

**PURCHASE AND SALE AGREEMENT**  
**BY AND BETWEEN**  
**MISSION BROADCASTING, INC.,**  
**BAHAKEI COMMUNICATIONS**  
**AND**  
**THE OTHER PARTIES NAMED HEREIN**

**Dated as of May 9, 2003**

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## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** is made this 9th day of May, 2003, by and among Bahakel Communications, Ltd., a North Carolina corporation ("Bahakel"), Bahakel Broadcasting Company, a North Carolina corporation ("Bahakel Broadcasting"), Terre Haute Independent Broadcasters, Inc., an Indiana corporation ("Terre Haute"), Indiana Broadcasting Partners, an Indiana partnership ("Indiana" and together with Bahakel, Bahakel Broadcasting and Terre Haute, "Seller"), Star City Development Co., Inc., a Virginia corporation ("Star City"), KXEL Broadcasting Company, Inc., an Iowa corporation ("KXEL"), and Mission Broadcasting, Inc. ("Buyer").

### **RECITALS:**

**A.** Seller owns all of the assets of commercial television broadcast station WBAK-TV, Terre Haute, Indiana (the "Station"), including certain licenses, permits and authorizations issued by the FCC.

**B.** Seller is willing to sell to Buyer and Buyer is willing to purchase from Seller substantially all of the assets, business, properties and rights of Seller related to the conduct of the Station, other than the Retained Assets, on the terms and subject to the conditions set forth herein.

**C.** Seller and Buyer are entering into a Time Brokerage Agreement ("TBA") simultaneously with the execution and delivery of this Agreement pursuant to which Buyer will provide programming to the Station and sell advertising time related to such programming, and Seller will air such programming and advertising, subject to the terms of the TBA.

**D.** Star City owns the Tower Site and the Studio Site and is a party to this Agreement for the sole purposes of (i) agreeing to transfer the Tower Site to Buyer and to allow Buyer to use the Studio Site in connection to Buyer's operation of the Station during the term of the TBA, and (ii) making the representations and warranties contained herein with respect to the Tower Site and Studio Site. Where the context of this agreement concerns the Tower Site and Studio Site, the use of the term "Seller" includes Star City.

**E.** KXEL is the lessee of the Guy Wire Lease and is a party to this Agreement for the sole purposes of agreeing to assign the Guy Wire Lease to Buyer and making the representations and warranties contained herein with respect to the Guy Wire Lease. Where the context of this agreement concerns the Guy Wire Lease, the use of the term "Seller" includes KXEL.

**F.** Bahakel Broadcasting is the owner of a 1% partnership interest in Indiana Broadcasting Partners and is party to this agreement only to the extent necessary to cause Indiana to sell the Purchased Assets owned by Indiana to Buyer.

**NOW, THEREFORE,** in consideration of the Recitals and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.** Except as specified otherwise, when used in this Agreement, the following terms shall have the meanings specified:

"Accounts Payable" shall mean all accounts payable of Seller (other than Tradeout Payables) related to the Station as of any date or time of determination as determined in accordance with generally accepted accounting principles and Section 2.4;

"Accounts Receivable" shall mean all accounts receivable of Seller (other than Tradeout Receivables) related to the Station as of any date or time of determination as determined in accordance with generally accepted accounting principles and Section 2.4;

"Adjustment Amount" shall have the meaning set forth in Section 2.4(d);

"Adjustment List" shall have the meaning set forth in Section 2.4(d);

"Adjustment Time" shall have the meaning set forth in Section 2.4(a);

"Affiliate" shall have the meaning set forth in Section 10.4;

"Affiliation Agreement" shall mean the network affiliation agreement by and between Fox, and Seller, dated as of May 31, 2002, as amended and supplemented.

"Agreement" shall mean this Purchase and Sale Agreement, together with the Schedules and the Exhibits attached hereto, as the same shall be amended from time to time in accordance with the terms hereof;

"Assumed Contract" shall mean any Contract described in clause (b) of the definition of the term "Assumed Liabilities";

"Assumed Liabilities" shall mean (a) the liabilities of Seller, if any, listed on Schedule 1.1; (b) the obligations of Seller under (i) the Contracts listed on Schedule 1.2, (ii) Contracts not required pursuant to Section 4.7 to be listed on Schedule 1.2 (other than Contracts described in clauses (iii) and (iv) of Section 4.7(a)), (iii) Contracts entered into after the date hereof and prior to the Closing Date in accordance with this Agreement, and (iv) the Leases, in each case to the extent such obligations arise from and accrue with respect to the operation of the Station after the Closing Date, and in each case except those Contracts and Leases, if any, included in the Retained Assets; (c) the liabilities, obligations and claims resulting from the operation of the Station following the Adjustment Time; and (d) liabilities under Permitted Liens; provided that, Assumed Liabilities shall not include (A) liabilities of Seller arising out of any facts, circumstances or actions that constitute a misrepresentation or breach of any warranty or covenant by Seller made in this Agreement or the TBA, (B) the Seller's obligations under this Agreement or the TBA, (C) liabilities arising out of the termination of employees of the Station prior to the Adjustment Time, (D) any indebtedness for borrowed money of the Seller, (E) all taxes of Seller that result from or have accrued in connection with the operation of the Station prior to the Closing and any income taxes incurred by the Seller during the period of operations

under the TBA, (F) any liabilities of Seller resulting from, or arising out of, relating to, in the nature of or caused by any breach of contract, breach of warranty, tort, infringement, claim or lawsuit relating to the period prior to the Adjustment Time, (G) the liabilities of Seller for the accrued vacation of its employees, (H) severance liabilities with respect to terminated employees as described in Section 10.2, (I) the Pre-TBA Payables, and (J) all liabilities related to Station Employee Benefit Plans;

"Assumption Agreement" shall mean an instrument in the form of Exhibit "A" attached hereto by which the Assumed Liabilities shall be assumed by Buyer;

"Benefit Arrangements" shall mean a benefit program or practice providing for bonuses, incentive compensation, vacation pay, severance pay, insurance, restricted stock, stock options, employee discounts, company cars, tuition reimbursement or any other perquisite or benefit (including, without limitation, any fringe benefit under Section 132 of the Code) to employees, officers or independent contractors that is not a Plan;

"Bill of Sale and Assignment" shall mean an instrument in the form of Exhibit "B" attached hereto, by which Seller shall convey to Buyer title to the Customer Lists, the Equipment, the Intangible Property, the Licenses, the Miscellaneous Assets, the Motor Vehicles, the Records and the Trade Secrets;

"Buyer's Closing Certificate" shall mean the certificate of Buyer in the form of Exhibit "C" attached hereto;

"Buyer's Performance Certificate" shall mean the certificate of Buyer in the form of Exhibit "D" attached hereto;

"Cable Act" shall mean the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), as amended;

"Cash" shall mean all moneys of Seller, whether in the form of cash, cash equivalents, marketable securities, short-term investments or deposits in bank or other financial institution accounts of any kind;

"Closing" shall mean the conference to be held at 10:00 a.m., New York, New York time on the Closing Date at such place as the parties may mutually agree to in writing, at which time the transactions contemplated by this Agreement shall be consummated;

"Closing Date" shall mean the date on which the Closing occurs which shall be (a) November 30, 2003 or such later date which is 10 days after the date on which a Final Order is issued, or (b) such other date as Buyer and Seller may agree upon in writing. The Closing shall be deemed effective as of 12:01 a.m., Terre Haute, Indiana time, on the Closing Date;

"Code" shall mean the Internal Revenue Code of 1986, as amended;

"Collection Period" shall have the meaning set forth in Section 2.9;



"Communications Act" means the Communications Act of 1934, as amended, together with the rules and published policies of the FCC;

"Contract Assignment" shall mean the Assignment and Assumption of Contracts, in the form of Exhibit "E" attached hereto, by which Seller shall assign the Assumed Contracts to Buyer and Buyer shall assume the Assumed Liabilities arising under such Contracts;

"Contracts" shall mean those agreements (other than those included in the Retained Assets and other than the Leases) under which the business of the Station is conducted by Seller, whether written, oral or implied, including all contractual obligations incurred by Seller for the Program Rights, including without limitation those agreements listed on Schedule 1.2;

"Copyrights" shall mean all rights of Seller to copyrights and copyright applications related to the Station, including without limitation those items described on Schedule 1.3;

"Credit Agreement" shall mean that certain Amended and Restated Credit Agreement, dated as of June 20, 2000 (as amended and as the same may from time to time be further amended, restated or otherwise modified), among Bahakel, the lenders party thereto, and First Union National Bank, as administrative agent for the lenders;

"Customer Lists" shall mean all lists, documents, written information and computer tapes and programs and other computer readable media used by or in Seller's possession concerning past, present and potential purchasers of advertising or services from the Station;

"Emmis Contract" shall mean the Contract with Emmis Indiana Broadcasting for news production dated April 3, 2000 identified on Schedule 1.2.

"Environmental Laws" shall mean the rules and regulations of the FCC, the Environmental Protection Agency and any other federal, state or local government authority pertaining to human exposure to RF radiation and all applicable rules and regulations of federal, state and local laws, including statutes, regulations, ordinances, codes, and rules, as amended, relating to the discharge or removal of air pollutants, water pollutants or process waste water or hazardous or toxic substances, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Occupational Safety and Health Act of 1970, each as amended, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, regulations of the Occupational Safety and Health Administration and regulations of any state department of natural resources or state environmental protection agency, now in effect;

"Equipment" shall mean all machinery, equipment, furniture, fixtures, furnishings, toolings, parts, blank films and tapes and other items of tangible personal property owned or leased by Seller which are used or useable in the operation of the Station, including without limitation to those items listed on Schedule 1.4;

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended;

"Event of Loss" shall mean any loss, taking, condemnation, damage or destruction of or to any of the Purchased Assets or the Station;

"FCC" means the Federal Communications Commission;

"FCC Consent" shall mean action or actions by the FCC granting its consent to the assignment of the Licenses from Seller to Buyer;

"Final Order" shall mean an FCC Consent with respect to which no action, request for stay, petition for rehearing or reconsideration, appeal or review by the FCC on its own motion is pending and as to which the time for filing or initiation of any such request, petition, appeal or review has expired;

"Financing Lease" shall mean any Lease that is properly characterized as a capitalized lease obligation in accordance with generally accepted accounting principles;

"Fox" shall mean the Fox Broadcasting Company.

"Guy Wire Lease" shall mean the Lease identified as the "Guy Wire Lease" on Schedule 1.5.

