

# **ASSET PURCHASE AGREEMENT**

**by and between**

**CHARLOTTE-MECKLENBURG PUBLIC BROADCASTING  
AUTHORITY**

**and**

**CENTRAL PIEDMONT COMMUNITY COLLEGE**

**April \_4\_, 2012**

## Table of Contents

Recitals .....	1
SECTION 1 SALE AND PURCHASE OF ASSETS .....	1
1.1 Agreement to Sell and Buy .....	1
1.2 Excluded Assets.....	3
1.3 Assumption of Liabilities and Obligations .....	3
1.4 Retained Liabilities .....	3
SECTION 2 PURCHASE PRICE .....	4
2.1 Purchase Price.....	4
SECTION 3 REPRESENTATIONS AND WARRANTIES OF SELLER .....	4
3.1 Organization, Standing and Authority .....	4
3.2 Authorization and Binding Obligation .....	4
3.3 Absence of Conflicting Agreements and Required Consents .....	5
3.4 FCC Licenses and Authorizations; Compliance with Law.....	5
3.5 Compliance with Laws .....	5
3.6 Personal Property .....	6
3.7 Assumed Contracts .....	6
3.8 Intellectual Property .....	6
3.9 Transferred Assets .....	7
3.10 Claims; Legal Actions .....	7
3.11 Taxes.....	7
3.12 Disclosure .....	7
SECTION 4 REPRESENTATIONS AND WARRANTIES OF BUYER .....	8
4.1 Existence and Power.....	8
4.2 Authorization and Binding Obligation .....	8
4.3 Absence of Conflicting Agreements.....	8
4.4 Eligibility of Buyer .....	8
4.5 Litigation .....	9
4.6 Disclosure .....	9
SECTION 5 COVENANTS OF SELLER AND BUYER.....	9
5.1 Pre-Closing Covenants of Seller.....	9
5.2 Pre-Closing Covenants of Buyer .....	11
5.3 Post-Closing Covenants.....	11
5.4 Mutual Post-Closing Covenants .....	12
5.5 Third-Party Consents .....	12
SECTION 6 SPECIAL COVENANTS AND AGREEMENTS .....	12
6.1 FCC Consent.....	12
6.2 Expenses; Taxes .....	13
6.3 Risk of Loss .....	13
6.4 No Brokers.....	14
SECTION 7 CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER.....	14
7.1 Conditions of Obligations of Buyer to Close.....	14
7.2 Conditions of Obligations of Seller to Close .....	15
SECTION 8 CLOSING AND CLOSING DELIVERIES .....	16
8.1 Closing .....	16
8.2 Deliveries by Seller.....	16
8.3 Deliveries by Buyer .....	17
SECTION 9 TERMINATION .....	18

9.1	Termination Rights .....	18
9.2	Rights Upon Termination .....	19
9.3	Specific Performance .....	19
SECTION 10 INDEMNIFICATION .....		19
10.1	Buyer's Right to Indemnification .....	19
10.2	Seller's Right to Indemnification.....	19
10.3	Survival of Representations and Warranties.....	20
SECTION 11 DISPUTE RESOLUTION .....		20
11.1	Disputes.....	20
11.2	Failure to Resolve a Dispute .....	20
SECTION 12 MISCELLANEOUS .....		20
12.1	Governing Law .....	20
12.2	Construction.....	20
12.3	Entire Agreement .....	21
12.4	Assignment .....	21
12.5	Notice.....	21
12.6	Waiver.....	22
12.7	No Third Party Beneficiary.....	22
12.8	Severability .....	22
12.9	Counterparts; Execution.....	22
12.10	Publicity .....	22
12.11	Time is of the Essence .....	23

## **ASSET PURCHASE AGREEMENT**

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of April 4, 2012 (the “Effective Date”), is entered into between **CHARLOTE-MECKLENBURG PUBLIC BROADCASTING AUTHORITY** (“Seller”) d/b/a **WTVI** (“WTVI”) and **CENTRAL PIEDMONT COMMUNITY COLLEGE** (“Buyer”).

### **Recitals**

A. Seller holds certain licenses and other authorizations issued by the Federal Communications Commission (“FCC”) for the operation of, or used in connection with, (i) WTVI, a noncommercial educational television station licensed to Charlotte, North Carolina, and auxiliary transmitting and receiving facilities and a translator station licensed to Hickory, North Carolina (collectively, the “WTVI Licenses”), (ii) Educational Broadband Station WHR535 (the “WHR535 License”), and (iii) satellite receive-only earth Station WE24 (the “WE24 Registration” and together with WTVI and WHR535, the “Stations”).

B. Since August of 1965, WTVI has provided television programming for viewers in the Charlotte region. The primary mission of WTVI is to provide education, culture, and citizenship information through programs broadcast to residents of the Charlotte region (the “WTVI Mission”). WTVI operates primarily from and out of the land, building, broadcast towers, and other facilities located at 3242 Commonwealth Avenue, Charlotte, NC and the transmitting tower located at 12541 Caldwell Road, Charlotte, NC (collectively, the “WTVI Facilities”).

C. Since WTVI’s inception, Mecklenburg County, North Carolina (“County”) has provided both operational and capital funding, with such operating funding being provided in the form of an annual “grant” to Seller. Due to recent cuts in County funding and other financial constraints, the fiscal stability and continued operation of WTVI by Seller is in jeopardy.

D. As a result of the foregoing, Seller desires to sell and assign to Buyer, and Buyer wishes to buy and take assignment of, certain assets of Seller, including but not limited to the FCC Licenses, as set forth herein on the terms and subject to the conditions hereinafter set forth, subject to the prior approval of the FCC (the “Asset Acquisition”).

