreement and the Closing Date, including the property listed in Schedule 2.1(a); but excluding the Excluded Assets.

(b) **FCC Licenses**. All FCC licenses, permits and authorizations necessary to operate the Station and its associated facilities, copies of which are attached hereto as Schedule 1.9, and all applications therefor, together with any renewals, extensions or modifications thereof and additions thereto between the date hereof and the Closing Date.

(c) **Contracts**. All contracts and agreements relating to the use or ownership of the Station (except that Buyer shall only assume those contracts and agreements that are specifically identified to be assumed in Schedule 3.5).

(d) **FCC Reports**. Copies of all reports required by the FCC to be maintained by Seller relating to the operation of the Station, and all books of account, logs and records necessary or useful for Buyer's operation of the Station.

(e) **Financial Data**. All files, documents, records, and books of account relating to the operation of the Station or to the Station Assets, including the Station's local public files, programming information and studies, blueprints, technical information and engineering data, news and advertising studies or consulting reports, marketing and demographic data, sales correspondence, lists of advertisers, promotional materials, credit and sales reports and filings with the FCC, all Contracts to be assigned hereunder, logs, software programs and books and records relating to employees, financial, accounting and operation matters; but excluding records relating solely to any Excluded Asset.

(f) **Intangible Assets**. All of Seller's rights in and to the call letters "KVAY-FM" as well as all of Seller's rights in and to all trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, computer software, programs and programming material of whatever form or nature, jingles, slogans, the Station's logos and all other logos or licenses to use the same and all other intangible property rights of Seller which are used or useful in connection with the operation of the Station, including those listed in Schedule 3.13 (collectively, the "Intellectual Property"), together with any goodwill and any additions thereto between the date hereof and the Closing Date.

(g) **Real Property**. All real property owned or leased by Seller and related to the business and operation of the Station, including all land, fee interests, leasehold interests, easements and other interests of every kind and description in such real property, buildings, structures, fixtures, appurtenances, towers and antennae, and other improvements thereon owned by Seller, the property

described on Schedule 2.1(g) hereto as well as any additions thereto between the date hereof and the Closing Date. The parties acknowledge and agree that, at Closing, Seller shall transfer to Buyer good and marketable title to the Tower site, free and clear of all liens, charges, pledges, security interests, mortgages and other encumbrances of any kind or nature.

(h) Programming. All programs and programming materials and elements of whatever form or nature, whether recorded on tape or other medium or intended for live performance, and whether completed or in production, and all copyrights thereof, owned by or licensed to Seller that are used or useful in connection with the operation of the Station, including all such programs, materials, elements and copyrights acquired by Seller between the date hereof and the Closing Date.

(i) Warranties. All of Seller's rights under manufacturers' and vendors' warranties relating to items included in the Station Assets and all similar rights against third parties relating to items included in the Station Assets.

(j) Auxiliary Facilities. All translators, earth stations, and other auxiliary facilities, and all application therefor, owned, leased (leased assets to be transferred by an assignment of the lease) or otherwise used or useful by Seller in connection with the business and operation of the Station.

(k) Permits and Licenses. All permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with, any court or governmental authority (other than the FCC) in any jurisdiction, which have been issued or granted to or are owned and used or useful by Seller in connection with the business and operation of the Station, and all pending applications therefor.

(l) Deposits. All deposits and other prepayments of any kind relating to the operation of the Station.

2.2 Excluded Assets. The following are expressly excluded from the Station Assets to be purchased and sold (the "Excluded Assets"):

(a) Miscellaneous Excluded Assets. The assets listed on Schedule 2.2(a).

(b) Accounts Receivable. All accounts receivable arising out of the operation of the Station by Seller prior to the Closing Date.

(c) Cash. All cash and cash equivalents (including marketable securities and short-term investments) of Seller.

2.3 No Assumption of Liabilities. Buyer shall assume no liabilities or obligations of Seller, including accounts payable, debts, liabilities, or other obligations, whether pursuant to a

contract or otherwise, except for those liabilities and obligations that are expressly to be assumed hereunder (as described on Schedule 2.3 hereto), which liabilities and obligations shall be assumed pursuant to an Assumption Agreement in the form of Exhibit 9.1(e).

2.4 Purchase Price. The purchase price (the "Purchase Price"), as the same may be adjusted pursuant to this Agreement, shall be a total of Eight Hundred Twenty-Five Thousand Dollars (\$825,000). The parties acknowledge and agree that Buyer has previously deposited \$10,000 (the "Earnest Money Deposit") with Seller. The Earnest Money Deposit will be applied against the Purchase Price at the Closing or returned to Buyer in the event this transaction fails to close due to any reason other than default by Buyer. Buyer will pay any sales tax arising from this transaction.

2.5 Closing. The Closing shall take place at the offices of Buyer's business counsel, or at such other place agreed by Buyer and Seller, on the Closing Date.

2.6 Closing Date Adjustments.

(a) The income and expenses attributable to the operation of the Station up to 12:01 a.m. on the Closing Date (the "Adjustment Time") shall, except as otherwise expressly provided in this Agreement, be for the account of Seller and thereafter shall be for the account of Buyer. Income and expense items such as utilities, rents, prepaid items, wages, commissions, payroll and property taxes, vacation pay and other fringe benefits of employees of Seller who enter the employment of Buyer, and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Adjustment Time. Revenues, expenses, taxes, costs and liabilities earned or incurred in connection with particular programs and announcements shall be allocated to the time of performance of such programs and announcements without regard to the date of receipt or payment therefor. If the amount of any taxes are not known at the Closing Date, they shall be prorated as of the Adjustment Time on the basis of taxes assessed for the preceding year. All other prorations shall, to the extent feasible, be determined and set forth in a writing executed by the parties hereto and paid on the Closing Date, with a final settlement thereof to be made within ninety (90) days after the Closing Date.

(b) Disputes. In the event of any disputes between the parties as to any prorations, the amounts not in dispute shall nonetheless be paid at the time provided in Section 2.6(a) and such disputes shall be resolved by an independent certified public accountant mutually acceptable to the parties, and the fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer. Notwithstanding the foregoing, if the aggregate amount in dispute is \$5,000 or less, the disputed amount shall be shared equally by Buyer and Seller.

(c) Trade Agreements. At Closing there shall exist no obligation on the Station to air announcements or programming under trade or other agreements except as provided in Schedule 2.6(c).

2.7 Allocation of Purchase Price. The parties agree to allocate the Purchase Price among the Station Assets for all purposes in accordance with the allocation schedule attached hereto as Schedule 2.7, and the parties agree to file all tax returns in accordance with such allocation.

ARTICLE III
SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that the statements contained in this Article III are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date was substituted for the date of this Agreement throughout this Article III) and acknowledges and confirms that Buyer is relying upon such representations and warranties in connection with the purchase by Buyer hereunder.