"Hazardous Materials" shall mean any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws. "Hazardous Materials" includes but is not limited to polychlorinated biphenyls (PCB's) asbestos, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including, without limitation, crude oil or any fraction thereof);

"Intangible Property" shall mean: (a) the Copyrights; (b) the Trademarks; (c) the Trade Secrets; (d) all of the rights of the Seller in and to the call letters "WBAK-TV" or "WBAK"; and (e) all rights of Seller in and to all slogans, phrases or logos of the Station; and (f) all goodwill associated therewith and with the Purchased Assets;

"Internet Web Sites" means all internet Domain Leases and Domain names of the Station, the unrestricted right to the use of HTML content relating to the Station located and publicly accessible from those Domain names, and the "visitor" data base for those sites

"Knowledge of Seller" or "to the Seller's Knowledge" shall mean, collectively, the actual knowledge of (i) Beverly B. Poston, Executive Vice President of Seller, (ii) J. Edwin Conrad, Senior Vice President and Chief Financial Officer of Bahakel, (iii) Russell Schwartz, Senior Vice President and General Counsel of Bahakel, (iv) Bill Napier, Vice President of Engineering of Bahakel, (v) John Newcomb, General Manager of the Station, (vi) Laura Myles, Business Manager of the Station, (vii) Paula Phillips, General Sales Manager of the Station, and (viii) Larry Grant, Jr., Chief Engineer of the Station;

"Lease Assignment" shall mean the Assignment and Assumption of Leases in the form of Exhibit "F" attached hereto, by which Seller shall assign to Buyer the Leases or in the case of Leases of Real Property, in such other form as is reasonably acceptable to the Title Company;

"Leases" shall mean those leases of Real Property and Equipment related to the Station as listed on Schedule 1.5;

"Licenses" shall mean all licenses, permits and authorizations issued by the FCC to Seller for the operation of the Station and all auxiliary facilities licensed by the FCC for operation in connection with the Station, as listed on Schedule 1.6;

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any of the Purchased Assets or the Station, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement with respect to any of the Purchased Assets or the Station under the Uniform Commercial Code of the State of Indiana or comparable law of any jurisdiction;

"Material Adverse Effect" shall mean a material adverse effect on the present or future business, operations, financial condition or results of operations of the Station or on the ability of Seller to perform its material obligations under this Agreement or the TBA; provided that general changes in market conditions or the economy, war, acts of terrorism, and events specifically affecting the television industry as a whole (such as legislative or regulatory matters), in each case to the extent occurring after the date hereof, shall not be deemed to constitute a Material Adverse Effect;

"Miscellaneous Assets" shall mean all tangible and intangible assets owned by, leased by or licensed to Seller and used or useable in the operation of the Station and not otherwise specifically referred to in this Agreement, including any warranties related to any of the Purchased Assets, excepting therefrom only the Retained Assets;

"Motor Vehicles" shall mean all motor vehicles owned by Seller related to the operation of the Station including without limitation those listed on Schedule 1.7;

"Motor Vehicle Title Certificates" shall mean the official evidences of title to the Motor Vehicles;

"Permitted Liens" shall mean (i) Liens imposed by any governmental authority for Taxes not yet due and/or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Seller in accordance with generally accepted accounting principles; (ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other non-consensual Liens arising in the ordinary course of business and securing amounts not yet due and payable or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the Seller in accordance with generally accepted accounting principles; (iii) pledges or deposits in connection with worker's compensation, unemployment insurance and other social security legislation; (iv) deposits to secure the performance of any or all of the following: bids,

trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (v) easements, rights-of-way, restrictions and other similar encumbrances on real property incurred in the ordinary course of business, and encroachments (whether or not in the ordinary course of business), which do not secure any monetary amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business thereon; and (vi) all of the exceptions reflected in Schedule 1.8 or the title insurance policies attached thereto, provided the Liens on the Purchased Assets granted to the lenders under the Credit Agreement, are to be released at Closing. Schedule 1.8 also sets forth a list of the Liens described in clauses (i) and (ii) above as Liens which are being contested in good faith;

"Person" shall mean any natural person, general or limited partnership, corporation, limited liability company or other entity;

"Plan" shall mean any plan, program or arrangement, whether or not written, that is or was (a) an "employee benefit plan" as such term is defined in Section 3(3) of ERISA and (i) which was or is established or maintained by Seller; (ii) to which Seller contributed or was obligated to contribute or to fund or provide benefits; or (iii) which provides or promises benefits to any person who performs or who has performed services for Seller and because of those services is or has been (A) a participant therein or (B) entitled to benefits thereunder; (b) an "employee pension benefit plan" as such term is defined in Section 3(2) of ERISA, including, without limitation, any such plan that satisfies, or is intended by Seller to satisfy, the requirements for tax qualification described in Section 401 of the Code; (c) a "multiemployer plan" as such term is defined in Section 3(37) of ERISA; or (d) an "employee welfare benefit plan" as such term is defined in Section 3(1) of ERISA;

"Pre-TBA Payables" shall mean the Accounts Payable of the Seller as of the Adjustment Time other than Tradeout Payables;

"Pre-TBA Receivables" shall mean the Accounts Receivable of the Seller as of the Adjustment Time other than Tradeout Receivables;

"Program Payments" shall have the meaning set forth in Section 2.4(b)

"Program Rights" shall mean all rights of Seller presently existing or obtained prior to the Closing, in accordance with this Agreement, to broadcast television programs or shows as part of the Station's programming and for which Seller is or will be obligated to compensate the vendor of such Program Rights, including all film and program barter agreements;

"Purchased Assets" shall mean all rights of Seller in, to and under all assets used or useable in the operation of the Station, including but not limited to (a) the Contracts; (b) the Customer Lists; (c) the Equipment; (d) the Intangible Property; (e) the Leases; (f) the Licenses; (g) the Miscellaneous Assets; (h) the Motor Vehicles; (i) the Real Property; (j) the Records; (k) the Trade Secrets; and (l) Internet Web Sites; in each case, other than the Retained Assets;

"Purchase Price" shall mean the sum of Three Million Dollars (\$3,000,000.00) adjusted pursuant to Section 2.4;

"Real Property" shall mean the real property owned in fee simple or leasehold by Seller more particularly described on Schedule 1.9, and all buildings, improvements and fixtures thereon, together with all strips and gores, rights of way, easements, strips and gores privileges and appurtenances pertaining thereto, including any right, title and interest of Seller in and to any street adjoining any portion of the Real Property;

"Records" shall mean files and records, including schematics, technical information and engineering data, programming information, correspondence, books of account, employment records, customer files, purchase and sales records and correspondence, advertising records, files and literature, and FCC logs, files and records and other written materials of Seller relating to the Station other than those that are Retained Assets; provided, however, that Records shall not mean or include the certificates of formation, limited liability company agreements, bylaws, qualifications to conduct business as a foreign limited liability company, arrangements with registered agents relating to foreign qualification, taxpayer and other identification numbers, seals, minute books, and other documents and records relating to the organization, maintenance and existence of Seller as limited liability companies;

"Retained Assets" shall mean (a) the Seller's Cash and cash equivalents on hand and in banks; (b) Pre-TBA Receivables (subject to Buyer's right to collect and use the proceeds of same as provided in Section 2.9 hereof); (c) any and all claims of Seller with respect to transactions prior to the Closing Date including, without limitation, claims for tax refunds and refunds of fees paid to the FCC, except to the extent any such item was taken into account in adjusting the Purchase Price pursuant to Section 2.4 or relates to Assumed Liabilities or the Purchased Assets; (d) all contracts of insurance entered into by Seller and all rights to insurance proceeds relating to the Retained Assets; (e) all rights and obligations under any agreements listed on Schedule 1.10; (f) those other assets, if any, described on Schedule 1.10; (g) all assets related to Seller's Station Employee Benefit Plans; (h) the records and other documents described in the proviso to the definition of Records above; (i) those employment contracts relating to employees of Seller whom Buyer does not hire as provided in Section 10.2, (j) any of the rights of Seller under this Agreement, the TBA and under any agreement or documents executed or to be executed in connection herewith or therewith or any side agreement between Seller and Buyer entered into on or after the date of this Agreement, and (k) the Emmis Contract;

"Retained Liabilities" shall mean all the obligations and liabilities of Seller whether now existing or previously or hereafter incurred other than the Assumed Liabilities;

"Schedules" shall mean those schedules referenced to in this Agreement which have been bound in that separate volume executed by or on behalf of the parties, and delivered concurrently with the execution of this Agreement, which schedules and volume are hereby incorporated herein and made a part hereof;

"Seller's Closing Certificate" shall mean the certificate of Seller in the form of Exhibit "G" attached hereto;

"Seller's Performance Certificate" shall mean the certificate of Seller in the form of Exhibit "H" attached hereto;

"Station" shall have the meaning set forth in the Recitals;

"Station Employee Benefit Plans" shall mean any Plan or Benefit Arrangement in which any current, former or retired employee of the Seller participates;

"Studio Site" shall mean the "Studio Site Lease" and the "Studio Site" as each is identified on Schedule 1.10.

"TBA" shall have the meaning set forth in the recitals;

"Title Commitment" shall have the meaning set forth in Section 6.2;

"Title Company" shall mean First American Title Insurance Company, or such other title insurance company reasonably acceptable to Buyer;

"Title Policy" shall have the meaning set forth in Section 6.2;

"Trade Secrets" shall mean all proprietary or confidential information of Seller relating to the Station;

"Trademarks" shall mean all of those names, trademarks, service marks, jingles, slogans, logos, trademark and service mark registrations and trademark and service mark applications owned, used, held for use, licensed by or leased by Seller relating to the Station including without limitation those set forth on Schedule 1.11;

"Trademark Assignment" shall mean an instrument, in the form of Exhibit "I" attached hereto, by which Seller shall convey to Buyer the Trademarks;

"Tradeout Agreement" shall mean any Contract pursuant to which Seller has sold or traded commercial air time of the Station in consideration for any property or services in lieu of or in addition to Cash, excluding film and program barter agreements;

"Tradeout Payables" means all obligations of Seller arising under any Tradeout Agreement, whenever made;

"Tradeout Receivables" means all current assets of Seller which are goods or services receivable by any Seller arising under any Tradeout Agreement, whenever made;

"Tower Site" shall mean the "Tower Site" identified on Schedule 1.9.

"Warranty Deed" shall mean a special or limited warranty deed in a form acceptable to the Title Company pursuant to which Seller shall convey to Buyer at the Closing the Real Property owned by Seller, subject only to Permitted Liens.

**1.2 Singular/Plural; Gender.** Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes any and all genders. Except as specifically set forth herein, all Section and Article references are to Sections and Articles of this Agreement.

## ARTICLE II PURCHASE AND SALE

**2.1 Purchase and Sale.** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase the Purchased Assets, including all of Seller's legal and equitable interests therein. Notwithstanding any provision of this Agreement to the contrary, Seller shall not transfer, convey or assign to Buyer, but shall retain, all of its right, title and interest in and to the Retained Assets.