In consideration of the foregoing and the mutual covenants contained herein, Buyer and Seller agree as follows:

### **SECTION 1** **SALE AND PURCHASE OF ASSETS**

#### **1.1 Agreement to Sell and Buy.**

Seller shall sell, convey, assign, and deliver to Buyer, and Buyer shall purchase, acquire, assume and accept, at the Closing the assets owned by Seller and described in this Section 1.1

(collectively, the “Transferred Assets”), free and clear of all encumbrances, liens, security interest or charges, except for the liens set forth on Schedule 1.3 attached hereto. The Transferred Assets will include, but not be limited to, the following:

- (a) all licenses and authorizations issued by the FCC for the operation of the Stations, including but not limited to the WTVI License, the WHR535 License, and the WE24 Registration (the “FCC Licenses”), all of which are listed in Schedule 3.4 hereto;
- (b) the tangible personal property owned by Seller (the “Personal Property”), all material elements whereof are listed on Schedule 3.6 hereto, including any additions thereto or replacements thereof made between the date of this Agreement and the Closing, and less any retirement or dispositions thereof made between the date of this Agreement and the Closing in the ordinary course of business and consistent with the past practices of Seller;
- (c) the contracts, agreements, and leases listed on Schedule 3.7 hereto (including Seller’s lease with Clearwire for WHR535’s excess EBS capacity and all subleases pertaining to the WTVI Facilities), together with all contracts, leases and agreements entered into by Seller between the date of this Agreement and the Closing in the ordinary course of business, consistent with the past practices of Seller and in accordance with this Agreement and which Buyer specifically agrees in writing to assume at the Closing (collectively, the “Assumed Contracts”);
- (d) the files and records of Seller relating to the operations of the Stations or the Transferred Assets, all applications and filings with the FCC that are in Seller’s possession or reasonably accessible by Seller, technical information and engineering data, all files and records required to be maintained in accordance with the rules and policies of the FCC (“FCC Rules”), and all written Assumed Contracts;
- (e) the trademarks, copyrights, and other intellectual property owned by Seller, all the federally registered or actively used ones of which are listed on Schedule 3.8 hereto (collectively, the “Intellectual Property”);
- (f) all of Seller’s inventories, productions, films, programming, and works in process;
- (g) all accounts receivable, notes receivable, or other obligations receivable of Seller, including but not limited to any and all membership dues owed to Seller and any and all fees owed to Seller under cable franchise agreements, all pre-paid expenses, deposits, funds, tax refunds and insurance proceeds of Seller;
- (h) all bank accounts and other deposit accounts, including but not limited to amounts on deposit with the Foundation for the Carolina, endowments,

and grants owned by Seller or of which Seller is a beneficiary, including but not limited to Seller's annual Community Service Grant and any and all other grants from the Corporation for Public Broadcasting;

- (i) all of Seller's sales, advertising, promotional and marketing materials and information;
- (j) all other studies, reports and other printed materials used in connection with the operations of the Stations;
- (k) all program and production underwriting funds and/or income;
- (l) all bequests and other testamentary gifts made to Seller and/or the Stations; and
- (m) all of Seller's goodwill.

## 1.2 **Excluded Assets.**

Notwithstanding the foregoing or any other provisions of this Agreement, the Transferred Assets to be conveyed to Buyer hereunder shall exclude the following (all of which shall be referred to herein collectively as the "Excluded Assets"):

- (a) all pension, health insurance, and other employee benefit plans maintained by Seller for the benefit of the Seller's employees;
- (b) any liabilities of Seller related to or arising from its employment policies, including but not limited to its policies for unpaid vacation days, paid time off, or sick leave, as well as any severance payments owed by Seller;
- (c) Any items of personal property not listed on Schedule 3.7; and
- (d) All obligations and liabilities of Seller not specifically assumed under this Agreement;

## 1.3 **Assumption of Liabilities and Obligations.**

(a) On the terms and subject to the conditions set forth in this Agreement, Seller shall transfer to Buyer and Buyer shall assume (i) all obligations and liabilities arising out of Buyer's ownership of the Transferred Assets from and after the Closing Date, (ii) all obligations and liabilities of Seller under the Assumed Contracts arising from and after the Closing Date, (iii) all obligations and liabilities of Seller under the FCC Licenses and all other Transferred Licenses transferred to Buyer arising from and after the Closing Date, (iv) the obligation to pay the cost and expense of Seller's final audit to Cherry, Bekaert & Holland, L.L.P. not to exceed \$25,000.00, and (v) the obligation to pay any and all Unrelated Business Income Tax of Seller not to exceed \$15,000 that is due and payable from and after the Closing Date. All of the foregoing liabilities and obligations assumed by Buyer under this Agreement shall be referred to herein collectively as the "Assumed Liabilities."

(b) Buyer shall assume as an additional Assumed Liability the liens in favor of the Corporation for Public Broadcasting resulting from Digital Distribution Fund funding of transmitter equipment included in the Personal Property, in accordance with the liens attached hereto as Schedule 1.3.

(c) The projected revenue and expenses for the continued operation of the Stations from March 1, 2012 through June 30, 2012 are shown on Schedule 1.3(c) attached hereto (the "Cash Flow Projection"). The Cash Flow Projection estimates that Seller will incur a net operating loss of approximately \$80,000.00 during the time period from March 1, 2012 through June 30, 2012 (the "Expected Operating Loss"). Seller and Buyer acknowledge and agree that the Cash Flow Projection does not include the following expenses: (1) the Assumed Liabilities set forth in Section 1.3(a)(iv) and (v) above and (2) other potential expenses of Seller related to the Asset Acquisition, including but not limited to severance payments to employees of Seller, insurance premiums for post-Closing liability coverage, and fees paid to the National Educational Telecommunications Association (NETA) (the "Additional Expenses"). When the Additional Expenses are added to the Expected Operating Loss, Seller estimates that the sum will not exceed \$175,000.00 (the "Seller Shortfall"). Seller and Buyer therefore acknowledge and agree that Buyer's obligation to close on the Asset Acquisition is contingent upon the actual Seller Shortfall not exceeding \$175,000.00.