3.1 Organization and Standing. Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Colorado. Seller has full power and authority (i) to carry on the business of the Station and to own and lease the Station Assets as and where such business is now being conducted and the Station Assets are now owned and leased and (ii) to execute, perform and carry out its obligations under this Agreement and the other agreements to be executed by Seller in connection herewith according to its and their terms. Seller's principal place of business since August 1991 has been 224 S. Main, Lamar, Colorado, and Seller has operated the Station only at such address under the name KWAY-FM since August 1991. Seller has not changed its name in the last seven (7) years.

3.2 Authorization: Binding Obligation. The execution and delivery of this Agreement and the other agreements to be executed by Seller in connection herewith, and the sale, conveyance and assignment of the Station Assets to Buyer as herein provided have been duly authorized and approved by Seller as required by its governing documents, applicable law or otherwise, subject only to FCC approval. This Agreement and the other agreements to be executed by Seller in connection herewith are the valid and binding obligations of Seller enforceable against Seller in accordance with its and their terms.

3.3 Brokers' Fees. Seller has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated or to which the Station Assets could become subject.

3.4 FCC and Other Authorizations. Seller is the holder of the FCC Licenses and authorizations, which are the only FCC licenses or authorizations used by Seller in connection with or necessary for the operation of the Station, and there is no action or proceeding, pending or threatened, before the FCC or otherwise, for the cancellation or modification of any of the FCC Licenses and authorizations, all of which are unimpaired by any act or omission of Seller or any of its employees or agents. Seller possesses all permits, certificates, licenses, approvals, and other authorizations from all governmental agencies necessary to carry on the business of the Station and

to own and operate the Station Assets at the places and in the manner in which the business of the Station is now being, or is authorized to be, conducted. To Seller's knowledge, no facts, conditions or events exists relating to Seller or the Station that would reasonably be expected to cause the FCC to revoke any of the FCC Licenses, to not grant any pending applications for renewal of the FCC Licenses, or to deny the assignment of the FCC Licenses to Buyer as provided for in this Agreement.

3.5 Contracts. Schedule 3.5 lists all Contracts (and describes any oral Contract). The Contracts to be assumed by Buyer are specifically identified in Schedule 3.5. Those Contracts, if any, to be assumed by Buyer and assigned by Seller and which require the consent of a third party to assignment are identified in Schedule 3.5. Neither the execution and delivery of this Agreement nor the performance hereof shall constitute a default under or breach of any Contract or other commitment or restriction of any kind to which Seller or the Station Assets are bound. With respect to each Contract to be assumed by Buyer and assigned by Seller (i) such Contract is legal, valid, binding, enforceable and in full force and effect; (ii) such Contract will continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (iii) no party is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration, under such Contract; and (iv) no party has repudiated any provision of such Contract.

3.6 Absence of Conflicting Agreements and Required Consents. Except for the Contracts to be assumed by Buyer and identified as requiring consent in Schedule 3.5 and the FCC Licenses, the execution, delivery and performance of this Agreement and the other agreements to be executed by Seller in connection herewith: (i) do not require the consent of any third party (including the consent of any governmental, regulatory, administrative or similar authority); (ii) will not conflict with, result in breach of, or constitute a violation of or default under, the provisions of Seller's governing documents or any applicable law, judgment, order, injunction, decree, rule, regulation or ruling to which Seller is a party or by which Seller or any of the Station Assets are bound; (iii) will not either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of any of the terms, conditions or provision of, or constitute a default under, any Contract, license or permit to which Seller or any of the Station Assets are now subject; and (iv) will not result in the creation of any lien, charge or encumbrance on any of the Station Assets.

3.7 Judgments and Litigation. No judgment has been entered and no claim, litigation, proceeding, investigation or dispute is pending or, to Seller's knowledge, threatened which pertains to the Station or the Station Assets, or Seller's power or right to sell, convey, transfer or assign the same to Buyer as herein provided, or which could prevent or materially adversely affect the operation and use of the same by Buyer. Seller has no reason to believe that any such claim, litigation, proceeding, investigation or dispute may be brought or threatened against Seller, the Station or the Station Assets.

3.8 Employees, Labor Matters. Seller is not a party to or bound by any collective bargaining agreement, nor has Seller experienced any strikes, grievances, claims of any unfair labor practices, or other collective bargaining disputes. Seller has not committed any unfair labor practices. Seller has no knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of Seller.

3.9 Personnel Information. Schedule 3.9 contains a true and complete list of all persons who are consultants or independent contractors of or employed at the Station, including date of hire, a description of material compensation arrangements (other than employee benefit plans set forth in Schedule 3.19) and a list of other terms of any and all agreements affecting such persons and their employment by Seller. Each employee of Seller is an employee at-will, and no employee has any agreement as to length of notice or severance payment required to terminate his or her employment. Seller has received no notice that, and Seller is not aware of, any employee who shall or is likely to terminate his or her employment relationship with the Station upon the execution of this Agreement or after the Closing.

3.10 Financial Statements. Set forth at Schedule 3.10 are complete copies of the unaudited balance sheets, income statements and statements of cash flow of Seller as of and for the fiscal years ended December 31, 2000 and December 31, 2001, together with unaudited balance sheets and income statements of Seller as of and for the period ended August 31, 2002 (collectively, the "Financial Statements"). The Financial Statements are true, correct and complete and have been prepared in accordance with the books and records of Seller and in accordance with generally accepted accounting principles consistently applied and maintained throughout the periods indicated. The Financial Statements present fairly the financial condition, results of operations and cash flow of the Station for the periods indicated. The financial information within the Financial Statements does not include financial information unrelated to the operation of the Station. None of the Financial Statements materially understate the true costs and expenses of conducting the business and operations of the Station, fail to disclose any material liability, or inflate the revenues of the Station for any reason. August 31, 2002, is hereinafter referred to as the "Financial Statement Date."

3.11 Conduct of Business in Ordinary Course; Adverse Changes. Since the Financial Statement Date:

(a) Seller has conducted the business of the Station only in the ordinary course consistent with past practices;

(b) there has not been any material adverse change in the business, assets, properties, prospects or condition (financial or otherwise) of Seller or the Station, or any damage, destruction, or loss affecting any of the Station Assets; and

(c) Seller has not created, assumed, or suffered any mortgage, pledge, lien or encumbrance on any of the Station Assets.

3.12 Call Letters, Trademarks and Trade Names. Seller owns or otherwise has the full and exclusive right to use all, and no claims have been asserted or threatened by any person concerning the use by Seller of any, call letters, trademarks, trade names, slogans, jingles, emblems and logos to be transferred to Buyer hereunder.