### **2.2 Payment of Purchase Price**

(a) On the date of this Agreement, Buyer shall pay to Seller, by wire transfer in immediately available funds, the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00);

(b) At Closing, Buyer shall pay to Seller, by wire transfer in immediately available funds, an amount equal to the Purchase Price (as adjusted pursuant to Section 2.4 below), less the amount paid pursuant to Section 2.2(a); and

(c) At Closing, Buyer shall assume the Assumed Liabilities pursuant to the Assumption Agreement.

### **2.3 Closing Date Deliveries.** At the Closing on the Closing Date:

(a) Seller shall deliver, or cause to be delivered to Buyer, properly executed and dated as of the Closing Date: (i) the Assumption Agreement; (ii) the Bill of Sale and Assignment; (iii) the Contract Assignment; (iv) the Lease Assignment; (v) the Motor Vehicle Title Certificates; (vi) Seller's Closing Certificate; (vii) Seller's Performance Certificate; (viii) the Trademark Assignment; (ix) the Warranty Deed; (x) a certificate of existence or good standing with respect to Seller from the Secretaries of State of North Carolina, Indiana, Virginia and Iowa; and (xi) such other documents as provided in Article VII hereof or as Buyer shall reasonably request; and

(b) In addition to the payments described in Section 2.2, Buyer shall deliver, or cause to be delivered to Seller, properly executed and dated as of the Closing Date: (i) the Assumption Agreement; (ii) the Bill of Sale and Assignment; (iii) Buyer's Closing Certificate; (iv) Buyer's Performance Certificate; (v) the Contract Assignment; (vi) the Lease Assignment; (vii) the Trademark Assignment; (viii) a certificate of existence or good standing with respect to Buyer from the Secretaries of State of Delaware and Indiana; and (ix) such other documents as provided in Article VIII hereof or as Seller shall reasonably request.

### **2.4 Proration; Adjustments to Purchase Price**

(a) For the purposes of (i) identifying the Purchased Assets, Retained Assets, Assumed Liabilities and Retained Liabilities, (ii) determining the adjustment to the Purchase Price, if any, to be made pursuant to this Section 2.4, and (iii) identifying the Pre-TBA Receivables for the purpose of Section 2.9, all prepaid or deferred revenue, prepaid expenses,

accrued income and accrued expenses of the Station as of 12:01 a.m., Terre Haute, Indiana time on the Commencement Date, as that term is defined in the TBA (the "Adjustment Time") shall, except as otherwise expressly provided herein, be adjusted and allocated between Seller and Buyer to reflect the principle that all revenue, income and expenses (including, without limitation, accrued liabilities for vacation pay, sick pay, compensatory pay and similar amounts, and amounts that may become payable in respect of unlicensed software, whether or not Seller's normally accrue such amounts) arising from the operation of the Station or relating to the Purchased Assets before the Adjustment Time shall be for the account of Seller, and all revenue, income and expenses arising from the operation of the Station or relating to the Purchased Assets from and after the Adjustment Time shall be for the account of Buyer under this Agreement or the TBA. Any and all rebates which, under any agreements in effect as of the Adjustment Time, may be payable after such date to any advertiser or other user of the Station's facilities, based in part on business, advertising or services prior to the Closing Date, shall be borne by Seller and Buyer ratably in proportion to revenues received or volume of business done by each during the applicable period. Any and all agency commissions which are subject to adjustment after the Adjustment Time based on revenue, volume of business done or services rendered in part before the Adjustment Time and in part after the Adjustment Time shall be shared by Seller, on the one hand, and Buyer, on the other hand, ratably in proportion to the revenue, volume of business done or services rendered, as the case may be, by each during the applicable period.

(b) Treatment of Program Liabilities. Notwithstanding anything to the contrary set forth in Section 2.4(a) above, as between Buyer and Seller with respect to all Contracts relating to Program Rights ("Program Contracts"), obligations to make cash payments of license and usage fees pursuant to each such Program Contract will be prorated between Seller and Buyer based on the number of days during the term of such Program Contract elapsed as of the Adjustment Time vis a vis the number of days during the term of such Program Contract occurring after the Adjustment Time.

(c) To the extent not inconsistent with the express provisions of this Agreement, the allocations made pursuant to Sections 2.4(a) and (b) above shall be made in accordance with generally accepted accounting principles.

(d) Net settlement of the adjustments contemplated under Section 2.4(e) shall be made at the Closing by increasing or decreasing the Purchase Price appropriately, if feasible based on Seller's and Buyer's good faith estimates. For items not readily subject to ascertainment at the Closing, the following procedures shall apply. Buyer shall prepare and deliver to Seller within thirty (30) business days following the Closing Date, or such earlier or later date as shall be mutually agreed to by Seller and Buyer, an itemized list (the "Adjustment List") of all sums which, as described in Section 2.4(e) below, shall increase or decrease the Purchase Price, with a brief explanation thereof. Such list shall show the net amount of the increase or decrease to the Purchase Price (the "Adjustment Amount"). If the Adjustment Amount is a decrease to the Purchase Price, Seller shall pay such amount to Buyer. If the Adjustment Amount is an increase to the Purchase Price, Buyer shall pay such amount to Seller. Except as provided otherwise in Section 2.4(f), payment of the Adjustment Amount shall be made not later than fifteen (15) business days following the delivery of the Adjustment List.



(e) The items set forth on the Adjustment List and the calculation of the Adjustment Amount shall each reflect the understanding that the Purchase Price shall be:

(i) *increased* by the amount of all Pre-TBA Receivables actually collected by Buyer pursuant to Section 2.9 below as of the close of business on the date immediately preceding the Closing Date, other than those paid to Seller pursuant to Section 2.9;

(ii) *decreased* by the amount of all Pre-TBA Payables actually paid or assumed by Buyer under this Agreement or otherwise or reimbursed by Buyer to Seller under the TBA;

(iii) *decreased* by the amount, if any, by which Tradeout Payables as of the Adjustment Time exceed Tradeout Receivables as of the Adjustment Time by more than \$10,000; and

(iv) *decreased* by the amount of all liabilities under Financing Leases, if any, existing as of the Adjustment Time.

(f) Not later than fifteen (15) business days following the delivery of the Adjustment List, Seller may furnish Buyer with written notification of any dispute concerning any items shown thereon or omitted therefrom together with a detailed explanation in support of Seller's position in respect thereof. If Seller does not furnish Buyer such a written notification during such fifteen (15) business day period, then Buyer's determination of the Adjustment Amount (as set forth in the Adjustment List) will be final and binding on Buyer and Seller as of the last day of such fifteen (15) business day period. If Seller does furnish Buyer such a written notification during such fifteen (15) business day period, then Buyer and Seller shall consult to resolve any such dispute for a period of fifteen (15) business days following the notification thereof. In the event of any such dispute, that portion of the Adjustment Amount that is not in dispute shall be paid to the party entitled to receive the same on the day for payment provided in Section 2.4(d). If such fifteen (15) business day consultation period expires and the dispute has not been resolved, the matter shall be referred to an independent "Big Five" public accounting firm mutually agreed upon by Seller and Buyer (the "Accountants"), which shall resolve the dispute and shall render its decision (together with a brief explanation of the basis therefor) to Buyer and Seller not later than twenty (20) business days following submission of the dispute to it; provided, however, if Buyer and Seller is unable to mutually agree upon an independent public accounting firm, then Buyer and Seller shall each choose an independent public accounting firm and those firms shall appoint a third independent public accounting firm to act as the Accountants. The Accountants' determination of the disputed portion of the Adjustment Amount (the "Disputed Amount") will become final and binding on Buyer and Seller on the business day after the date upon which a written report setting forth such determination is delivered to Seller and Buyer. The Disputed Amount shall be paid by the party required to pay the same within five (5) business days after the delivery of a copy of such decision to Seller and Buyer. The fees and expenses of the Accountants shall be shared equally by Seller, on the one hand, and Buyer on the other hand.

(g) The Adjustment List to the extent not disputed within the specified period by Seller, any mutually agreed written settlement of any such dispute concerning the Adjustment List and any determination of disputed items by the Accountants shall be final, conclusive and binding on the parties hereto absent manifest error.

**2.5 Taxes.** All federal, state, local and other transfer, sales and use taxes and recording costs applicable to, imposed upon or arising out of the transfer to Buyer of the Purchased Assets as contemplated by this Agreement shall be shared equally by Buyer on the one hand, and Seller on the other.

**2.6 Risk of Loss.** The risk of all Events of Loss prior to the Closing shall be upon Seller and the risk of all Events of Loss at or subsequent to the Closing shall be upon Buyer.

**2.7 Allocation of Purchase Price.** The Purchase Price will be allocated among each item or class of the Purchased Assets based upon (i) the mutual agreement of Buyer and Seller, or (ii) in the event Buyer and Seller fail to agree, an appraisal to be paid for by Buyer, to be conducted by a nationally-recognized appraisal firm experienced in appraising, for tax purposes, small-to-medium market television stations selected by Buyer and which is reasonably acceptable to Seller, under the residual method of allocating assets, which allocation shall be incorporated in a schedule to be provided by Buyer and executed by the parties within one hundred twenty (120) days after the Closing. Buyer and Seller each agree to report such allocation to the Internal Revenue Service in the form required by Treasury Regulations Section 1.1060-1; provided, however that nothing contained herein shall require Buyer or Seller to contest or litigate in any forum any proposed deficiency or adjustment by any taxing authority or agency that may challenge the allocation determined pursuant to this Section 2.7.

## **2.8 Access**

(a) Subject to Section 11.8(b), Seller and its authorized agents, officers and representatives, upon prior written request, shall have access to the appropriate records of Buyer to conduct such examination and investigation as Seller deems necessary to assure compliance with this Article 2, and to permit Seller to comply with its tax reporting compliance requirements, provided that such examination and investigation shall be at Seller's sole cost and expense and shall be during the Station's normal business hours, shall not unreasonably interfere with the Station's operations and activities and shall not, after the consummation of the Closing, constitute Seller's exercising control over the Station under the Communications Act.

(b) Subject to Section 11.8(a), Buyer and its authorized agents, officers and representatives, upon prior written request, shall have access to the appropriate records of Seller to conduct such examination and investigation as Buyer deems necessary to assure compliance with this Article 2, and to permit Buyer to comply with its tax reporting compliance requirements, provided that such examination and investigation shall be at Buyer's sole cost and expense, shall be during Seller's normal business hours and shall not unreasonably interfere with Seller's operations and activities. Without limiting the foregoing Seller will (i) give Buyer and its authorized agents, officers and representatives such access to such books and records pertaining to the Seller and the Station as may reasonably be required in order to perform any audit or other review and any disclosure that they may deem appropriate in connection with any

offering of securities by Buyer or any Affiliate thereof, and Seller (to the extent such consent is necessary) hereby consents to the use of information contained in such books and records for any such purpose, and (ii) use reasonable efforts to assist Buyer and its authorized agents, officers and representative in the conduct of such audit or other review.