#### **1.4 Retained Liabilities.**

Notwithstanding anything to the contrary in this Agreement, Buyer does not assume or agree to pay, satisfy, discharge or perform any liabilities, obligations or commitments of Seller of any nature whatsoever other than the Assumed Liabilities. All other obligations and liabilities shall remain and be the obligations and liabilities solely of Seller, including but not limited to, and notwithstanding anything in Section 1.3 to the contrary, (i) any and all liabilities and obligations of Seller relating to any current or former employees of Seller, (ii) any and all liabilities and obligations of Seller relating or arising in connection with any Excluded Asset, and (iii) those expenses and taxes that are the obligation of Seller as provided in Section 6.6(b). All such liabilities, obligations and commitments of Seller described in this Section 1.4 shall be referred to herein collectively as the "Retained Liabilities."

## **SECTION 2** **PURCHASE PRICE**

### **2.1 Purchase Price.**

The consideration for the assignment and transfer of the Transferred Assets shall be One Dollar (\$1.00) to be paid in cash at Closing and the assumption by Buyer of the Assumed Liabilities.

## **SECTION 3** **REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Buyer to enter into this Agreement, Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and

shall survive the Closing for the period set forth herein:

**3.1 Organization, Standing and Authority.**

Seller is a joint governmental authority duly organized, validly existing and in good standing under the laws of the State of North Carolina. Seller has all requisite power and authority (i) to own, lease and use its assets as presently owned, leased and used, (ii) to conduct the business and operations of Seller as presently conducted, (iii) to execute and deliver this Agreement, and (iv) to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

**3.2 Authorization and Binding Obligation.**

The execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all necessary action of Seller's Board of Directors. This Agreement has been, or at the Closing will be, duly executed and delivered by Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

**3.3 Absence of Conflicting Agreements and Required Consents.**

Subject to obtaining the FCC Consent (as defined in Section 6.1) and other third party consents that may be required to assign any of the Assumed Contracts and Real Property leases to Buyer, all of which third party consents are set forth on Schedule 3.3 (the "Required Consents"), the execution, delivery and performance by Seller of this Agreement (i) does not require the consent of any third party, (ii) will not conflict with any provision of the organizing documents of Seller, (iii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit by which Seller or any Transferred Asset may be bound, (iv) will not conflict with, constitute grounds for termination of, result in a breach of or constitute a default under any agreement, instrument, license or permit to which Seller is a party or by which Seller or any Transferred Asset may be bound, and (v) will not create any claim, liability, mortgage, lien, pledge, condition, charge or encumbrance of any nature whatsoever upon any Transferred Asset.

**3.4 FCC Licenses and Authorizations: Compliance with Law.**

Schedule 3.4 is a true and complete list of all the FCC Licenses to be transferred to Buyer hereunder upon the FCC's grant of consent to the assignment of those FCC Licenses to Buyer. Seller is the authorized lawful holder of each such FCC License, each of which is in full force and effect for the remainder of its term as set forth on Schedule 3.4. The FCC Licenses comprise all of the licenses, permits, approvals, and authorizations necessary under the Communications Act of 1934, as amended, and the FCC Rules for the operation of the Stations as presently operated and conducted. None of the FCC Licenses is subject to any restriction or condition, other than those set forth on the FCC License. Except as set forth on Schedule 3.5, the Stations are operating in compliance in all material respects with all terms and conditions of the FCC Licenses and FCC Rules. Except as set forth on Schedule 3.5, (a) there are no applications, investigations,



complaints, objections, petitions or proceedings pending or, to Seller's knowledge, threatened before the FCC relating to the Stations, except for proceedings of general applicability to television broadcast stations and EBS stations, (b) all reports, forms, applications and statements required to be filed by Seller with the FCC or required by the FCC to be maintained by Seller with respect to the Stations since the dates Seller has operated the Stations have been filed in a timely manner and are substantially complete and accurate, (c) the conduct of the business and operations of the Stations are in compliance in all respects with the FCC's radiation standards applicable to the Stations and (d) the conduct of the business and operations of the Stations and the Transferred Assets are in compliance in all material respects with all applicable engineering standards required to be met under applicable FCC Rules.

### **3.5 Compliance with Laws.**

There are no governmental licenses, permits, approvals, franchises, or authorizations, other than FCC Licenses, issued by any governmental entity to be transferred to Buyer hereunder. The FCC Licenses comprise all of the licenses, permits, approvals, franchises and authorizations necessary for the conduct of the business and operations of Seller, including the operation of the Station, as presently operated and conducted. Except as set forth on Schedule 3.5, there are (a) no applications, investigations, complaints, petitions, or proceedings pending or, to Seller's knowledge, threatened by any governmental or regulatory authority other than the FCC relating to the business or operations of Seller, including operation of the Stations, (b) all reports, forms, applications and statements required to be filed by Seller with applicable governmental or regulatory authorities, other than the FCC, have been filed and are substantially complete and accurate, and (c) the conduct of the business and operations of the Stations and the Transferred Assets are in compliance in all material respects with all applicable federal, state and local laws, rules, regulations, requirements and policies other than the Communications Act and the FCC Rules.

### **3.6 Personal Property.**

Schedule 3.6 is a true and complete list of all Personal Property owned or leased by Seller that will be included in the transaction. Seller has good title to all such items of Personal Property. Except as noted on Schedule 3.6, none of the Personal Property is subject to any security interest, mortgage, pledge, lease or licensing agreement, conditional sales agreement, or other lien or encumbrance. The Personal Property is, and on the Closing Date will be, available for immediate use by Buyer in the conduct of the business and operations of the Stations in all material respects as they are now being operated and conducted, has been maintained by Seller in good operating condition and repair (ordinary wear and tear excepted), and will permit the Stations to be operated by Buyer in all material respects as it is now being operated and conducted. All material items of transmitting and studio/office equipment included in the Personal Property have been maintained in a manner consistent with generally accepted standards of good engineering practice, and will permit Buyer to conduct the business and operations of the Stations in compliance with the terms of the FCC Licenses and the rules and regulations of the FCC in all material respects.