3.13 Intellectual Property. Schedule 3.13 hereto is a true and complete list of all Intellectual Property applied for, registered or issued to, and owned by Seller or under which Seller is a licensee and which is used in the conduct of Seller's business and operations of the Station. Except as set forth on Schedule 3.13:

(a) Seller's right, title and interest in the Intellectual Property as owner or licensee, as applicable, is free and clear of all liens, claims, encumbrances, rights, or equities whatsoever of any third party and, to the extent any of the Intellectual Property is licensed to Seller, such interest is valid and uncontested by the licensor thereof or any third party;

(b) all computer software located at any of Seller's premises or used in Seller's operation of the Station is properly licensed to Seller, and all of Seller's uses of such computer software are authorized under such licenses;

(c) all of Seller's right, title and interest in and to the Intellectual Property and computer software shall be assignable to Buyer at Closing and, upon such assignment, Buyer shall receive complete and exclusive right, title, and interest in and to all tangible and intangible property rights existing in the Intellectual Property;

(d) there are no infringements or unlawful use of such Intellectual Property; and

(e) the Intellectual Property constitutes all of the intellectual or intangible property necessary to operate the Station as the Station is now being operated.

3.14 Other Agreements. No person, other than the Buyer, has any options or contracts which could enable it to purchase or otherwise acquire, directly or indirectly, the Station or the Station Assets, in whole or in part.

3.15 Environmental. Seller has complied with all federal, state and local environmental laws applicable to the Station and its operations, including the FCC's current guidelines regarding human exposure to radiofrequency (RF) electromagnetic fields. To Seller's knowledge, the technical equipment included in the Station Assets does not contain any PCB's. No hazardous or toxic waste, substance, material or pollutant (as those or similar terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., or any other applicable federal, state and local environmental law, statute, ordinance, order, judgment, rule or regulation relating to the environment or the protection of human health ("Environmental Laws")), including any asbestos or asbestos-

related products, oils or petroleum-derived compounds, CFC's, PCB's, or underground storage tanks, have been released, emitted or discharged by Seller or, to Seller's knowledge, are otherwise currently located in, on, under, or about the real property on which the Station Assets are situated (including the transmitter site or the Tower) or contained in the tangible personal property included in the Station Assets. To Seller's knowledge, the Station Assets and Seller's use thereof are not in violation of any Environmental Laws or any occupational, safety and health or other applicable law now in effect.

3.16 Real Property.

(a) Schedule 2.1(g) contains descriptions of all of Seller's interests, including leasehold interests and easements, and rights in and agreements with respect to real property used or held for use in connection with Seller's operation of the Station (the "Real Property"). Seller has good and clear record and marketable title to all of the fee or leasehold estates included in the Real Property free and clear of all debts, liens, security interests, mortgages, trusts, claims, liabilities and encumbrances, except for (a) liens for current taxes not yet due and payable; (b) easements, rights-of-way and restrictions and other minor defects in title, none of which materially and adversely affects the use of such property as it is currently used or the value of such property as a tower or studio site, as the case may be, all of which are disclosed on Schedule 2.1(g); and (c) other liens, claims or encumbrances disclosed on Schedule 2.1(g) which will be removed at or prior to Closing. All of the Real Property is in satisfactory condition and repair consistent with its current use and available for use in the conduct of business and operations of the Station. The Real Property and the use thereof by Seller comply with all applicable laws, including those relating to zoning, and the rules and regulations of the FCC. The improvements on the Real Property are in good working condition and repair and exist or are operating in compliance with good engineering practices and are adequate for their intended use. Seller has good and valid rights of ingress and egress to and from all of the Real Property from and to the public street systems for all usual street, road and utility purposes.

(b) Seller has not received any notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or other law, order, regulation or requirement affecting the Real Property or the improvements thereon, or of the need for any material repair, remedy, construction, alteration or installation with respect to the Real Property or the improvements thereon, or any change in the means or methods of conducting operations thereon.

(c) Seller has not assigned title to the estates or interests identified on Schedule 2.1(g) or otherwise taken, or failed to take, any action which will adversely affect Seller's title therein.

(d) The studio/office, as identified on Schedule 2.1(g), is leased by Seller on a month-to-month basis as set forth in Section 2.1(g). The Tower site, as identified on Schedule 2.1(g), is also leased by Seller. Prior to Closing, Seller shall acquire title to the Tower Site.

3.17 **Insurance.** The business, properties (including the Station Assets) and employees of the Station are insured against loss, damage or injury in amounts customary in the broadcast industry. All such insurance policies, which are identified on Schedule 3.17, are in full force and effect.

3.18 **Taxes.** Seller has duly, timely and in the required manner filed all federal, state, local and foreign income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid. No event has occurred which could impose on Buyer any liability for any taxes, penalties, or interest due or to become due from Seller from any taxing authority. No audit by any taxing authority affecting Seller or any of the Station Assets is pending or, to Seller's knowledge, threatened.

3.19 **Employee Benefit Plans.** Except as set forth in Schedule 3.19, Seller is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan. Except pursuant to a plan or agreement listed on Schedule 3.19, and except as required by applicable law, Seller has no fixed or contingent liability or obligation to any person now or formerly employed at the Station, including pension or thrift plans, individual or supplemental pension or accrued compensation arrangements, contributions to hospitalization or other health or life insurance programs, incentive plans, bonus arrangements and vacation, sick leave, disability and termination arrangements or policies, including workers' compensation policies. Seller has administered any plan listed on Schedule 3.19 in compliance with any applicable provisions of ERISA. Buyer shall not assume or hereby become obligated to pay any debt, obligation or liability arising from Seller's employee benefit plans, or any other employment arrangement and coverage under such plans and arrangements shall remain the responsibility of Seller.

3.20 **Personal Property.** Schedule 2.1(a) contains a list of all material items of tangible personal property owned by Seller and used in the conduct of the business and operations of the Station. Schedule 2.1 (a) also separately lists any material tangible personal property leased by Seller pursuant to leases included within the Contracts. Seller has, and at the Closing Seller will transfer to Buyer, good and marketable title to all of the Station Assets (other than those subject to lease, in which Seller has, and at the Closing Seller will transfer to Buyer, a good and marketable leasehold interest) and none of the Station Assets is, or at the Closing will be, subject to any liens, encumbrances, claims, charges, security interests or other encumbrances or title defects, except for liens for taxes not yet due and payable. The properties listed in Schedule 2.1(a), along with those properties subject to lease and included among the Contracts, constitute all material tangible personal property necessary to operate the Station as the Station is now being operated. All items of tangible personal property included in the Station Assets are in good and technically sound operating condition and repair, are free from all material defect and damages, are suitable for the purposes for

which they are now being used, and have been maintained in a manner consistent with generally accepted standards of good engineering practice.

3.21 Qualifications of Buyer. Seller knows of no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify Buyer as an assignor of the FCC Licenses to be assigned hereunder.