**2.9 Accounts Receivable** From and after the Adjustment Time until the earlier of (i) November 30, 2003, (ii) the Closing Date, and (iii) the termination of this Agreement prior to the Closing (the "Collection Period"), Buyer agrees to use reasonable efforts to collect, as agent for Seller, the Pre-TBA Receivables in the manner regularly pursued by Buyer with respect to the collection of its accounts receivable and in the ordinary course of business. Buyer shall hold the proceeds collected from Pre-TBA Receivables (which may be commingled with other funds of Buyer and/or used by Buyer for its own purposes) pending remittance to Seller as provided in Section 2.4(e) or this Section 2.9.

(b) Within 5 business days of (i) the end of each calendar month ending during the Collection Period, and (ii) the termination of this Agreement prior to the Closing, Buyer shall pay to Seller an amount equal to the proceeds of the Pre-TBA Receivables collected by Buyer during such calendar month (or shorter period in the case of a termination of this Agreement prior to the Closing). Any payments of Pre-TBA Receivables received by Buyer after the last day of the Collection Period shall be promptly forwarded by Buyer to Seller including after a termination of this Agreement prior to the Closing.

(c) Within twenty (20) days following the last day of the Collection Period, Buyer will deliver to Seller all records of uncollected Pre-TBA Receivables (provided that Buyer may retain copies of such records). In the collection of accounts receivable, all payments received by Buyer from account debtors will be applied first to the Pre-TBA Receivables and then to Buyer's accounts receivable, in the order of origination (i.e., "first-in, first-out"), unless the account debtor specifies otherwise, in which case the proceeds shall be applied as specifically designated by the account debtor. Buyer or Seller will promptly deliver to the other a true copy of any notice of a dispute as to the validity or enforceability of a Pre-TBA Receivable received from an account debtor. Buyer shall not agree to any settlement, discount or reduction of any Pre-TBA Receivable without the prior written consent of Seller. Buyer's collection obligation under this Section 2.9 shall not include any obligation to bring suit, engage a collection agent or take any legal action for the collection of any Pre-TBA Receivable. After the last day of the Collection Period, Buyer shall, if requested by Seller, execute and deliver letters, in form and substance reasonably satisfactory to Seller and Buyer, to the effect that the respective account debtor should send payments on the Pre-TBA Receivables to Seller's designee and shall otherwise reasonably cooperate with Seller for the purpose of Seller's collection of outstanding Pre-TBA Receivables.

### **ARTICLE III**

#### **GOVERNMENTAL APPROVALS AND CONTROL OF STATION**

**3.1 FCC Consent.** It is specifically understood and agreed by Buyer and Seller that the Closing shall be in all respects subject to, and conditioned upon, the receipt of prior FCC Consent. Buyer and Seller shall prepare and file with the FCC, as soon as practicable but in no event later than ten (10) business days after the execution of this Agreement, all requisite

applications and other necessary instruments and documents to request the FCC Consent and any necessary extensions thereof to comply with the Closing Date. After the aforesaid applications, instruments and documents have been filed with the FCC, Buyer and Seller shall prosecute such applications with all reasonable diligence and take all steps reasonably necessary to obtain the requisite FCC Consent. No party hereto shall take any action that such party knows or should know would adversely affect obtaining the FCC Consent, or adversely affect the FCC Consent from becoming a Final Order. Buyer shall pay all FCC filing or transfer fees relating to the transactions contemplated hereby irrespective of whether the transactions contemplated by this Agreement are consummated and irrespective of whether such fees are assessed before or after the Closing.

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

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that the statements contained in this Article IV are true, correct and complete as of the date of this Agreement, as follows:

**4.1 Organization.** Seller is a corporation or a partnership, as set forth in the preamble to this Agreement, organized, validly existing and in good standing under the law of the state of its organization and is qualified to do business as a foreign limited liability company in the State of Indiana. Seller has the power and authority to own, lease, and operate its properties and to conduct its business as it is now being conducted.

**4.2 Authorization; Enforceability.** The execution, delivery and performance of this Agreement and the TBA and all of the documents and instruments required hereby by Seller are within the power of Seller and have been duly authorized by all necessary action by Seller. This Agreement and the TBA are, and the other documents and instruments required hereby will be, when executed and delivered by Seller, the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

**4.3 Absence of Conflicting Agreements.** Except for the FCC Consent or as described on Schedule 4.3, neither the execution, delivery or performance of this Agreement or the TBA in accordance with their respective terms by Seller nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement (including, without limitation, the commencement or continuation of operations under the TBA), does or will, with or without the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under, the organizational documents of Seller, or any federal, state or local law, statute, ordinance, rule or

regulation applicable to Seller, or any court of administrative order or process applicable to Seller, or any material contract, agreement, arrangement, commitment or plan to which Seller is a party or by which Seller is bound and which relates to, the ownership or operation of the Station or the Purchased Assets;

(b) result in the creation of any Lien upon any of the Purchased Assets, except for Permitted Liens;

(c) terminate, amend or modify, or give any other Person the right to terminate, amend, modify, abandon or refuse to perform any material contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to, the ownership or operation of the Station or the Purchased Assets;

(d) accelerate or modify, or give any party the right to accelerate or modify, the time within which, or the terms under which, any duties or obligations are to be performed, or any rights or benefits are to be received, under any material contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to the ownership or operation of the Station or the Purchased Assets;

(e) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency or other authority other than the FCC; or

(f) require the consent of any Person under any material agreement, arrangement or commitment of any nature to which Seller is party, by which Seller is bound, or by which the Purchased Assets are bound or subject.

**4.4 Purchased Assets.** The Purchased Assets include all of the assets, properties and rights of every type and description, real, personal and mixed, tangible and intangible, that are necessary for the business of owning and operating the Station as currently conducted, with the exception of the Retained Assets. All inventories of supplies, tubes and spare parts necessary or appropriate for the operation of the Station are at levels at least equal to the Station's usual and customary levels.

**4.5 Title to Purchased Assets; Liens and Encumbrances.** Except as set forth on Schedule 4.5, Seller owns good and marketable title to or has valid leasehold interests in all of the Purchased Assets (other than the Real Property as to which the provisions of Section 4.9 shall apply and the Intangible Property as to which the provisions of Section 4.8 shall apply) free and clear of any and all Liens except for Permitted Liens.

**4.6 Equipment.** Each of the material items of Equipment is in good condition and repair, ordinary wear and tear excepted.

**4.7 The Contracts.** Except as set forth on Schedule 4.7:

(a) Schedule 1.2 lists all agreements relating to properties, undertakings or commitments to or for third parties in the operation and conduct of the Station except for (i) agreements (other than Tradeout Agreements) for the sale of time on the Station that involve

the purchase of less than Five Thousand Dollars (\$5,000.00) in advertising time and require performance over a period of less than thirty (30) days, (ii) other agreements which are cancelable by Seller or its assignee without breach or penalty on not more than thirty (30) days notice and which involve average annual payments or receipts by the Station of less than Five Thousand Dollars (\$5,000.00) in the case of any single contract and Fifteen Thousand Dollars (\$15,000.00) in the aggregate, (iii) the Credit Agreement and all related agreements, documents and instruments, and (iv) Seller's corporate records and internal organizational documents;

(b) Seller has performed, or is in compliance with, each material term, covenant and condition of each of the Contracts required to be listed on Schedule 1.2, and no material event of default on the part of Seller, and to the Knowledge of Seller, any other party thereto, exists under any of the Contracts required to be listed on Schedule 1.2;

(c) each of the Contracts listed on Schedule 1.2 is in full force and effect, unimpaired by any acts or omissions of Seller, and constitutes the legal and binding obligation of, and is enforceable against Seller, and to the Knowledge of Seller, against each other party thereto in accordance with its terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies;

(d) Seller has furnished or made available to Buyer true and complete copies of all written Contracts required to be listed on Schedule 1.2, including all amendments, modifications and supplements thereto, and Schedule 1.2 contains summaries of the following provisions of all oral Contracts which involve Five Thousand Dollars (\$5,000.00) or more in the case of any single oral Contract and Fifteen Thousand Dollars (\$15,000.00) or more in the aggregate: the parties thereto, and the nature and value of the goods and services to be provided thereunder;

(e) Schedule 1.2 sets forth an accurate and complete list of all Tradeout Agreements, and sets forth for each Tradeout Agreement the parties thereto, the value of broadcast time required to be provided on the Station from and after the date shown on such Schedule and the value of goods and services to be provided to the Station from and after such date.

**4.8 Intangible Property.** Except as set forth on Schedule 4.8:

(a) there are no claims, demands or proceedings instituted, pending or, to the Knowledge of Seller, threatened by any Person pertaining to or challenging Seller's right to use any of the Intangible Property;

(b) to the Knowledge of Seller, Seller is not infringing upon or otherwise acting adversely to any trademark, trade name, patent or copyright owned by a third party;

(c) there are no royalty agreements between Seller and any third party relating to any of the Intangible Property;

(d) the Intangible Property constitutes all of the intangible and intellectual property interests and other intellectual property necessary or appropriate for or used in the operation of the Station (other than Copyrights and Trademarks with respect to Program Rights); and

(e) all Copyrights and Trademarks are listed on Schedule 1.3 and Schedule 1.11, respectively, and all Intangible Property is transferable to Buyer by the sole act of Seller.

**4.9 Real Property.** Except as disclosed on Schedule 4.9:

(a) Seller has good, marketable and insurable fee simple or leasehold interests, as applicable, in the Real Property, and such Real Property includes all real property necessary for the business of the Station as currently conducted or used in the operation of the Station. There are no policies of title insurance currently existing in favor of Seller with respect to the Real Property. Except for Permitted Liens and the items set forth on Schedule 4.9, there are no Liens on any portion of the Real Property. No Lien set forth or required to be set forth on Schedule 4.9 materially interferes with the operation of the Station as currently operated;

(b) Seller has not received notice of any pending condemnation or similar proceeding affecting the Real Property or any portion thereof, and to the Knowledge of Seller, no such action is presently contemplated or threatened;

(c) Seller has not received any written notice from any insurance company of any defects or inadequacies in the Real Property or any part thereof, which would materially adversely affect the insurability of the Real Property or the premiums for the insurance thereof. Seller has not received any notice from any insurance company which has issued or refused to issue a policy with respect to any portion of the Real Property or by any board of fire underwriters (or other body exercising similar functions) requiring the performance of any repairs, alterations or other work with which compliance has not been made;

(d) there are no parties in possession of any portion of the Real Property other than Seller, whether as lessees, tenants at will, trespassers or otherwise;

(e) there is no law, ordinance, order, regulation or requirement now in existence, (other than Environmental Laws) which would require any material expenditure to remediate, remedy, remove, modify or improve any of the Real Property in order to bring it into substantial compliance therewith;

(f) the Real Property has adequate direct access to and from completed, dedicated and accepted public roads, and there is no pending or, to the Knowledge of Seller, threatened governmental proceeding which would impair or curtail such access; and

(g) to the Knowledge of Seller, there are no material structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the buildings or towers located on the Real Property and the roofs of the buildings located on the Real Property are free from leaks and in good condition, ordinary wear and tear excepted.