### **3.7 Assumed Contracts.**

Schedule 3.7 lists and describes all of the Assumed Contracts, which include service agreements, warranties on the Personal Property, the Clearwire EBS excess capacity lease,

subleases related to the WTVI Facilities, and other scheduled Assumed Contracts. All Assumed Contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms. There is not any material default by any party thereto or event which, after notice or lapse of time, or both, would constitute such a default such that any party would have the right to terminate any Assumed Contract. Seller is not aware of any intention by any party to any Assumed Contract (i) to terminate such contract or amend the terms thereof; (ii) to refuse to renew the same upon expiration of its term, or (iii) to renew the same upon expiration only on terms and conditions that are more onerous than those pertaining to such existing contract, where any of the foregoing would be materially adverse to Buyer. Except for any Required Consents, each of which is listed on Schedule 3.3, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of the Assumed Contracts.

### **3.8 Intellectual Property.**

Seller owns or has the right to use all Intellectual Property necessary or prudent for the operation of the Stations as presently conducted, all of the federally registered or actively used ones of which are listed on Schedule 3.8. Each item of Intellectual Property owned, licensed or used by Seller immediately prior to the Closing will be owned, licensed or available for use by Buyer on identical terms and conditions immediately following the Closing. Seller has taken all necessary and prudent action to maintain and protect each item of Intellectual Property that it owns, licenses or uses. Each item of Intellectual Property owned, licensed or used by Seller is valid and enforceable and otherwise fully complies with all laws applicable to the enforceability thereof. Seller does not use any software that was either created or distributed pursuant to any open source license. Seller has not violated or infringed upon or otherwise come into conflict with any intellectual property of third parties, and Seller has not received any notice alleging any such violation, infringement or other conflict. To the knowledge of Seller, no third party has infringed upon or otherwise come into conflict with any Intellectual Property of Seller.

### **3.9 Transferred Assets.**

The Transferred Assets will permit the Stations to be operated by Buyer following the Closing in all material respects as it is currently being operated and conducted.

### **3.10 Claims: Legal Actions.**

Except as set forth on Schedule 3.10 and except for proceedings of a general nature that may affect the television broadcast or EBS industries, there is no claim, legal action, arbitration, governmental investigation, application or rule making proceeding, in progress, pending, or, to Seller's knowledge, threatened, against or relating to Seller, the Transferred Assets, or the conduct of the business or operations of Seller, or which would have a material adverse affect on Seller's ability to perform its obligations in accordance with the terms of this Agreement, and Seller has no knowledge of any facts that would result in any such proceeding.

### **3.11 Taxes.**

Seller is not subject to taxation other than with respect to employment and sales and use taxes and Unrelated Business Income Taxes. It has timely filed all required tax returns in the

manner prescribed by law, and all such tax returns are true, correct and complete in all material respects. Seller has properly accrued or paid to the extent such taxes have become due all taxes due from Seller. Seller has properly withheld all taxes as required. There are no liens for taxes upon the Transferred Assets. There is no dispute or claim concerning any tax liability relating to Seller either claimed or raised by any taxing authority. There are no pending tax audits or proposed tax audits of which Seller has notice.

### **3.12 Disclosure.**

No representation or warranty made by Seller herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Seller pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

## **SECTION 4 REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Seller to enter into this Agreement, Buyer makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall be true as of the date of the Closing:

### **4.1 Existence and Power.**

Buyer is a community college duly organized, validly existing and in good standing under the laws of the State of North Carolina. Buyer has all requisite power and authority to enter into and perform this Agreement and the transactions contemplated hereby and to carry on its business as now conducted and as intended to be conducted after the Closing, including its ownership of the Transferred Assets and operation of the Stations.

### **4.2 Authorization and Binding Obligation.**

The execution, delivery, and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action. This Agreement has been, or at the Closing will be, duly executed and delivered by Buyer. This Agreement constitutes, and on the Closing Date will constitute, the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity.

### **4.3 Absence of Conflicting Agreements.**

Subject to obtaining the FCC Consent and any required third party consents to the assignment by Seller to Buyer of the Assumed Contracts and the Real Property leases, the execution, delivery, and performance by Buyer of this Agreement (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment,

order, rule or regulation of any court or governmental unit to which Buyer is a party or by which Buyer is bound; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Transferred Assets and be the licensee of the Stations.

#### **4.4 Eligibility of Buyer.**

Buyer is legally, financially, and technically qualified to be the assignee of the FCC Licenses and the owner and operator of the Station under the Communications Act of 1934, as amended, and the FCC Rules, including, but not limited to, eligibility to hold a noncommercial educational license under Section 73.621 of those rules.

#### **4.5 Litigation**

There is no outstanding judgment, award, decree, writ or litigation, action, suit, investigation or other proceeding pending or, to Buyer's knowledge, threatened, which would have a material adverse effect on Buyer's ability to perform its obligations in accordance with the terms of this Agreement and Buyer has no knowledge of any facts that would result in any such proceeding.

#### **4.6 Disclosure.**

No representation or warranty made by Buyer herein or in any Schedule hereto or any certificate or other document delivered or to be delivered by or on behalf of Buyer pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make any such statement contained herein or therein not misleading.

### **SECTION 5** **COVENANTS OF SELLER AND BUYER**

#### **5.1 Pre-Closing Covenants of Seller.**

Except as expressly authorized by this Agreement or with the prior written consent of Buyer which consent shall not be unreasonably withhold, between the date hereof and the Closing, Seller shall:

- (a) operate the Stations and conduct its other activities, including but not limited to its fundraising and other revenue generating programs, in the ordinary course of business, consistent with and in accordance with its past practices and consistent with its representations and warranties set forth in this Agreement;
- (b) operate the Stations in compliance in all material respects with the FCC Licenses and the FCC Rules, including but not limited to the timely filing of all reports, notices, applications, and the maintenance of records as may

be required under those Rules;