3.22 Reports and Compliance. All material returns, reports and statements at the Station required to be filed with the FCC or any other government agency after the date of this Agreement, and all material returns, reports and statements that the Station has been required to file with the FCC or any governmental agency through the date of this Agreement, have been or will be timely filed, and all reporting requirements of the FCC and other governmental authorities having jurisdiction thereof have been or will be complied with by Seller in all material respects. All such reports, returns and statements to be filed prior to the date hereof and to be filed after the date hereof will be and were complete and correct in all material respects as filed. The operation of the Station by Seller and all of the Station Assets are in material compliance with all applicable laws, including FCC laws, and there are no existing claims known to Seller to the contrary.

3.23 Undisclosed Liabilities. Seller has no obligation or liability to be reflected or reserved against in any of the Financial Statements which is not fully reflected or reserved against in such Financial Statements or otherwise disclosed hereunder, and there is no asserted or unasserted claim or contingent liability whether or not required to be reflected or reserved against in the Financial Statements, which in reasonable likelihood could after Closing result in any form of transferee liability against Buyer or subject the Station Assets to any lien, encumbrance, claim, charge, security interest or imposition whatsoever or otherwise affect the full, free and unencumbered use of the Station Assets by Buyer in any material respect. Seller has no direct or indirect equity interests in any corporation, partnership, limited liability company, joint venture, business association or other entity.

3.24 Sufficiency of Station Assets. The Station Assets comprise all of the assets used or useful in the ownership and operation of the Station.

3.25 Tower Power. The Tower has received all authorizations for and is capable of and is currently transmitting at a power not less than 90,000 watts.

3.26 Complete Disclosure. This Agreement does not (i) contain any untrue statement of a material fact in respect to Seller or the affairs, prospects, operations or condition of Seller, the Station or the Station Assets or (ii) omit any statement of a material fact necessary to make the statements in respect of Seller, the Station or the Station Assets, and the affairs, prospects, operations or condition of Seller, the Station or the Station Assets contained herein not misleading. Except as disclosed herein, there is no fact known to Seller which materially or adversely affects the affairs, profits, operations or conditions of Seller, the Station or the Station Assets.

ARTICLE IV
COVENANTS OF SELLER

4.1 Affirmative Covenants. From the date hereof until the Closing Date, Seller shall:

(a) Afford Buyer and its representatives the opportunity at all reasonable times, following reasonable notice, to inspect the operation of the Station, to meet with the Station management personnel, to be notified of any change in methods or policies by or pursuant to which the Station is operated and to list and itemize its equipment and personal property and determine the condition and status of title of the assets of Seller and the Station Assets (the "Diligence Review"). Without limiting the foregoing, Buyer shall have the right to conduct phase I and phase II environmental site assessments on the Tower and the land on which it is located (the "Tower Site"). Buyer agrees (i) to conduct the Diligence Review at its sole cost and expense; (ii) to indemnify Seller for any damages caused by Buyer to the Station Assets as a result of the Diligence Review, unless caused by the willful or grossly negligent act or omission of Seller; and (iii) conduct the Diligence Review so as to limit, to the extent possible, disruption to the business of the Station;

(b) keep its books and records pertaining to the Station and all Contracts relating to the Station at the Station's office; and, at all reasonable times, following reasonable notice, permit Buyers' representatives to inspect such records and documents;

(c) comply with all of its material contractual undertakings, perform all of its material duties and obligations under all Contracts, and to make available to Buyer, by assignment at Closing, the rights of Seller under such Contracts as Buyer shall wish to assume hereunder, it being understood, however, that Buyer shall not be obligated to assume any contractual obligations of Seller other than Seller's obligations under the Contracts which Buyer has agreed herein to assume hereunder (Seller has listed in Schedule 3.5 all consents necessary to Buyer's use and enjoyment of the Contracts being assumed by Buyer hereunder);

(d) maintain in full force and effect and in good standing the FCC Licenses and comply in all material respects with all requirements of the FCC and any other agencies having jurisdiction over Seller or the Station or Station Assets;

(e) maintain insurance coverage in force with respect to the Station at least equivalent to that currently in effect;

(f) fully maintain and keep in good condition or repair every part of all tangible property included in the Station Assets;

(g) fully and actively cooperate with Buyer in proceedings instituted to obtain the approval of the FCC to this transaction;

(h) otherwise generally conduct its business in the ordinary course consistent with past practices;

(i) use its best efforts to ensure that the conditions set forth in Article VI hereof are satisfied;

(j) immediately give notice to Buyer upon first learning that Seller is in default of any of its representations, warranties, agreements or covenants contained in this Agreement; and

(k) deliver to Buyer unaudited interim financial statements for the Station promptly after the close of each of Seller's standard fiscal accounting periods that occurs between the Financial Statement Date and the Closing Date, and deliver to Buyer promptly when available weekly gross order reports for the Station.

4.2 Negative Covenants. From the date hereof until the Closing Date, Seller shall not, without obtaining the prior written consent of Buyer, do or agree to do any of the following:

(a) sell, assign, lease or otherwise transfer or dispose of any property or equipment included in the Station Assets outside of the ordinary course of business and consistent with past practice;

(b) acquire any additional equipment or property having an aggregate cost in excess of \$5,000 or acquire any additional program rights or enter into any Contract(s) having an aggregate cost in excess of \$5,000;

(c) enter into any Contracts other than in the ordinary course of business and consistent with past practice, or make any amendment or changes to existing Contracts other than in the ordinary course consistent with past practice;

(d) increase or agree to increase the compensation, bonuses or other benefits for any employee of the Station, except in accordance with existing employment contracts or in accordance with past practices or policies;

(e) solicit, initiate, or encourage the submission of any proposal or offer from any person or entity relating to the acquisition of any capital stock or other voting securities, or any substantial portion of the assets, of Seller including any acquisition structured as a merger, consolidation, share acquisition or share exchange or participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in or facilitate in any other manner any effort or attempt by any person to do or seek any of the foregoing. Seller shall notify Buyer immediately if any person or entity makes any proposal, offer, inquiry or contact with respect to any of the foregoing;

(f) make any dividend distribution or other distribution with respect to the stock or other securities of Seller, or otherwise transfer or distribute any of the Station Assets to any person or entity for less than full and adequate consideration; and

(g) take any action, or permit or allow any of its employees to take any action, that would be reasonably likely to have a material adverse effect on the Station or any of the Station Assets.

ARTICLE V
BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller that the statements contained in this Article V are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date was substituted for the date of this Agreement throughout this Article V) and acknowledges and confirms that Seller is relying upon such representations and warranties in connection with the sale by the Seller hereunder.

5.1 **Organization and Standing.** Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Oklahoma with full power and authority (i) to carry on its business and own and lease its assets as and where such businesses are now being conducted and such assets are now owned and leased and (ii) to execute, perform and carry out its obligations under this Agreement and the other agreements to be executed by Buyer in connection herewith according to its and their terms.

5.2 **Authorization; Binding Obligation.** The execution and delivery of this Agreement and the other agreements to be executed by Buyer in connection herewith, and the acceptance by Buyer of the sale, conveyance, transfer and assignment of the Station Assets as herein provided, have been duly authorized and approved by Buyer as required by Buyer's governing documents, applicable law or otherwise subject only to FCC approval. This Agreement and the other Agreements to be executed by Buyer in connection herewith are the valid and binding obligations of Buyer enforceable against Buyer in accordance with its and their terms.