**4.10 The Leases.** Except as set forth on Schedule 4.10:

(a) the Leases described on Schedule 1.5 constitute all of the lease agreements between Seller and third parties relating to the operation of the Station or the Purchased Assets;

(b) Seller has performed each material term, covenant and condition of each of the Leases which is required to be performed by Seller at or before the date hereof, and no material default or event which with the passing of time or giving of notice or both would constitute a default on the part of the Seller and, to the Knowledge of Seller, on the part of any other party thereto, exists under any Lease;

(c) each of the Leases is in full force and effect, unimpaired by any acts or omissions of Seller, and constitutes the legal and binding obligation of, and is legally enforceable against Seller, and to the Knowledge of Seller, against each other party thereto in accordance with its terms;

(d) Seller has furnished or made available to Buyer true and complete copies of the Leases, including any and all amendments thereto;

(e) there are no leasing commissions or similar payments due, arising out of, resulting from or with respect to any Lease which are owned by Seller; and

(f) each of Seller's Financing Leases is listed as such on Schedule 4.10.

#### **4.11 Financial Statements and Interim Financial Statements**

(a) Attached as Schedule 4.11(a) are true and complete copies of the unaudited consolidated balance sheets of Seller, as of December 31, 2001 and December 31, 2002 and the related consolidated statements of income for the fiscal years then ended (collectively, the "Financial Statements"). The Financial Statements are in accordance with the books and records of Seller, have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with preceding years and present fairly in all material respects the financial condition of the Seller as of the date indicated and the results of the Station's operations and changes in cash flows for the period then ended.

(b) Attached as Schedule 4.11(b) are true and complete copies of the unaudited consolidated balance sheet of Seller as of February 28, 2003, and the related consolidated statement of income for the two month period then ended (collectively, the "Interim Financial Statements"). The Interim Financial Statements are in accordance with the books and records of Seller, have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with the Financial Statements and present fairly in all material respects the financial condition of Seller as of the date indicated and the results of the Station's operations and changes in cash flows for the period then ended; subject, however, to year-end adjustments which, in the aggregate, will not be materially adverse and provided that the Interim Financial Statements do not contain footnotes and lack other presentation items.

**4.12 No Changes.** Except as contemplated by this Agreement, since February 28, 2003 through the Adjustment Time, there has not been any:



- (a) amendment or termination of any Contract, Lease or License to which Seller is a party with respect to the Station except in the ordinary course of business;
- (b) increase in compensation paid, payable or to become payable by Seller to any of its employees at the Station, except in the ordinary course of business;
- (c) extraordinary losses (whether or not covered by insurance) or waiver by Seller of any extraordinary rights of value;
- (d) commitment to or liability to any labor organization which represents, or proposes to represent, employees of the Station;
- (e) notice from any of the Station's sponsors or any customers (determined on the basis of the Station's revenues for the trailing twelve (12) month period) as to any of such sponsor's or customer's intention not to conduct business with the Station, the result of which loss or losses of business, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect;
- (f) sale, assignment, lease or other transfer or disposition of any of the Purchased Assets or properties of the Station except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;
- (g) adverse change in cable carriage or channel position on which the Station is carried (on any cable system with more than 1,000 subscribers);
- (h) period of four (4) consecutive days or more during which the Station was off the air for any reason or a period of fifteen (15) days or more during which the Station operated at substantially reduced power;
- (i) termination of the Affiliation Agreement or loss by the Station of the Fox network affiliation; or
- (j) change in the financial condition, business, assets or results of operation of the Station which has had a Material Adverse Effect.

**4.13 No Litigation; Labor Disputes; Compliance with Laws.** Except as set forth on Schedule 4.13:

- (a) except for FCC rulemaking proceedings generally affecting the television broadcasting industry, there is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or other proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, to the Knowledge of Seller, threatened, to which Seller is a party or otherwise relating to the Station or the Purchased Assets which could reasonably be expected to have a Material Adverse Effect;
- (b) to the Knowledge of Seller, there is no material investigation by any commission, agency or other administrative or regulatory body or authority pending or

threatened, which is specifically concerned with the operations, business or affairs of Seller, the Station or the Purchased Assets;

(c) the Station is not subject to or bound by any labor agreement, there is no labor dispute, grievance, controversy, strike or request for union representation pending or to the Knowledge of Seller threatened against Seller relating to or affecting the business or operations of the Station and, to the Knowledge of Seller, Seller has not experienced any of the matters described in this Section 4.13(c); and

(d) Seller has carried on and conducted the business and affairs of the Station in compliance with all applicable federal, foreign, state and local laws, statutes, ordinances, rules and regulations, and all applicable court or administrative orders or processes, including but not limited to the FCC, Occupational Safety and Health Administration, Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board and Environmental Protection Agency, a violation of which has had or may reasonably be expected to have a Material Adverse Effect. The Station complies in all material respects with all applicable statutes, rules and regulations pertaining to equal employment opportunity.

**4.14 Taxes.** Except as disclosed on Schedule 4.14:

(a) Seller has duly filed all required federal, state and local tax returns, reports and estimates for all years and periods (and portions thereof) for which any such returns, reports and estimates were due to be filed by Seller (taking into account any permitted extensions), and any and all amounts shown on such returns and reports to be due and payable have been paid in full except as may be contested in good faith. All of such returns, reports and estimates are true and complete in all material respects. Seller has withheld all taxes required to be withheld under applicable law and regulations, and such withholdings have either been paid to the proper governmental agency or set aside in accounts for such purpose, or accrued, reserved against and entered upon the books of Seller, as the case may be; and

(b) There are, and after the date of this Agreement will be, no tax deficiencies (including penalties and interest) of any kind assessed against or relating to Seller or the Purchased Assets with respect to any taxable periods ending on or before, or including, the Closing Date of a character or nature that would result in Liens or claims on any of the Purchased Assets or on Buyer's title or use of the Purchased Assets or that would result in any claim against Buyer or the Purchased Assets; provided, however, that Seller shall not be deemed to make any representations or warranty with respect to any Liens or claims arising by reason of, or attributable to, Buyer's use or operation of the Station or the Purchased Assets on or after the Adjustment Time.

**4.15 Governmental Authorizations.** Seller holds, and, on the Closing Date Seller will hold, all regular and valid licenses, permits and authorizations issued by the FCC to operate the Station as a television broadcast station with the power disclosed on Schedule 1.6. Such licenses, permits and authorizations constitute all of the licenses, permits and authorizations that are necessary under the Communications Act for the operation of the Station. The Licenses are in full force and effect. Except as set forth on Schedule 4.15, no qualifications, registrations, filings, privileges, franchises, licenses, permits, approvals or authorizations other than the

Licenses and those as set forth on Schedule 4.15 are required for Seller to own and operate the Station in the manner operated on the date hereof. As of the date hereof, (i) no action or proceeding is pending or, to the Knowledge of Seller, threatened before the FCC or any other governmental authority to revoke, refuse to renew or materially and adversely modify the Licenses (except for FCC rulemaking proceedings generally affecting the television broadcasting industry), and (ii) there is no pending, issued or outstanding or, to the Knowledge of Seller, threatened investigation, order to show cause, cease and desist order, notice of violation, notice of apparent liability, notice or forfeiture, petition or complaint with respect to the Station or any of the Licenses.

**4.16 Compliance with FCC Requirements.** Except as set forth on set forth on Schedule 4.16, the Station, its physical facilities, electrical and mechanical systems and transmitting and studio equipment are being and have been operated in all material respects in accordance with the specifications of the Licenses, and the Station is in compliance in all material respects with the Communications Act. Except as set forth on Schedule 4.16, Seller has complied in all material respects with the Communications Act concerning advertising in children's programming, and the record keeping obligations related thereto. Except as set forth on Schedule 4.16, all obligations, reports and other filings required by the FCC with respect to the Station, including, without limitation, material required to be placed in the Station's public inspection file, have been properly and timely filed. Except as set forth on Schedule 4.16, no cable television system or satellite service provider has notified Seller of any signal quality deficiency or copyright indemnity or other prerequisite to cable or satellite carriage of the Station's signal, and no cable television system or satellite service provider has notified Seller that it has declined or threatened to decline such carriage or failed to respond to a request for carriage or sought any form of relief from carriage from the FCC.

**4.17 Insurance.** Seller has such amounts and types of insurance coverage as is reasonable and customary for a broadcast television station such as the Station. Seller is not in default with respect to any of its insurance policies, nor has Seller failed to give any notice or present any claim under any policies in a due and timely fashion.

**4.18 Brokers.** Neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity with the exception of Media Venture Partners, Ltd. whose fees and expenses shall be borne by Seller.

**4.19 Employees.** Immediately prior to the execution of this Agreement, Seller has supplied to Buyer, a true and complete list of all of Seller's employees as of the date of this Agreement, which list identifies the name of such employees and each such employee's current annual base salary and bonus. Except as otherwise provided by applicable state law, the employment of all employees of the Station is terminable at will by such employer without any penalty or severance obligations incurred by such employer. Seller is not bound by any collective bargaining agreement, and to the Knowledge of Seller, there exists no organizational effort presently being made or, threatened by or on behalf of any labor union with respect to employees of the Station.

**4.20 Financial Benefit Plans.** Seller has not at any time maintained or been a party to or made contributions to any of the following: (i) any "employee pension benefit plan," as such term is defined in Section 3(2) of ERISA; or (ii) any "employee welfare benefit plan," as such term is defined in Section 3(1) of ERISA, whether written or oral. The execution of this Agreement and performance of the transactions contemplated hereby will not in and of itself constitute a triggering event under any Employee Benefit Plan that will result in any payment (whether of severance pay or otherwise) becoming due from Seller.