- (c) operate the Stations in compliance in all material respects with all other laws, regulations, rules and orders applicable to the Stations and the Transferred Assets;
- (d) not sell, convey, mortgage, encumber or otherwise dispose of any of the Transferred Assets except for the retirement of items of Personal Property in the ordinary course of business as permitted under Section 1.1(c) hereof, provided that such items are replaced by items of like kind or quality;
- (e) maintain, repair and replace the Personal Property consistent with its existing practices and operations, and maintain self-insurance on the Transferred Assets consistent with the past practices of Seller;
- (f) permit Buyer and its representatives and agents to have reasonable access to the Station and the Transferred Assets, provided that such access does not disrupt the normal operations of Seller;
- (g) promptly notify Buyer in the event there is any material damage to the Transferred Assets or interruption to the normal broadcast operations of the Stations in excess of eighteen continuous hours at any one time or thirty-six hours over seven consecutive days;
- (h) promptly notify Buyer in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Seller or of Buyer is no longer accurate in all material respects, or that any covenant of Seller or of Buyer has been breached;
- (i) not enter into any new agreements that would be binding on Buyer after the Closing without the written consent of Buyer, to be granted or withheld in Buyer's sole discretion;
- (j) not terminate or materially amend or modify, or assign any rights relating to any Assumed Contract;
- (k) not create or assume any liens, encumbrances, or security interests affecting any of the Transferred Assets;
- (l) use its commercially reasonable efforts to obtain any third party consents necessary for the assignment of any Assumed Contract;
- (m) cooperate with Buyer in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Buyer in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent;

- (n) promptly provide Buyer with (1) any and all information that Buyer may reasonably request concerning or related to the Transferred Assets and the WTVI Facilities, (2) all data relating to the existing employees of Seller, including but not limited to information regarding compensation, benefit plans, unpaid vacation and sick days, if any, and (3) all relevant financial data related to the Stations that Buyer and its advisors may reasonably request, including but not limited to audited financial statements, year-to-date financial reports, bank statements, and account balances.
- (o) make available to Buyer and its advisors the certified public accountants Seller utilizes at the accounting firm Cherry, Bekaert & Holland, L.L.P. to answer any questions and/or provide any additional information that Buyer and its advisors may reasonably request.

## **5.2 Pre-Closing Covenants of Buyer.**

Except as expressly authorized by this Agreement or with the prior written consent of Seller, which consent shall not be unreasonably withheld, between the date hereof and the Closing, Buyer shall:

- (a) take no action that would reasonably be expected to impair its qualifications to be the licensee of the Stations, materially delay obtaining the FCC Consent, result in its disqualification under the rules of the FCC to be the licensee of the Stations, or that would require it to obtain a waiver of the FCC Rules in order to obtain the FCC Consent;
- (b) promptly notify Seller in writing if it determines, or has reasonable grounds to believe, that any representation or warranty of Buyer or of Seller is no longer accurate in all material respects, or that any covenant of Buyer or of Seller has been breached;
- (c) use its commercially reasonable efforts to cooperate with Seller to obtain any third party consents necessary for the assignment of any Assumed Contract; and
- (d) cooperate with Seller in timely filing such applications and other material as may be required to obtain FCC Consent to the assignment of the FCC Licenses to Buyer, including, but not limited to, providing the FCC with such information as it may reasonably request, assisting Seller in providing such information, where appropriate, and generally using commercially reasonable efforts to obtain the prompt and timely FCC Consent.

## **5.3 Post-Closing Covenants of Buyer**



Except as expressly authorized by this Agreement or with the prior written consent of Seller, which consent shall not be unreasonably withheld, after Closing, Buyer shall:

- (a) endeavor to, in a financially feasible manner and provided it finds the same to be in the public's best interest, continue the operations of WTVI as a member of the Public Broadcast Service (PBS) in accordance with the WTVI Mission and the grant requirements set forth by the Corporation for Public Broadcasting;
- (b) endeavor to, in a financially feasible manner and provided it finds the same to be in the public's best interest, expand and enhance Buyer's instructional programs related to broadcasting and the operation of WTVI;
- (c) endeavor to, in a financially feasible manner and provided it finds the same to be in the public's best interest, provide regional and/or locally focused programming to the nine (9) county WTVI market;
- (d) hire WTVI's current President (the "WTVI President") to be employed as WTVI's General Manager for the fiscal year ending June 30, 2013 at the same level of compensation currently paid to said WTVI President by Seller; and
- (e) consider hiring other appropriate employees of Seller in order to support the continuing and ongoing operation of the Stations, provided that Buyer's budget for operating the Stations permits the same and said employees are acceptable to Buyer, and transition any such employees to Buyer.

#### **5.4 Mutual Post-Closing Covenants**

After the Closing, Seller and Buyer will take such actions, and execute and deliver to Buyer or Seller, respectively, such further bills of sale, assignments or other transfer or assumption documents as may be necessary to ensure the full and effective transfer of title to the Transferred Assets to Buyer or the assumption of the Assumed Liabilities by Buyer pursuant to this Agreement. Additionally, Seller will dissolve Seller's entity and Buyer will create a community advisory board for the Stations and solicit for membership on such advisory board members of Seller's Board of Directors.

#### **5.5 Third-Party Consents.**

Subject to Section 7.1(e), provided that Buyer has cooperated with Seller to obtain any required third-party consents, if any required third-party consent is not obtained by the Closing with respect to the transfer to Buyer of any contract or agreement intended to be included in the Transferred Assets, (i) title to such contracts and agreements shall be retained by Seller and not transferred to Buyer at the Closing; and (ii) Seller will cooperate with Buyer in any reasonable arrangement designed to provide to Buyer as of the Closing the rights and benefits under such contracts and agreements and for Buyer to assume the obligations thereunder, recognizing, however that Seller's entity will be dissolved after the Closing.

**SECTION 6**  
**SPECIAL COVENANTS AND AGREEMENTS**

**6.1 FCC Consent.**

The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent"). Buyer and Seller have filed with the FCC appropriate applications for the FCC Consent (the "Assignment Applications"), provided, however, that the parties shall consent to an amendment of the WTVI Assignment Application to include a fully executed copy of this Agreement. The parties shall prosecute the Assignment Applications, and the amendment thereto with all reasonable diligence and use commercially reasonable efforts to obtain the grant of the Assignment Applications expeditiously. The transfer of the Transferred Assets hereunder is expressly conditioned upon the grant of the FCC Consent without the imposition of any condition that is materially adverse to Buyer or Seller, and compliance by the parties with any conditions imposed by the FCC Consent.