5.3 **Brokers' Fees.** Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

5.4 **Absence of Conflicting Agreements and Required Consents.** Except for the FCC Licenses, the Buyer's execution, delivery and performance of this Agreement and the other agreements to be executed by Buyer in connection herewith: (i) do not require the consent of any third party (including the consent of any governmental, regulatory, administrative or similar authority); (ii) will not conflict with, result in breach of, or constitute a violation of or default under, the provisions of Buyer's governing documents or any applicable law, judgment, order, injunction,

decree, rule, regulation or ruling to which Buyer is a party; and (iii) will not either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any contract, agreement, instrument, license or permit to which Buyer is now subject.

5.5 Judgments and Litigation. No judgment has been entered and no claim, litigation, proceeding, investigation or dispute is pending or, to Buyer's knowledge, threatened against Buyer which materially adversely affects its power or right to purchase the Station Assets.

ARTICLE VI CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

The obligation of Buyer to consummate the transactions contemplated hereby shall be subject to the following conditions precedent:

6.1 Representations and Warranties. All of Seller's representations and warranties set forth herein or in any exhibit, schedule or document executed in connection herewith shall, at the time of Closing, be true and accurate as if made on and as of the Closing Date.

6.2 Performance. Seller shall have performed and complied in all material respects with all agreements, obligations, covenants, representations and warranties required by this Agreement to be performed or complied with on or prior to the Closing Date.

6.3 FCC Licenses.

(a) Seller shall hold regular licenses and authorizations from the FCC authorizing it to operate the Station on the same frequency as under, and at no less power and with no shorter terms than those provided in, the FCC Licenses and there will not otherwise have been any material adverse change, actual or threatened, in the terms of such licenses or the operations authorized thereunder.

(b) Seller shall be operating the Station substantially in accordance with the terms of the FCC Licenses then in effect.

(c) The FCC shall not have instituted any proceeding or otherwise taken any action which could result in a material adverse change with respect to the Station's ability to be operated in the manner in which it has historically been operated.

6.4 Consents and Approvals. Each person or entity, the consent or approval of which is required to permit the sale, conveyance, transfer and assignment of the Station Assets or any material part thereof, shall have duly consented to or approved such sale, conveyance, transfer and assignment; provided, however, that it shall not be a condition precedent to Buyer's obligation that

Buyer obtain the consent of its members, managers, or lenders to consummate the transactions contemplated by this Agreement.

6.5 Assignment of FCC Licenses. The FCC shall have authorized the assignment of the FCC Licenses to Buyer, such authorization shall not be subject to any conditions that are materially adverse to Buyer and such authorization shall have become a Final Order, unless Buyer shall elect to close earlier following issuance of FCC authorization.

6.6 No Adverse Change. No material adverse change in the condition or status of the Station or Station Assets shall have occurred or be threatened to occur.

6.7 Third Party Consents. Seller shall have obtained and shall have delivered to Buyer all third-party consents that may be required for assignment of the Contracts to be assumed by Buyer and listed on Schedule 3.5, without any condition materially adverse to Buyer.

6.8 Painting Tower. Seller shall, at Seller's expense, have painted the Tower in accordance with all applicable laws and regulations.

ARTICLE VII CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

The obligation of Seller to consummate the transactions contemplated hereby shall be subject to the following conditions precedent:

7.1 Representations and Warranties. All of Buyer's representations and warranties set forth herein or in any exhibit, schedule or document executed in connection herewith shall, at the time of Closing, be true and accurate in all respects as if made on and as of the Closing Date.

7.2 Performance. Buyer shall have performed and complied in all material respects with all agreements, obligations, covenants, representations and warranties required by this Agreement to be performed or complied with on or prior to the Closing Date.

7.3 Assignment of FCC Licenses. The FCC shall have authorized the assignment of the FCC Licenses to Buyer, such authorization shall not be subject to any conditions that are materially adverse to Seller and such authorization shall have become a Final Order.

ARTICLE VIII
OTHER COVENANTS

The parties agree as follows

8.1 **General.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties will take such further action (including the execution and delivery of such further instruments and documents) as the other party may reasonably request, all at the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefor under Article XII below).

8.2 **Litigation Support.** In the event and for so long as any party hereto is actively contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand (including any tax audit) in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to the Closing Date involving the Station or the Station Assets, each of the other parties hereto will cooperate with it and its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefor under Article XII below).

8.3 **Transition.** Seller will not take any action that is intended or has the effect of discouraging any lessor, licensor, customer or listener, supplier, or other business associate of Seller from maintaining the same relationships with the Station after the Closing as it maintained with the Station prior to the Closing. Seller will refer all inquiries relating to the business of the Station to Buyer from and after the Closing.

8.4 **Confidentiality.**

(a) Seller will treat and hold as such all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to Buyer or destroy, at the request and option of Buyer, all tangible embodiments (and all copies) of the Confidential Information which are in its possession. In the event that Seller is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, Seller will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 8.4(a). If, in the absence of a protective order or the receipt of a waiver hereunder, Seller is, on the written advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, Seller may disclose the Confidential Information to the tribunal; provided, however, that Seller shall use reasonable efforts to obtain, at the reasonable

request of Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Buyer shall designate.

(b) Any Confidential Information furnished to or obtained by Buyer from Seller in connection with the Diligence Review pursuant to Section 4.1(a) hereof shall be considered "Evaluation Material". The Evaluation Material shall not include public information or Confidential Information obtained by Buyer or its affiliates or representatives from a third party who is lawfully in possession of such information and who has the legal right to transmit such information. In the event that the transactions contemplated by this Agreement are not consummated, Buyer (i) agrees to return to Seller all written Evaluation Material and copies thereof furnished to it; (ii) agrees to destroy all documents, notes and other work product derived from the Evaluation Material; and (iii) agrees to promptly confirm in writing to Seller the fact of such destruction. Except as otherwise required by law, Buyer agrees to keep the Evaluation Material confidential, not to use the Evaluation Material for any purpose other than to the extent contemplated hereby, or permit any such Evaluation Material to be made available to third parties other than its designated representatives or agents Buyer will direct to maintain the Evaluation Material confidential. The obligations of Buyer under the provisions of this Section 8.4(b) shall survive for a period of two (2) years after the date of any termination of this Agreement. If, however, the transactions contemplated by this Agreement are consummated, Buyer's obligations under this Section 8.4(b) shall terminate as of the Closing Date.