**4.21 Environmental Compliance.** Except as set forth in Schedule 4.21 (including the reports attached thereto):

(a) Seller has complied in all material respects and is in material compliance with all Environmental Laws with respect to its operation of the Station and its assets and properties;

(b) Seller is not a party to any litigation or administrative proceeding and, to the Knowledge of Seller, nor is any litigation or administrative proceeding threatened against them, which in either case (i) asserts or alleges that Seller violated any Environmental Laws, (ii) asserts or alleges that Seller is required to clean up, remove or take remedial or other response action due to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials at the Real Property, or (iii) asserts or alleges that Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal or remedial or other response action which arises out of or is related to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials by Seller at any of the Real Property;

(c) with respect to the period during which Seller owned or occupied the Real Property through the Adjustment Time, and, to the Knowledge of Seller with respect to the time before Seller owned or occupied the Real Property, no person has caused or permitted Hazardous Materials to be stored, deposited, treated, recycled or disposed of on, under or at any Real Property owned, leased, used or occupied by Seller which would subject Seller to material liability for the cleanup, removal or some other remedial action under Environmental Laws;

(d) as of the date hereof and as of the Adjustment Time there are not any, nor, to the Knowledge of Seller, have there previously been, tanks or other facilities on, under, or at the Real Property which contained any Hazardous Materials which, if known to be present in soils or ground water, would subject any owner or operator of such Real Property to material liability for cleanup, removal or some other remedial action under Environmental Laws;

(e) to the Knowledge of Seller, there are no conditions existing as of the date hereof and as of the Adjustment Time which would subject any owner or operator to the Real Property to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws or which require or are likely to require cleanup, removal, remedial action or other response pursuant to Environmental Laws;

(f) Seller is not subject, as a result of its interest in the Real Property, to any judgment, order or citation related to or arising out of any Environmental Laws and has not been

named or listed as a potentially responsible party by any governmental body or agency in a matter related to or arising out of any Environmental Laws; and

(g) to the Knowledge of Seller, the operation of the Station does not exceed the permissible levels of exposure to RF radiation specified in the Communications Act.

**4.22 Affiliation Agreement.** As of the date of this Agreement, (i) the Affiliation Agreement is in full force and effect and (ii) Fox has not given Seller written or verbal notice of any type of Fox's intention to terminate or fail to renew the Affiliation Agreement or that Fox is considering such possible termination or failure to renew the Affiliation Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this Article V are true, correct and complete as of the date of this Agreement, as follows:

**5.1 Organization.** Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and on the Closing Date Buyer shall be duly qualified to do business as a foreign entity in Indiana, and Buyer has full power to purchase the Purchased Assets pursuant to this Agreement.

**5.2 Authorization; Enforceability.** The execution, delivery and performance of this Agreement and the TBA and all of the documents and instruments required hereby by Buyer are within the power of Buyer and have been duly authorized by all necessary action by Buyer. This Agreement and the TBA are, and the other documents and instruments required hereby will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

**5.3 Absence of Conflicting Laws and Agreements.** Except as set forth on Schedule 5.3, neither the execution, delivery or performance of this Agreement or the TBA by Buyer nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement or the TBA does or will, with or without the giving of notice, or the lapse of time, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under, the certificate of incorporation or bylaws of Buyer, or any federal, state or local law, statute, ordinance, rule or regulation, or any court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer or its assets is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency other than the FCC Consent; or

(c) require the consent of any Person under any material agreement, material arrangement or material commitment of any nature to which Buyer is a party or by which it is bound.

**5.4 Brokers.** Neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of or representing Buyer as broker, finder, investment banker, financial advisor or in any similar capacity.

**5.5 Absence of Litigation.** There is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, to the knowledge of Buyer, threatened to which Buyer is a party and which could materially and adversely affect Buyer's ability to purchase the Purchased Assets under this Agreement or to perform its obligations under the TBA.

**5.6 FCC Qualification.** Buyer is legally, technically, financially and otherwise qualified under the Communications Act to acquire the Licenses and own and operate the Station. Buyer knows of no fact or circumstance which would, under the federal antitrust laws or the Communications Act, disqualify or preclude Buyer from being approved as an assignee of the Licenses. There are no proceedings, complaints, notices of forfeiture, claims or investigations pending or threatened against Buyer or any principal, officer, director, or owner of Buyer that would materially impair the qualification of Buyer to assume the Licenses or which would materially impede Buyer's ability to prosecute the applications filed with the FCC to assign the Licenses to Buyer or to seek the grant of consents from the FCC to the assignment of the licenses to Buyer.

## **ARTICLE VI CERTAIN MATTERS PENDING THE CLOSING**

From and after the date of this Agreement and until the Closing (unless otherwise provided herein):

**6.1 Notice of Adverse Changes.** Pending the Closing, Seller shall give Buyer prompt written notice of the occurrence of any of the following as it gains Knowledge thereof:

(a) the commencement of any proceeding or litigation at law or in equity or before the FCC or any other commission, agency or administrative or regulatory body or authority which involves any of the Licenses or which could reasonably be expected to have a Material Adverse Effect, other than proceedings or litigation of general applicability to the television broadcasting industry; or

(b) any material violation by Seller, or written notice of any alleged material violation by Seller, of any federal, state or local law, statute, ordinance, rule or regulation.

**6.2 Operations Pending Closing.** Subject to the provisions of Section 3.2 regarding control of the Station, after the date hereof and prior to the Closing and subject to the TBA, Seller shall, except with Buyer's prior written consent:

(a) operate the Station in all material respects in accordance with the Communications Act and make all filings necessary to make the representation in Section 4.15 true and correct at Closing;

(b) not sell, lease, mortgage, pledge or otherwise dispose of any of the Purchased Assets except for transactions in the ordinary and regular course of the operation of the Station where the proceeds of such disposition are used to replace such Purchased Assets;

(c) not enter into, or become obligated under, amend or otherwise modify any agreement or commitment on behalf of the Station;

(d) maintain in full force and effect policies of liability and casualty insurance of substantially the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Station;

(e) not modify or adopt, or commit to modify or adopt, any Plan Benefit Arrangement or other pension, profit sharing, deferred compensation or similar plan, program or trust on behalf of personnel of the Station;

(f) promptly notify Buyer of any attempt or actual collective bargaining organizing activity with respect to any employee of the Station; and,

(g) except as required by law, not enter into any collective bargaining agreement or modify the employment terms applicable to any employee of the Station.

Notwithstanding any provision of this Agreement or the TBA to the contrary, none of the following shall be deemed (i) a breach of Seller's agreements or covenants under this Section 6.2 or under the TBA or of the representations and warranties contained in Article IV hereof, or (ii) a failure of any of the conditions set forth in Article VII to be satisfied: any fact or circumstance that occurs as a result of either any action or omission to act of the Buyer pursuant to the TBA or any other agreement or arrangement, or by virtue of Buyer's activities or operations with respect to the Station.

**6.3 FCC Reports.** Seller will furnish to Buyer within ten (10) days after filing all reports filed with the FCC with respect to the Station after the date hereof.

**6.4 Consents.** Seller will use its commercially reasonable efforts to obtain all consents and approvals required from third Persons, whose consent or approval is required pursuant to any Contract or Lease prior to the Closing Date as a result of the purchase and sale of the Purchased Assets as contemplated herein. Anything to the contrary in this Agreement notwithstanding, Seller shall not be required to pay any fees or provide or deliver any other consideration to any such Person in order to obtain such consent or approval.

**6.5 Cooperation; Reasonable Efforts; Release.** Buyer and Seller will cooperate in all respects in connection with and use commercially reasonable efforts to: (a) secure any nongovernmental approvals, consents and waivers of third parties listed in Schedule 4.3; (b) give notices to any governmental authority, or secure the permission, approval, determination, consent or waiver of any governmental authority, required by law in connection

with the transfer of the Purchased Assets from Seller to Buyer; and (c) cause all of the conditions set forth in Article VII and Article VIII to be satisfied (but not waived).

#### **6.6 Tax Returns and Payments**

(a) All tax returns, estimates and reports with respect to the Purchased Assets or operation of the Station that are required to be filed by Seller prior to the Closing Date or relating to periods prior to the Closing Date will be timely filed when due with the appropriate governmental agencies or extensions will have been granted; and

(b) All taxes pertaining to ownership of the Purchased Assets or operation of the Station prior to the Closing Date will be paid by Seller when due and payable unless protested in good faith.

**6.7 Release of Liens.** Except for the Permitted Liens, at or prior to the Closing, Seller shall obtain the release of all Liens disclosed in the Schedules hereto and any other Liens on the Purchased Assets and shall duly file releases or terminations of all such Liens in each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed.

**6.8 Public Announcement.** Seller shall publish and broadcast a public notice concerning the filing of the application for assignment of the Licenses in accordance with the requirements of Section 73.3580 of the FCC's Rules. As to any other announcements, no party hereto shall issue any press release or public announcement or otherwise divulge the existence of this Agreement or the transactions contemplated hereby without prior approval of the other parties hereto (which shall not be unreasonably withheld) except as and to the extent that such party shall be obligated by law, rule or regulation, in which case the other party shall be so advised and the party shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued.

**6.9 Exclusivity.** Seller agrees and covenants that until Closing or this Agreement expires or is terminated, neither Seller nor any of its representatives, will discuss, negotiate or offer (or solicit offers) regarding a sale, transfer or other disposition of the Station or the Purchased Assets or any merger, combination, restructuring, refinancing or similar transaction involving Seller (a "Sale") with another Person or provide any information to any other Person regarding the Station or Seller in that connection. Seller represents that it is not a party to or bound by any agreement with respect to a Sale except for this Agreement. Seller will disclose to Buyer the existence or occurrence of any proposal or contract whether written or oral which it may receive during the term of this Agreement in respect of any such competing transaction.

#### **6.10 Real Estate Matters**

(a) Prior to the Closing, Seller will cooperate with Buyer so that Buyer may obtain, for the benefit of and at the cost of Buyer, all documents reasonably required (including estoppel certificates, owner's affidavits, indemnities and GAP undertakings) for a final commitment for an ALTA Owners Policy of Title Insurance, as the case may be, Form B-1970, for each parcel of Real Property, issued by a title insurer designated by Buyer (the "Title



Insurer"), in such amount as Buyer reasonably determines to be the fair market value thereof, insuring the Buyer's interest in such parcel, subject only to the Permitted Liens, and with such other endorsements and other terms and conditions as Buyer may reasonably request.

(b) At Buyer's request, Seller will cooperate with Buyer so that Buyer may procure for the benefit of and at the cost of Buyer, in preparation for the Closing, current surveys of each parcel of Real Property disclosing no survey defects or encroachments which materially interfere with the current business and operation of the Station, prepared by a licensed surveyor and conforming to 1992 ALTA/ACSM Minimum Detail Requirements for Urban Land Title Surveys, and such standards as the Title Insurer may reasonably require as a condition to the removal of any survey exceptions from the commitment for the title insurance policy described in Section 6.10(a), and certified to Buyer, Buyer's lenders and the Title Insurer, in a form sufficient to permit the issuance of the title policies described above in Section 6.10(a).

(c) Star City and Terre Haute shall allow Buyer such use of the Studio Site, for no additional compensation, as Buyer requires to satisfy its obligations under the TBA.