**6.2 Expenses; Taxes.**

- (a) Except as provided for in this Section 6.2, each party shall be solely responsible for all expenses incurred by it in the negotiation and closing of this Agreement. Buyer shall pay all personal property sales and transfer taxes incurred in connection with the transactions contemplated hereby.
- (b) Notwithstanding anything in this Agreement to the contrary, Seller shall pay any and all taxes attributable to the conduct of the business and operations of Seller for all taxable years (or portions thereof) ending on or before the Closing Date and Buyer shall pay any and all taxes attributable to the conduct of the business and operations of Buyer for all taxable years (or portions thereof) after the Closing Date.

**6.3 Risk of Loss.**

- (a) The risk of any loss, damage or impairment, confiscation, or condemnation (a "Loss") of any of the Transferred Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing. In the event of any such Loss, the proceeds of any claim for Loss payable under any insurance policy, judgment or award with respect thereto shall be applied to repair, replace or restore such Transferred Assets to their prior condition as soon as possible after such Loss. Except as otherwise provided in Section 10, the risk of any Loss of any of the Transferred Assets from any cause whatsoever shall be borne by Buyer at all times after the Closing.
- (b) In the event of any damage or destruction of the Transferred Assets which prevents signal transmission by the Stations in the normal and usual manner and Seller cannot or does not restore or replace the Transferred Assets before the Closing so that the Stations are operating in accordance with good engineering standards, using equipment and facilities comparable to those in place at the date this Agreement is executed, Buyer



may, at its option and in its sole discretion, either (i) proceed to close this Agreement and complete the restoration and replacement of such damaged Transferred Assets after the Closing, in which event Seller's only obligation to Buyer shall be to deliver to Buyer all insurance proceeds received which are related to the Transferred Assets and arising from the event causing such damage or destruction; (ii) terminate this Agreement in writing, provided, that if Buyer elects to terminate this Agreement pursuant to this clause (b)(ii), it must give Seller written notice of such termination within thirty (30) days of its receipt of notice of damage or destruction of the Transferred Assets that provides Buyer with a reasonable basis to assess the extent of the damage and the prospects for repair and restoration. In the event Buyer elects to terminate this Agreement pursuant to this paragraph, neither party shall have any further liability to the other with respect to this Agreement, or (iii) postpone the Closing up to 60 days in order to permit Seller to effect the needed restoration and replacement.

#### 6.4 **No Brokers.**

Seller and Buyer each represents that it has not engaged any third party to act as a finder, broker, agent, consultant, or in a similar capacity in connection with this Agreement and the transactions contemplated hereby. Seller and Buyer each agrees to indemnify and hold harmless the other with respect to any claim for a finder's, consultant's, broker's, or similar commission or fee made by any third party on the basis of its conduct.

### **SECTION 7**

#### **CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER**

##### 7.1 **Conditions of Obligations of Buyer to Close.**

All obligations of Buyer at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Buyer in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Seller shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Seller shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Licenses.** Seller shall be the holder of the FCC Licenses and there shall not have been any modification of any such license that has a material adverse effect on the Station or the business or operations of the Station.
- (d) **FCC Consent.** The FCC Consent has been obtained and has become final

(as that term is defined in Section 8.1).

- (e) **Third Party Consents.** All Assumed Contracts (as defined in Section 1.1(c) and identified on Schedule 3.7) shall be in full force and effect on the Closing Date. Seller shall have obtained and shall have delivered to Buyer any Required Consents to the assignment of the Assumed Contracts.
- (f) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, Seller or Buyer that: (i) renders it unlawful, as of the Closing Date, to close the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the closing of the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Seller, an assignment by Seller for the benefit of its creditors, or other similar proceeding.
- (g) **Deliveries.** Seller shall have made or stand willing and able to make all the deliveries to Buyer set forth in Section 8.2.
- (h) **County Funding.** The County shall have agreed to fund the expenses and operating costs of the Asset Acquisition as set forth on Schedule 7.1(h).
- (i) **Joint Undertaking Agreement.** The County and Charlotte-Mecklenburg Board of Education (the "CMS Board") shall have agreed to transfer or assign title to all equipment and/or personal property used by WTVI to which the County and/or the CMS Board have ownership or residual rights in accordance with the terms of the Joint Undertaking Agreement, as amended.
- (j) **Funding Reallocation.** The County shall have agreed to provide the \$5,000,000 in approved funding to renovate/upfit the Citizens Center on Buyer's campus as a broadcast facility, but allow such funding to be used to renovate/upfit the Citizens Center as Buyer's IT and Data Center.
- (k) **Lease of WTVI Facilities.** The County shall have either (i) approved the assignment and assumption of all Assumed Contracts to which it is party, including but not limited to the lease of the WTVI Facilities or (ii) agreed to enter into a new lease with Buyer for the WTVI Facilities on terms similar to Seller's existing lease.
- (l) **Financial Condition of Seller.** Buyer shall not discover, while reviewing the documents and other information provided by Seller

pursuant to Section 5.1 or otherwise, any material financial issues and/or liabilities with respect to the Transferred Assets that would prevent Buyer from operating the Stations in a financially feasible manner, as determined by Buyer in its reasonable discretion.

- (m) **Seller Shortfall.** The actual Seller Shortfall shall not exceed \$175,000.00.

## 7.2 **Conditions of Obligations of Seller to Close.**

All obligations of Seller at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions, any of which may be waived by Seller in writing at or prior to the Closing:

- (a) **Representations and Warranties.** The representations and warranties of Buyer shall be true and complete in all material respects at and as of the Closing Date as though such representations and warranties were made at and as of such date.
- (b) **Covenants and Conditions.** Buyer shall have in all material respects performed and complied with the covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (c) **Adverse Proceedings.** No action, suit, claim or governmental proceeding shall be pending against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto that: (i) renders it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (ii) declares invalid or illegal the transactions contemplated hereby; (iii) enjoins the transactions contemplated hereby; (iv) awards material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Buyer, an assignment by Buyer for the benefit of its creditors, or other similar proceeding.
- (d) **Deliveries.** Buyer shall have made or stand willing and able to make all the deliveries set forth in Section 8.3.