8.5 Application for FCC Consent. Within ten (10) business days after the date of this Agreement, Buyer and Seller shall file with the FCC a substantially complete application (the "FCC Application") seeking the FCC's consent to the assignment of the FCC Licenses to Buyer and Buyer's assumption thereof. Seller and Buyer shall diligently and promptly take all actions necessary, or desirable and proper, to prosecute the FCC Application expeditiously. The failure by any party hereto to diligently prosecute its portion of the FCC Application shall be deemed a material breach and default of this Agreement by such party. Seller shall timely publish and/or broadcast the notices required by the rules and regulations of the FCC pertaining to the FCC Application. Seller and Buyer shall cooperate with each other in the preparation and prosecution of the FCC Application. Seller and Buyer shall provide to each other copies of any and all petitions and pleadings filed by any third party, and copies of any and all correspondence and orders received from the FCC, with respect to the FCC Application. In the event that the FCC imposes any condition upon Buyer or Seller with respect to the FCC Application, the party subject to such condition shall use its best efforts to comply therewith, provided, however, that the party subject to such condition shall not be required to take any action which would have a material adverse effect on such party or any affiliate of such party. Buyer will pay all FCC fees attributable to assignment of the FCC Licenses as contemplated hereunder.

8.6 Control of the Station. Buyer shall not, directly or indirectly, control, supervise or conduct the operations of the Station prior to the Closing. Such operations, including complete control and supervision of all Station programs, employees and policies, shall be the sole responsibility of the Seller.

ARTICLE IX
DOCUMENTS TO BE DELIVERED AT CLOSING

9.1 **Seller's Documents.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following, which shall be duly and completely executed as and where appropriate:

(a) A certificate, dated as of the Closing Date, executed by Seller certifying that:

(i) the representations and warranties of Seller contained in the Agreement are true and complete in all respects on and as of the Closing Date as if made on and as of that date; and

(ii) Seller has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(b) Certified resolutions of the Board of Directors of Seller setting forth resolutions of the directors of Seller authorizing the execution and delivery of this Agreement and the other agreements to be executed in connection herewith by Seller and the performance by Seller of the transactions contemplated herein and therein.

(c) Governmental certificates showing that Seller is a limited liability company in good standing under the laws of the State of Colorado.

(d) Executed instruments of assignment, conveyance and transfer, in form and substance reasonably satisfactory to Buyer, effecting the sale, transfer, assignment and conveyance of the Station Assets to Buyer, including: (i) assignments of the FCC Licenses; (ii) bills of sale for all personal property; (iii) assignments of the Contracts to be assigned hereunder, including all third party consents required by Buyer; and (iv) assignments of all intangible personal property including all books, records, logs and similar assets.

(e) An executed Assumption Agreement in the form of Exhibit 9.1(e) effectuating the assignment and assumption of the Contracts so identified in Schedule 3.5.

(f) At the time and place of Closing, originals and all copies of all program, operations, transmission or maintenance logs and all other records required to be maintained by the FCC with respect to the Station, including the public files of the Station, which shall be left at the Station and thereby delivered to Buyer.

(g) A written opinion of Seller's counsel in the form of Exhibit 9.1(g), dated as of the Closing Date.

(h) Such additional information, materials, agreements, documents and instruments as Buyer and its counsel may reasonably request in order to consummate the Closing.

9.2 Buyer's Documents. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following, which shall be duly and completely executed as and where appropriate:

(a) A certificate, dated as of the Closing Date, executed by Buyer certifying that

(i) the representations and warranties of Buyer contained in the Agreement are true and complete in all respects on and as of the Closing Date as if made on and as of that date; and

(ii) Buyer has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(b) Certified resolutions of the Manager of Buyer setting forth resolutions of the Managers of Buyer authorizing the execution and delivery of this Agreement and the other agreements to be executed in connection herewith by Buyer and the performance by Buyer of the transactions contemplated herein and therein.

(c) Governmental certificates showing that Buyer is a limited liability company in good standing under the laws of the State of Oklahoma.

(d) An executed Assumption Agreement in the form of Exhibit 9.1(e) effecting the assignment and assumption of the Contracts so identified in Schedule 3.5.

(e) The Purchase Price in accordance with Section 2.4 hereof.

(f) The written opinion of Buyer's counsel in the form of Exhibit 9.2(f), dated as of the Closing Date.

(g) Such additional information, materials, agreement, documents and instruments as Seller and its counsel may reasonably request in order to consummate the Closing.

ARTICLE X TERMINATION RIGHTS

10.1 This Agreement may be terminated at any time prior to the Closing by mutual written consent of the parties hereto.

10.2 This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other upon the occurrence of any of the following:

(a) if, on or prior to the Closing Date, the other party breaches in any material respect any of its representations or warranties hereunder or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained herein;

(b) if the FCC denies the FCC Application or designates the FCC Application for a trial-type hearing;

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

(d) if the Closing has not occurred nine (9) months from the date of filing of the FCC Application.

10.3 This Agreement may be terminated by Buyer at any time on or before the 45th day after the execution of this Agreement if Buyer is not satisfied, in its sole discretion, with the Diligence Review conducted by it pursuant to Section 4.1(a). Buyer shall be deemed to have waived the right to terminate this Agreement under this Section 10.3 if it fails to give a notice of termination to Seller on or before the 45th day after the execution of this Agreement.

10.4 This Agreement may be terminated by Buyer any time between the date of this Agreement and the Closing if the Station fails to broadcast at full power and antennae heights on its main transmitter for more than three (3) days during any thirty (30) day period, or if the Station is off the air for more than twenty-four (24) consecutive hours, in either case regardless of the causes thereof.

This Agreement may be terminated by Buyer pursuant to Section 13.2.

ARTICLE XI REMEDIES

11.1 Default by Seller. Seller recognizes that, in the event Seller defaults in the performance of its obligations under this Agreement, monetary damages alone will not be adequate. Buyer shall therefore be entitled in such event, in addition to bringing suit at law or equity for money or other damages, to obtain specific performance of the terms of this Agreement. In any action to enforce the provisions of this Agreement, Seller shall waive the defense that there is an adequate remedy at law or equity and agrees that Buyer shall have the right to obtain specific performance of the terms of this Agreement without being required to prove actual damages, post bond or furnish

other security. In addition, Buyer shall be entitled to obtain from Seller court costs and reasonable attorneys fees incurred by it in enforcing its rights hereunder or in seeking monetary damages. As a condition to seeking specific performance, Buyer shall not be required to have tendered the consideration specified in this Agreement, but shall be ready, willing and able to do so.

11.2 Default by Buyer. If the Closing does not occur solely because of Buyer's material breach of this Agreement and Seller is not also in breach of this Agreement, then Seller shall be entitled to payment of the Earnest Money Deposit as liquidated damages in full settlement of any damages of any nature or kind that Seller may suffer or allege to suffer as the result thereof. It is understood and agreed that the amount of such damages represents Buyer's and Seller's reasonable estimate of actual damages and does not constitute a penalty. Recovery of such liquidated damages under this Section 11.2 shall be the sole and exclusive remedy of Seller against Buyer for failing to consummate this Agreement and shall be applicable regardless of the actual amount of damages sustained.