#### **6.11 Access and Information**

. From the date hereof, Buyer and its financing sources shall be entitled to make or cause to be made such reasonable investigation of the Purchased Assets as the Buyer and its financing sources deem necessary or advisable, and Seller shall reasonably cooperate with any such investigation. In furtherance of the foregoing, but not in limitation thereof, Seller will provide Buyer and its financing sources and their respective agents and representatives, or cause them to be provided, with reasonable access to any and all of its management personnel, accountants, representatives, premises, properties, contracts, commitments, book, records and other information of Seller upon reasonable notice and during regular business hours and shall furnish such financial and operating data, projections, forecasts, business plans, strategic plans and other data related to the Seller and its business as Buyer, its financing sources and their respective agents, representatives and advisors shall reasonably request from time to time. Seller and its Affiliates agree to use their reasonable efforts to cause their respective officers, employees, consultants, agents, accountants and attorneys to reasonably cooperate with Buyer, its financing sources, representatives and advisors in connection with such review and the financing of the transactions contemplated hereby, including the preparation by Buyer and its financing sources of any offering memorandum, bank book, registration statement or related documents or other documents related to such financing; provided that Buyer shall be responsible and shall promptly pay for any out of pocket expenses incurred by Seller in such regard.

### **ARTICLE VII CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER**

Each and every obligation of Buyer to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

**7.1 Compliance with Agreement.** Seller shall have performed and complied in all material respects with all of Seller's obligations under this Agreement and the TBA which are to be performed or complied with by it prior to or at the Closing.

**7.2 Representations and Warranties.** The representations and warranties made by Seller shall be true and correct as of the date hereof and as of the Closing Date, except for (A) matters which have not had and could not reasonably be expected to have a Material Adverse Effect and (B) changes permitted or contemplated by this Agreement, or contemplated or effected as a result of the TBA or Buyer's operations, activities, acts or omissions with respect to the Station.

**7.3 Deliveries at Closing.** Seller shall have delivered or caused to be delivered to Buyer the documents, each properly executed and dated as of the Closing Date as required pursuant to Section 2.3(a).

**7.4 Other Documents.** Seller shall have delivered to Buyer such documents and certificates of officers of Seller and public officials as shall be reasonably requested by Buyer's counsel to establish the existence and good standing of Seller and the due authorization of this Agreement and the transactions contemplated hereby by Seller.

**7.5 Required Approvals and Consent.** There shall have been secured such permissions, approvals, determinations, consents and waivers, as may be listed on Schedule 7.5.

**7.6 Absence of Investigations and Proceedings.** Except for governmental proceedings relating to the television broadcast industry generally, there shall be no claim, suit, action or other proceeding pending or threatened before or by any court, governmental agency, arbitrator or other entity against any party to this Agreement the effect of which would make it reasonably likely to be unlawful to consummate the transactions contemplated by this Agreement to be performed prior to or at the Closing.

**7.7 FCC Consent.** The FCC Consent for the Station's main broadcast television license (WBAK-TV) (without any conditions materially adverse to Buyer) shall have been issued, and shall, at Closing, be a Final Order and in full force and effect.

**7.8 Licenses.** Seller shall be the holder of the Licenses and there shall not have been any modification of any of such Licenses which has had or could reasonably be expected to have a Material Adverse Effect. The Station shall be operating in material compliance with the Communications Act, and no proceeding shall be pending or, to the Knowledge of Seller, threatened, the effect of which would be to revoke, cancel, fail to renew, suspend or modify materially and adversely any of the Licenses.

**7.9 Release of Liens.** All Liens (other than Permitted Liens) on the Purchased Assets shall be released as provided in Section 6.7.

If any of the conditions set forth in this Article VII have not been satisfied prior to or at the Closing, Buyer may (without waiving any other right or remedy under this Agreement or the TBA) in its sole discretion waive any such condition (other than the FCC Consent) and elect to proceed with the consummation of the transactions contemplated hereby.

**ARTICLE VIII**  
**CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

Each and every obligation of Seller to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

**8.1 Compliance with Agreement.** Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement and the TBA which are to be performed or complied with by it prior to or at the Closing.

**8.2 Representations and Warranties.** The representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

**8.3 Deliveries at Closing.** Buyer shall have delivered, or caused to be delivered, to Seller the documents, each properly executed and dated as of the Closing Date, required pursuant to Section 2.3(b). Buyer shall also have made the payments described in Section 2.2.

**8.4 Other Documents.** Buyer shall have delivered, or caused to be delivered, to Seller such documents and certificates of officers of Buyer and of public officials as shall be reasonably requested by Seller's counsel to establish the existence and good standing of Buyer and the due authorization of this Agreement and the transactions contemplated hereby by Buyer.

**8.5 Absence of Investigations and Proceedings.** Except for governmental proceedings relating to the television broadcast industry generally, no claim, suit, action or other proceeding shall be pending or threatened before or by any court, governmental agency, arbitrator or other entity against any party to this Agreement the effect of which would make it reasonably likely to be unlawful to consummate the transactions contemplated by this Agreement to be performed prior to or at the Closing.

**8.6 Governmental Consents.** The FCC Consent shall have been issued and shall be in full force and effect. All other material authorizations, consents or approvals of any and all governmental regulatory authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

If any of the conditions set forth in this Article VIII have not been satisfied, Seller may (without waiving any other right or remedy under this Agreement or the TBA) in its sole discretion waive any of such conditions (other than the FCC Consent) and elect to proceed with the consummation of the transactions contemplated hereby.

**ARTICLE IX**  
**INDEMNIFICATION**

**9.1 Survival of Representations and Warranties.** All of the representations and warranties of the parties hereto contained in the Agreement shall survive the Closing

(regardless of any investigation or inquiry of any party and even if the damaged party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect until the second annual anniversary of the Closing Date; provided, however, that (i) the representations and warranties contained in Sections 4.20 and 4.21 shall survive the Closing and continue in full force and effect until the fifth annual anniversary of the Closing Date; (ii) the representations and warranties contained in Section 4.14 shall survive the Closing and continue in full force and effect for a period expiring 60 days after the expiration of the applicable statutes of limitation, and (iii) the representations and warranties contained in Sections 4.2, 4.4, 4.5 and 4.18 shall continue in full force and effect forever. Any claim with respect to the foregoing sentence under Section 9.3 or 9.4 must be asserted in writing with reasonable particularity by the party making such claim within the applicable survival period.

**9.2 Survival of Covenants and Agreements.** The respective covenants and agreements of the parties contained in this Agreement shall survive the Closing.

**9.3 Indemnification by Seller.** Subject to (a) the survival provisions set forth in Section 9.1 and (b) the other limitations set forth in this Article IX, Seller shall indemnify and hold harmless Buyer, its Affiliates, and their successors and assigns (collectively, "Buyer Indemnified Parties") from and against any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorneys' fees) ("Losses") which Buyer Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

- (i) any breach of the representations and warranties made by Seller in or pursuant to this Agreement, or in any instrument, certificate or affidavit delivered by Seller at the Closing in accordance with the provisions of this Agreement;
- (ii) any failure by Seller to carry out, perform, or otherwise fulfill or comply with any covenant, agreement, undertaking, or obligation under this Agreement or the TBA;
- (iii) the Retained Liabilities;
- (iv) without limiting clause (iii) above and subject to Section 10.7 hereof, the Emmis Contract;
- (v) without limiting clause (iii) above, any and all losses, liabilities or damages resulting from the litigation required to be listed on Schedule 4.13; or
- (vi) any suit, action or other proceeding brought by any governmental authority or other Person arising out of, or in any way related to, any of the matters referred to in Sections 9.3(i), 9.3(ii), 9.3(iii), 9.3(iv) or 9.3(v).

**9.4 Indemnification by Buyer.** Subject to the survival provisions set forth in Section 9.1, Buyer agrees to indemnify and hold harmless Seller and its respective successors and assigns (individually a "Seller Indemnitee," and collectively the "Seller Indemnified

Parties") from, against and in respect of any and all Losses, which Seller Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

- (i) any breach of the representations and warranties of Buyer contained in this Agreement or in any instrument, certificate or affidavit delivered by or on behalf of Buyer at the Closing in accordance with this Agreement; and
- (ii) any failure by Buyer to perform or otherwise fulfill or comply with any covenant, undertaking, agreement or obligation to be performed, fulfilled, or complied with by Buyer hereunder and under the TBA prior to, on or after the Closing;
- (iii) the Assumed Liabilities; or
- (iv) any suit, action or other proceeding brought by any governmental authority or Person arising out of, or in any way related to, any of the matters referred to in 9.4(i) , 9.4(ii) or 9.4(iii);

## **9.5 Indemnification Procedures**

(a) Notice of Third Party Claim. Any party making a claim for indemnification under Sections 9.3 or 9.4 (the "Indemnified Party") will notify the party from whom indemnification is claimed (the "Indemnifying Party") of the claim in writing promptly after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it by a third party. Such notice will describe the claim, the amount thereof (to the extent then known and quantifiable), and the basis therefor, in each case to the extent known to the Indemnified Party. The failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of its obligations under Sections 9.3 or 9.4, as the case may be, except to the extent that such failure actually prejudices the Indemnifying Party.

(b) Assumption of Defense. With respect to any third party claim which gives rise or is alleged to give rise to a claim for indemnity under Sections 9.3 or 9.4 and which involves only the payment of money damages to such third party and which does not concern any FCC Authorization, the Indemnifying Party, at its option (subject to the limitations set forth below), will be entitled to control and assume responsibility for the defense of such claim and to appoint a competent and reputable counsel reasonably acceptable to the Indemnified Party to act as lead counsel of such defense. Prior to the Indemnifying Party's assuming control of such defense, the Indemnifying Party must first furnish the Indemnified Party with evidence which, in the Indemnified Party's reasonable judgment, establishes that the Indemnifying Party is and will be able to satisfy any such liability.

(c) Limits of Assumption of Defense. An Indemnifying Party's rights under Section 9.5(b) will be subject to the following additional limitations:

- (i) with respect to any claim the defense of which the Indemnifying Party has assumed, the Indemnified Party will be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, and the fees and expenses of such separate counsel will be borne by the Indemnified Party (except that the reasonable fees and expenses of such separate counsel incurred prior to the date the

Indemnifying Party effectively assumes control of such defense will be borne by the Indemnifying Party);

(ii) the Indemnifying Party will not be entitled to assume (or retain, as applicable) control of such defense if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation against the Indemnified Party, (B) the Indemnified Party reasonably concludes in good faith that, in light of any actual or potential conflict of interest, it would be inappropriate for legal counsel selected by the Indemnifying Party to represent the Indemnified Party, (C) the Indemnified Party reasonably believes in good faith that an adverse determination with respect to the action, lawsuit, investigation, proceeding or other claim giving rise to such claim for indemnification would be materially detrimental to or materially injure the Indemnified Party's reputation or future business prospects (or, in the case of a claim by the Buyer, a Station's or a Company's reputation or business prospects), or (D) upon the Indemnifying Party failing to vigorously prosecute or defend such claim in good faith or failing to begin such prosecution or defense in a timely manner; and

(iii) if the Indemnifying Party assumes control of the defense of any such claim, then the Indemnifying Party will obtain the prior written consent of the Indemnified Party before entering into any settlement of such claim, if such settlement does not expressly and unconditionally release the Indemnified Party from all liabilities and obligations with respect to such claim.