## SECTION 8 **CLOSING AND CLOSING DELIVERIES**

### 8.1 **Closing.**

Upon the terms and subject to the conditions set forth in this Agreement, this Agreement shall be consummated by Buyer and Seller (the "Closing") to occur at 10:00 am Eastern Time at the offices of Buyer, unless another mutually agreeable location is chosen, on the first (1<sup>st</sup>) business day following the date upon which the FCC Consent is final (the "Closing Date"). As

used in this Agreement, the FCC Consent shall have become final when that action, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay. Closing shall be effective as of 12:01 a.m. Eastern Time on the Closing Date, unless the parties agree on a different time.

Buyer and Seller will endeavor to close the transaction contemplated herein on or before August 1, 2012. In the event that Closing has not occurred by August 1, 2012, Seller will make application on or before that date for the renewal of the WTVI License.

## 8.2 **Deliveries by Seller.**

Prior to or at the Closing, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

- (a) **Transfer Documents.** Duly executed bills of sale, assignments, and other transfer documents which shall be sufficient to vest good and marketable title to the Transferred Assets in the name of Buyer free and clear of any claims, liabilities, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, except for (i) liabilities and obligations assumed pursuant to Section 1.3(a), (ii) any taxes not yet due and payable, none of which individually or collectively impair the use and operations of the Station as presently operated, and (iii) the assumption of liens pursuant to Section 3;
- (b) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized official of Seller, certifying (i) that the representations and warranties of Seller are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Seller has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Seller possesses all necessary governmental authority to execute this Agreement and the closing documents contemplated herein;
- (c) **Board Resolutions.** Certified resolutions of Seller's Board of Directors approving the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;
- (d) **Opinion of Counsel.** An opinion or opinions of counsel for Seller with respect to such matters in a form mutually agreed to by Seller and Buyer, if requested by Buyer;
- (f) **Third-Party Consents.** All third-party consents to the assignment of the Material Contracts; and
- (g) **Other Documents.** All other documents, instruments, and writings required to be delivered by Seller at or prior to the Closing pursuant to this

Agreement.

8.3 **Deliveries by Buyer.**

Prior to or at the Closing, Buyer shall deliver to Seller the following, in form and substance reasonably satisfactory to Seller and its counsel:

- (a) **Purchase Price.** The Purchase Price in accordance with Section 2.1.
- (b) **Assumption Agreements.** Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Assumed Contracts and an agreement by which Buyer shall take assignment of the FCC Licenses and any other governmental licenses and authorizations held by Seller;
- (c) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by a duly authorized officer of Buyer, certifying (i) that the representations and warranties of Buyer are true and complete in all material respects as of the Closing Date as though made on and as of that date, (ii) that Buyer has, in all material respects, performed its obligations and complied with its covenants set forth in this Agreement to be performed and complied with by it prior to or on the Closing Date, and (iii) that Buyer possesses all necessary corporate authority to execute this Agreement and the closing documents contemplated herein;
- (d) **Governing Entity Resolutions.** Certified resolutions of Buyer approving the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated herein and therein, and the delivery of the closing documents provided for hereunder;
- (e) **Other Documents.** All other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

**SECTION 9**  
**TERMINATION**

9.1 **Termination Rights.**

This Agreement may be terminated by written notice to the other party upon the occurrence of any of the following events or conditions, provided that the terminating party is not then in breach of any material provision of this Agreement:

- (a) by either Seller or Buyer, if there shall be in effect on the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing of this Agreement;
- (b) by either Seller or Buyer, if the Assignment Application shall be set for hearing by the FCC for any reason;

- (c) by either Seller or Buyer, if the FCC Consent has not been issued within nine (9) months following the date the Assignment Application has been accepted for filing by the FCC;
- (d) by Buyer, pursuant to Section 6.5 (Risk of Loss);
- (e) by Buyer, if Seller is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Buyer of the substance of Seller's material breach;
- (f) by Seller, if Buyer is in material breach of its obligations and fails to cure such material breach within thirty (30) days of receipt of written notice from Seller of the substance of Buyer's material breach; or
- (g) by either Seller or Buyer upon five (5) business days' prior written notice, if the other party defaults in its obligation to complete the Closing and the default is not cured within that period.

## **9.2 Rights Upon Termination.**

Upon termination, if neither party hereto is in breach of any material provision of this Agreement, the parties hereto shall not have any further liability.

## **9.3 Specific Performance.**

Notwithstanding the provisions of Sections 9.1 and 9.2, if Seller is in material default or breach of any material provision of this Agreement, Buyer shall have the right, in its absolute and sole discretion, to obtain specific performance of this Agreement. The parties hereby stipulate that the Transferred Assets and FCC Licenses are distinct and unique assets that cannot be replicated and that damages would be an inadequate remedy in the event of Seller's breach. Accordingly, Buyer shall be entitled, as a matter of right, upon notice to Seller, to seek specific performance of this Agreement, subject to such equitable adjustments as the Court may impose.

# **SECTION 10 INDEMNIFICATION**

## **10.1 Buyer's Right to Indemnification.**

Seller shall indemnify and hold harmless Buyer and its officers, directors, members, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all losses, costs, liabilities, claims, obligations, and expenses, including reasonable attorneys' fees and expenses (together, "Claims"), incurred or suffered by any party arising from:

- (a) the operation of the Stations or ownership of the Transferred Assets at or prior to the Closing;
- (b) any breach, misrepresentation, or other violation of or failure to perform



any of Seller's covenants, agreements, warranties, or representations contained in this Agreement;

- (c) all obligations and liabilities of Seller arising under the FCC Licenses, any other Transferred License or any of the Assumed Contracts prior to the Closing; and
- (d) all Retained Liabilities, including but not limited to all accounts payable for the operation of the Stations between the date hereof and the Closing, and any contracts, agreements, leases and understandings that are not Assumed Contracts.