ARTICLE XII INDEMNIFICATION

12.1 Indemnification by Seller. Seller shall indemnify and hold harmless Buyer and its successors, assigns, agents, employees, managers, members, attorneys and representatives, past and present (all of such released parties being hereinafter collectively referred to as the "Buyer Released Parties") in respect of, and pay to the Buyer Released Parties the amount of, any and all damages (including incidental and consequential damages), losses, liabilities, claims, costs, expenses (including costs of investigation and defense and reasonable attorneys' fees) and diminution in value, whether or not involving a third-party claim (collectively "Damages") arising directly or indirectly, from or in connection with:

- (a) any inaccuracy in or breach of any representation or warranty made by Seller herein;
 - (b) any breach or nonperformance (partial or total) of any covenant or agreement of Seller contained herein;
 - (c) any and all liabilities of Seller, except for the liabilities specifically assumed by Buyer hereunder;
 - (d) any failure of Seller to comply with any "bulk sales" or similar laws;
 - (e) any claims made by the Station's employees (i) by reason of termination of employment pursuant to this Agreement, or (ii) in respect of any employee benefit plans of Seller;
- or

(f) any other fact, circumstance, event, condition or occurrence in existence on or prior to the Closing Date, relating directly or indirectly to Seller, the Station or the Station Assets, even though such Damages may be suffered after the Closing Date.

12.2 **Indemnification by Buyer.** Buyer shall indemnify and hold harmless Seller and its successors, assigns, agents, employees, officers, directors, shareholders, attorneys and representatives, past and present (all of such released parties being hereinafter collectively referred to as the "**Seller Released Parties**") in respect of any Damages arising directly or indirectly, from or in connection with:

(a) any inaccuracy in or breach of any representation or warranty made by Buyer herein;

(b) any breach or nonperformance (partial or total) of any covenant or agreement of Buyer contained herein; or

(c) any liability or obligation arising out of Buyer's use of the Station Assets after the Closing and not (i) retained by Seller pursuant to this Agreement or (ii) resulting from a breach of any representation, warranty or covenant made herein by Seller.

12.3 **Notice of Claims.** If any party or person entitled to be indemnified (the "**Indemnified Party**") believes that it has suffered or incurred or will suffer or incur any Damages for which it is entitled to indemnification under this Article XII, such Indemnified Party shall so notify the party or parties from whom indemnification is being claimed (the "**Indemnifying Party**") with reasonable promptness and reasonable particularity in light of the circumstances then existing. The failure of an Indemnified Party to give any notice required by this Section 12.3 shall not affect any of such Indemnified Party's rights under this Article XII or otherwise, except to the extent the Indemnifying Party is materially prejudiced by such failure to give prompt notice.

12.4 **Third Party Claims.** The Indemnifying Party shall have the right to conduct and control, through counsel reasonably acceptable to the Indemnified Party, the defense of any third party claim, action or suit, and the Indemnifying Party may compromise or settle the same, provided that the Indemnifying Party shall give the Indemnified Party prior written notice of any proposed compromise or settlement. The Indemnifying Party shall permit the Indemnified Party to participate in the defense of any such action, suit or proceeding through counsel chosen by the Indemnified Party, provided that the fees and expenses of such counsel shall be borne by the Indemnified Party. If the Indemnifying Party undertakes to conduct and control the conduct and settlement of such action or suit, the Indemnifying Party shall not (i) permit to exist any security interest, lien or encumbrance upon any assets of the Indemnified Party or Buyer related to such Claims; (ii) consent to any settlement that does not include as an additional term thereof the giving of a complete release from liability with respect to such action or suit to the Indemnified Party and Buyer; or (iii) consent to any settlement for other than money damages without the prior written consent of the Indemnified Party. To the extent the Indemnifying Party elects not to defend any such proceeding, action or suit

(and the Indemnifying Party hereby agrees to give prompt written notice of such decision to the Indemnified Party) and the Indemnified Party defends against such proceeding, action or suit or otherwise deals with such proceeding, the Indemnified Party may retain counsel and control, defend against, negotiate, settle or otherwise deal with such proceeding, action or suit. The costs of the Indemnified Party in so dealing with such proceeding, action or suit shall be included in the indemnification obligations of the Indemnifying Party.

12.5 **Limitations of Indemnification.** Notwithstanding the foregoing provisions of this Article XII:

(a) **Survival Period.** No claim for indemnification shall be brought after the second anniversary of the Closing Date, except for indemnification claims arising out of (i) breaches of the representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4 and 3.20 above, or (ii) breaches of any other representations and warranties relating to the reporting, payment or liability for taxes or relating to labor and employment matters or environmental matters, which shall extend until the expiration of the applicable statute or period of limitations (the "**Survival Period**"); provided, however, that any claim for indemnification under Section 3.20 based on the physical condition of any Station Asset may not be brought after the second anniversary of the Closing Date. Anything to the contrary notwithstanding, the Survival Period shall be extended automatically to include any time period necessary to resolve a claim for indemnification that was made before the expiration of the Survival Period but not resolved prior to its expiration, and any such extension shall apply only as to claims asserted and not so resolved within the Survival Period. Liabilities for any such items shall continue until such claims shall have been finally settled, decided or adjudicated.

(b) **Exception.** The provisions of this Section 12.5 shall not apply to any indemnification arising out of, related to or in connection with (i) the breach of any representation or warranty contained herein or pursuant hereto if such representation or warranty was made with actual knowledge that it contained an untrue statement of a fact or omitted to state a fact necessary to make the statement of fact contained therein not misleading; or (ii) fraud or willful misconduct.

(c) **Amount Limit.** Notwithstanding anything to the contrary in this Article XII (i) in no event shall the liability for indemnification of any party pursuant to this Article XII exceed in the aggregate \$825,000 and (ii) no party shall be entitled to make a claim for indemnification under this Article XII hereof unless and until the aggregate Damages suffered or incurred by that party exceed \$5,000; provided, however, that such \$5,000 "basket" shall not apply to claims for indemnification based upon or arising out of any breach or nonperformance (partial or total) of any covenant or agreement of Seller or Buyer hereunder. Furthermore, with respect to such \$5,000 "basket", if the aggregate amount of Damages suffered by any party exceeds \$5,000, then such party shall be entitled to indemnification to the full extent of its Damages.

12.6 **Other Indemnification Provisions.** The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory, equitable (including the right to specific

performance) or common law remedy any party may have for breach of a representation, warranty or covenant.

ARTICLE XIII
MISCELLANEOUS

13.1 **Opportunity to Cure.** If, as of the time the Closing otherwise would have occurred, there is any mortgage, claim, lien, charge, security interest or other encumbrance on any of the Station Assets, then Seller shall immediately give written notice thereof to Buyer, and Seller shall have a period of fifteen (15) days within which to cure the defect(s) in title, whereupon the Closing shall occur five (5) business days thereafter. If said defect(s) is or are not cured within the 15-day period, then, at the option and written notice from Buyer this Agreement shall terminate or, at Buyer's election, Closing shall occur and Buyer shall satisfy the encumbrance or charge by deducting the amount thereof from the Purchase Price.

13.2 **Risk of Loss.** Seller shall bear the risk of loss as to all tangible property included in the Station Assets until the Closing Date. In the event that material damage or loss to any such property exists on the Closing Date, Buyer, at its option, may (i) terminate this Agreement; (ii) proceed to close, accept responsibility for repair and accept an assignment of all insurance proceeds applicable to such loss; or (iii) defer the Closing to a date set forth in a writing delivered to Seller which date shall be no more than sixty (60) days after the previously scheduled Closing Date by which date such loss shall be restored or repaired to substantially the same condition that existed previous to the damage.

13.3 **Expenses.** Whether or not the transactions provided for herein are consummated, each party's expenses incurred in connection with the preparation and performance of this Agreement and the transactions contemplated hereby shall be paid for by that party.

13.4 **Amendment.** This Agreement may be amended only by a writing signed by all parties hereto.

13.5 **Notices.** All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) if served personally, on the day of such service; (ii) if mailed by certified or registered mail (return receipt requested), on the second business day after mailing; (iii) if transmitted by recognized overnight carrier, on the next business day after tender to the carrier; and (iv) if transmitted by telefacsimile, when received (with confirmation of receipt of the transmission). Such communications shall be sent to the following addresses:

Seller: Bauer Properties, LLC
404 Oak Drive
P.O. Box 1156
Lamar, Colorado 81052
Attn: Larry Bauer
Telefacsimile: _____

With a copy to: John S. Lefferdink
P.O. Box 110
Lamar, Colorado 81052
Telefacsimile: (719) 336-7621

Buyer: Beacon Broadcasting, LLC
1028 South Portland Avenue
Oklahoma City, Oklahoma 73108
Attn: Gary D. Smith
Telefacsimile: (405) _____

With a copy to: James D. Kallstrom
1600 Bank of Oklahoma Plaza
201 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Telefacsimile: (405) 235-7329

Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

13.6 **Entire Agreement.** This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they related in any way to the subject matter hereof including that certain letter agreement, dated as of September 9, 2002. This Agreement is not intended to have any legal effect whatsoever, or to be a legally binding agreement or any evidence thereof, until it has been signed by all parties hereto.

13.7 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall be but a single instrument.

13.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Oklahoma (without regard to its choice of law provisions), except as they may be preempted by federal statute or the rules and regulations of the FCC.

13.9 **Severability.** Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any applicable statute, law, ordinance, order or regulation, such statute, law, ordinance, order or regulation shall prevail; provided, however, that in such an event the provision of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provision of this Agreement shall be affected hereby and all such other provisions shall continue in full force and effect.

13.10 **Press Releases and Public Announcements.** Each party hereto agrees that it will not issue a press release or make any other disclosure of this Agreement without the prior written consent of the other party. However, Buyer may issue press releases after closing.

13.11 **No Waiver.** The failure of any party to insist upon strict performance of any obligation hereunder shall not constitute a waiver of such party's right to demand strict compliance therewith in the future.

13.12 **No Third Party Beneficiary.** Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.13 **No Right of Reverter.** Upon closing of the instant transaction, Seller will have no rights of reversion or license reassignment, and no reservation of time on the Station for any period whatsoever.

13.14 **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party hereto; provided, however, that Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its affiliates and (ii) designate one or more of its affiliates to perform its obligations hereunder (in any or all of which cases the Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

13.15 **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder. Whenever the words "include," "includes," or "including," are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein", and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter gender thereof or to the plurals of each, as the identity

of the person or persons or the context may require. The descriptive headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision contained herein. The parties intend that each representation, warranty and covenant contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant.

13.16 **Submission to Jurisdiction.** In the event any party hereto institutes any legal action in connection with any matter contained herein, that legal action shall be instituted only in the District Court of Oklahoma County, Oklahoma, if in state court, and if in federal court, then in the United States District Court for the Western District of Oklahoma, sitting in Oklahoma City, Oklahoma. Each party hereto irrevocably waives any objection which it may have at any time to the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any such court and, further, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Each party hereto irrevocably waives the right to object, with respect to any suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party.

13.17 **Employees.**

(a) The parties agree that Buyer shall have the right to elect which of Seller's employees it will hire as of the Closing Date. Buyer will notify Seller in writing no less than five (5) days prior to Closing of those employees it does intend to hire. Seller shall terminate all other employees prior to the Closing. Seller shall be responsible for payment of all compensation (including accrued vacation, commissions and sick pay) payable to all employees of the Station up through the day preceding the Closing Date. Seller shall pay all non-qualified, out-of-pocket pension liabilities and other employee liabilities to employees or former employees of the Station related to any period prior to the Closing Date whether or not hired by Buyer and shall provide COBRA coverage for such employees. Seller will retain all of the Station's employee benefit plans and pension plans, and Buyer will not assume any obligations under such plans related to any period of time. Seller shall be fully and solely responsible for any costs, expenses, obligations and liabilities, vested or non-vested, arising out of the pension or retirement obligations attributable to the Station's current or former employees related to the period prior to the Closing Date.

(b) To the extent severance is required, Seller will be responsible for all employee severance obligations with respect to employees who are not hired by Buyer on the Closing Date.

(c) Seller will be responsible for all medical insurance costs relating to COBRA coverage for those employees who are not hired by Buyer on the Closing Date, and Buyer will be

responsible for all medical insurance costs relating to COBRA coverage for those employees hired by Buyer and whose employment at the Station terminates at any time after the Closing Date.

13.18 Attorney's Fees. Notwithstanding Section 11.2, in any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the other party to such action such party's reasonable attorneys' fees and accountants' fees, court costs and other expenses incident to such litigation.

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

"SELLER"

BAUER PROPERTIES, LLC

By: _____
Larry Bauer, Manager

By: _____
Christeen Bauer, Manager

"BUYER"

BEACON BROADCASTING, LLC

By: Robert H. DeLancey
Robert H. DeLancey, Manager

By: Lisa DeLancey
Lisa DeLancey, Manager

responsible for all medical insurance costs relating to COBRA coverage for those employees hired by Buyer and whose employment at the Station terminates at any time after the Closing Date.

13.18 Attorney's Fees. Notwithstanding Section 11.2, in any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the other party to such action such party's reasonable attorneys' fees and accountants' fees, court costs and other expenses incident to such litigation.

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

"SELLER"

BAUER PROPERTIES, LLC

By: Larry Bauer
Larry Bauer, Manager

By: Christeen Bauer
Christeen Bauer, Manager

"BUYER"

BEACON BROADCASTING, LLC

By: _____
Robert H. DeLancey, Manager

By: _____
Lisa DeLancey, Manager

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