#### **10.2 Seller's Right to Indemnification.**

Buyer shall indemnify and hold harmless Seller and its directors, officers, employees, agents, successors, and permitted assigns from and against and in respect of, and to reimburse them for, any and all Claims incurred or suffered by such parties arising from:

- (a) the operation of the Stations or ownership of the Transferred Assets by Buyer on or after the Closing,
- (b) a breach, misrepresentation, or other violation of or failure to perform any of Buyer's covenants, agreements, warranties, or representations contained in this Agreement; and
- (c) the Assumed Contracts and/or the FCC Licenses arising on or after the Closing.

#### **10.3 Survival of Representations and Warranties.**

The representations and warranties of the parties contained herein, and the parties' respective indemnification rights pursuant to this Section 10 with respect thereto shall survive the Closing for a period of one year, it being acknowledged that dissolution of the Seller may occur prior to the expiration of the one-year indemnification period pursuant to Section 5.4 herein.

### **SECTION 11** **DISPUTE RESOLUTION**

#### **11.1 Disputes.**

The parties shall attempt in good faith to resolve any dispute, controversy or claim between them arising out of or relating to this Agreement, including without limitation any dispute over the breach, termination, interpretation, or validity thereof (the "Dispute"). Either party may request through written notice that the Dispute be referred to senior executives of the parties who have authority to resolve the Dispute. The executives shall attempt to resolve the Dispute by agreement within sixty (60) days of such notice.

#### **11.2 Failure to Resolve a Dispute.**

In the event the senior executives of the parties are not able to resolve the Dispute within sixty (60) days of such notice, as provided in Section 11.1, either party may seek judicial relief without any further notice to the other, provided, however, that the action shall be brought in the courts of the State of North Carolina with venue lying in the City of Charlotte and County of Mecklenburg.

## **SECTION 12** **MISCELLANEOUS**

### **12.1 Governing Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of North Carolina, but without regard to the choice of laws provisions thereof.

### **12.2 Construction.**

The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

### **12.3 Entire Agreement.**

This Agreement, all Schedules hereto, and all documents and certificates to be delivered by the parties pursuant hereto collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All Schedules referenced in and attached to this Agreement and all documents referenced in the Agreement as previously delivered to either party shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. This Agreement supersedes all prior negotiations, agreements, and understandings between Buyer and Seller. This Agreement cannot be amended except by an agreement in writing which makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment is sought.

### **12.4 Assignment.**

Buyer and Seller shall not assign their interests or delegate their obligations under this Agreement without the prior written consent of the other party in its sole discretion, provided that Buyer may assign its rights and delegate its obligations hereunder to an entity which is controlling, controlled by, or under common control with Buyer on condition that such assignment will not delay receiving the FCC Consent or the Closing. This Agreement shall be binding upon the successors and permitted assigns of the parties hereto.

### **12.5 Notice.**

All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery, sent by commercial delivery service or registered or certified mail, return receipt requested, (iii) deemed to have been given on the date of personal delivery, or the date set forth in the records of the delivery service, or on the return receipt,, whichever shall first occur, and (iv) addressed as follows:



To Seller (prior to Closing): Charlotte-Mecklenburg Public Broadcasting Authority  
3242 Commonwealth Avenue  
Charlotte, NC 28205  
Attn: Elsie Garner

To Seller (post Closing): Charlotte-Mecklenburg Public Broadcasting Authority  
11916 Stone Creek Court  
Charlotte, NC 28227  
Attn: Lal Vishin

with a copy to (pre and post Closing):

Schwartz, Woods & Miller  
Suite 610 - The Lion Building  
1233 20th Street, N.W.  
Washington, D.C. 20036-7322  
Attn: Lawrence M. Miller, Esq.

To Buyer: Central Piedmont Community College  
P.O. Box 35009  
Charlotte, NC 28235-5009  
Attn: Dr. Kathy Drumm

with a copy to:

Johnston, Allison, & Hord, P.A.  
1065 E. Morehead Street  
Charlotte, NC 28204  
Attn: James W. Allison, Esq.

or to such other persons and addresses as the parties may from time to time designate in writing to the other party delivered in accordance with this Section 12.5.

#### 12.6 **Waiver.**

Either party may, at its election, waive in writing any or all of the conditions contained herein to which its obligations are subject. Waiver by either party hereto of any breach of or exercise of any right under this Agreement shall not be deemed a waiver of similar or other breaches or rights. The failure of a party to take any action by reason of any such breach, or to exercise any such right, shall not deprive such party of the right to take action at any time while such breach or condition giving rise to such right continues or in connection with any subsequent breach.

#### 12.7 **No Third Party Beneficiary.**

Nothing in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

12.8 **Severability.**

Whenever possible, each provision hereof shall be interpreted so as to be effective and valid under applicable law. If, however, any provision contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability, and the remainder of this Agreement shall continue in effect and the parties shall endeavor to implement this Agreement so as to achieve the goals set forth herein.

12.9 **Counterparts: Execution.**

This Agreement may be signed in counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. This Agreement shall not be deemed executed unless and until signed by both parties.

12.10 **Publicity.**

Except as may be required by applicable law, no press release or public announcements shall be made relative to this Agreement or the transactions contemplated hereby without the prior agreement of the parties hereto.

12.11 **Time is of the Essence.**

Time is of the essence with regard to all dates and time periods contained in this Agreement.

12.12 **Completion of Schedules.**

In order to timely submit this Agreement to the FCC after the Assignment Application has been filed, Seller and Buyer understand and acknowledge that all of the Schedules to this Agreement will not be complete and finalized upon execution hereof. Seller and Buyer therefore agree to cooperate and work together in good faith to complete and finalize all Schedules to this Agreement as soon as possible after the Effective Date.

*[signatures appear of the following page]*

**Intending to be legally bound**, Buyer and Seller hereby execute this Agreement as of the date first above written:

Charlotte-Mecklenburg Public  
Broadcasting Authority

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

Printed: Liz Downing

Title: Chair

Central Piedmont Community College

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

Printed: P. Anthony Zeiss

Title: President