If the Indemnifying Party has the right to, but does not, assume control of the defense of any claim in accordance with this Section 9.5, then the Indemnifying Party may nonetheless participate (at its own expense) in the defense of such claim and at the Indemnifying Party's request the Indemnified Party will consult in a reasonable manner with the Indemnifying Party in respect of such defense. As used in this Article IX, the term "settlement" refers to any settlement, compromise, consent or similar decree, or election to permit default judgment to be entered, in respect of any claim.

**9.6 Remedies.** The indemnification provisions of this Article IX are the sole and exclusive post-Closing remedy of Buyer and Seller for a breach or nonperformance of any representations, warranties or covenants contained in this Agreement or in any related agreement, document, instrument or certificate (other than (i) the rights and remedies contained in the TBA, which shall be deemed non-exclusive herewith, (ii) in the case of fraud, and (iii) rights to seek specific performance).

**9.7 Certain Limitations of Liability.** Any provision of this Agreement to the contrary notwithstanding, the Seller shall have no obligation to indemnify any Buyer Indemnified Parties for any Losses suffered or incurred by the Buyer Indemnified Party for a breach of the representations or warranties of Seller made under this Agreement or in any instrument, certificate or affidavit delivered by or on behalf of Seller under this Agreement (a) until such Losses exceed an aggregate deductible of Forty Five Thousand Dollars (\$45,000.00) (the "Indemnity Deductible") (after which point the Seller shall be obligated to indemnify Buyer from and against all Losses in excess of the Indemnity Deductible), and (b) to the extent such

Losses exceed the sum of One Million Dollars (\$1,000,000.00); provided that such limitations shall not apply to Losses related to breaches of representations and warranties contained in Sections 4.2, 4.4, 4.5, 4.14, 4.18, 4.20 and 4.21.

**9.8 Survival.** Notwithstanding any other provision to the contrary in this Agreement, this Article IX shall survive termination of this Agreement without limitation.

## **ARTICLE X FURTHER AGREEMENTS**

**10.1 Event of Loss.** If prior to Closing the Station shall suffer an Event of Loss, at Closing, Seller shall assign to Buyer all its rights under any insurance and all proceeds of insurance (excluding business interruption proceeds for periods prior to the Closing Date) covering the property damage, destruction or loss not repaired, replaced or restored prior to Closing.

**10.2 Station Employees.** Buyer shall, effective as of the Closing Date, employ and hire such employees of Seller as it desires, upon terms substantially consistent with their respective current employment with Seller or, if applicable, pursuant to the terms and provisions of such employees' respective employment agreements as listed on Schedule 1.2; provided that Buyer shall give Seller reasonable notice prior to the Closing Date with respect to employees it intends not to hire. Immediately prior to the Closing Seller shall terminate all of its employees, and Seller shall be responsible for and shall pay any and all severance obligations and earned and accrued vacation owed to such terminated employees. Any notification required by any federal, state or local law governing mass layoffs or terminations, including without limitation the federal Worker Adjustment and Retraining Notification Act of 1988, shall be given by Seller. Compliance with all such laws shall be Sellers' sole responsibility and liability. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, claims and causes of action (including, without limitation, reasonable attorney fees and other legal costs and expenses) arising out of the violation, or alleged violation, of any such laws, any other laws or otherwise arising out of any such termination of any of the employees.

**10.3 Bulk Transfer.** Buyer and Seller hereby waive compliance with the Bulk Transfer provisions of the Uniform Commercial Code and all similar laws. Except for the Assumed Liabilities, Seller shall promptly pay and discharge when and as due all liabilities and obligations arising out of or relating to Seller's ownership and operation of the Station prior to Closing and its sale of the Station to Buyer. Except for the Assumed Liabilities, Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any and all liabilities, losses, costs, damages or causes of action (including, without limitation, reasonable attorney fees and other legal costs and expenses) arising out of or relating to claims asserted against Buyer pursuant to the Bulk Transfer provisions of the Uniform Commercial Code of Indiana or any similar law.

**10.4 Non-Competition.** Seller agrees that neither Seller nor its Affiliates will, directly or indirectly, for a period of three (3) years from and after the Closing Date own, manage, operate, control, be employed by, participate in or be engaged in any manner with the operation of a television broadcast station in the Terre Haute, Indiana Designated Market Area, as defined

by Nielsen Media Research. For purposes hereof, an "Affiliate" shall mean any person controlling, controlled by or under common control with another Person, and "control" shall mean the ownership (legal or beneficial) of over fifty percent (50%) of the capital stock or common equity interests of the applicable Person.

**10.5 Non Solicitation.** Seller agrees that neither Seller nor its Affiliates will, directly or indirectly, for a period of three (3) years from and after the Closing Date, contact, approach or solicit for the purpose of offering employment to or hiring (whether as an employee, consultant, agent, independent contractor or otherwise) or actually hire any person who is employed in the operation of the Station on the date hereof or on the Commencement Date (other than those persons who are not offered employment by Buyer on or about the Closing Date on substantially the same terms as the terms of employment such persons have with Seller as of the date hereof), or induce or attempt to induce any customer or other business relation of the Station to cease doing business with Buyer or the Station. If the final judgment of a court of competent jurisdiction declares that any term or provision of Sections 10.4 or 10.5 is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability will have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

**10.6 Pre-TBA Payables.** Seller agrees that from and after the date hereof, Seller shall satisfy the Pre-TBA Payables on a timely basis; provided that if Seller breaches such agreement Buyer shall have the right, but not the obligation, to satisfy such Pre-TBA Payables and any such payments by Buyer shall result in an increase to the Purchase Price pursuant to Section 2.4(e) (or in the event this Agreement is terminated prior to the Closing, Seller shall reimburse Buyer within 5 business days of such termination for any such payments made by Buyer).

**10.7 Emmis Contract.** Seller has notified Emmis Indiana Broadcasting that Seller believes the Emmis Contract to be terminated effective April 2, 2003. Buyer is not assuming the Emmis Contract, however, Seller and Buyer agree that, to the extent Seller's obligations under the Emmis Contract may extend beyond April 2, 2003, Buyer shall fulfill the ordinary course obligations of Seller under the Emmis Contract accruing from the Adjustment Time through the earlier of the termination of those obligations and December 31, 2003. Other than such obligations which Buyer has agreed to fulfill pursuant to this Section 10.7, Seller shall indemnify Buyer for all Losses suffered by Buyer relating to the Emmis Contract.

## **ARTICLE XI TERMINATION; MISCELLANEOUS**

**11.1 Termination.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date, as follows:

- (a) by mutual written agreement of Seller and Buyer; or



(b) at any time on or after the Closing Date, if the transactions contemplated hereby have not yet been consummated,

(i) by Seller, by written notice to Buyer, if each condition set forth in Article VII has been satisfied (or will be satisfied by the delivery of documents by the parties prior to the Closing) or waived in writing on such date and Buyer has nonetheless failed to consummate the transactions contemplated hereby; or

(ii) by Buyer, by written notice to Seller, if each condition set forth in Article VIII has been satisfied (or will be satisfied by the delivery of documents by the Parties prior to the Closing) or waived in writing on such date and Seller has nonetheless failed to consummate the transactions contemplated hereby; or

(c) at any time after the date hereof,

(i) by Buyer, by written notice to Seller, if the representations and warranties of Seller set forth in Article IV were not true and correct at and as of the Adjustment Time, except with respect to facts and circumstances that, in the aggregate, have not had and could not reasonably be expected to have a Material Adverse Effect; or

(ii) by Seller, by written notice to Buyer, if the representations and warranties of Buyer set forth in Article V were not true and correct in all material respects at and as of the Adjustment Time; or

(d) by Buyer, if Buyer is not then in material breach of this Agreement or the TBA and Seller is then in material breach of this Agreement or the TBA, and such breach remains uncured for fifteen (15) days after receipt of written notice thereof from Buyer; or

(e) by Seller, if Seller is not then in material breach of this Agreement or the TBA and Buyer is then in material breach of this Agreement or the TBA, and such breach remains uncured for fifteen (15) days after receipt of written notice thereof from Seller; or

(f) by Buyer or Seller upon termination (other than in connection with Closing) of the TBA in accordance with the terms thereof; provided that in the event of a termination of the TBA pursuant to or in response to a Governmental Termination Event (as defined in the TBA), Seller shall only be entitled to terminate this Agreement pursuant to this clause (f) if the Buyer has failed to assign its rights hereunder, within 120 days of such Governmental Termination Event, to a Person which Bahakel and Buyer believe in good faith is legally, technically, financially and otherwise qualified under the Communications Act to acquire the Licenses and own and operate the Station.

## **11.2 Rights on Termination; Waiver**

(a) If this Agreement is terminated pursuant to Section 11.1(a), all further obligations of the parties under or pursuant to this Agreement shall immediately terminate without further liability of any party to the other and the initial payment of \$1,500,000.00 (together with interest thereon at a rate of 5% per annum) made pursuant to Section 2.2 hereof shall be returned promptly to Buyer.

(b) If this Agreement is terminated (or terminable in the case of clause (i) below) by Buyer pursuant to Sections 11.1(b)(ii), 11.1(c)(i), 11.1(d), or pursuant to Section 11.1(f) (and Seller is in material default under the TBA), then Buyer shall be entitled to (i) pursue the legal remedy of specific performance (in lieu of terminating this Agreement), or (ii) claim and be paid by Seller as its sole liquidated damages hereunder and under the TBA, a return of the initial payment of \$1,500,000.00 (together with interest thereon at a rate of 5% per annum) made pursuant to Section 2.2 hereof, plus an amount equal to its direct and actual damages, not to exceed the sum of Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

(c) If this Agreement is terminated by Seller pursuant to Sections 11.1(b)(i), 11.1(c)(ii), 11.1(e), or pursuant to Section 11.1(f) (and Seller is not in material default under the TBA), then Seller shall be entitled to claim and be paid as its sole liquidated damages hereunder and under the TBA, the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), which payment shall be satisfied by Seller retaining the initial payment described in Section 2.2(a).

(d) The parties agree that the liquidated damages provided in Sections (b) and (c) above are intended to limit the claims that a non-defaulting party hereto may have against a defaulting party hereto in the circumstances described therein. The parties acknowledge and agree that the liquidated damages provided in such Sections bear a reasonable relationship to the anticipated harm, which would be caused by a breach of this Agreement and the TBA. The parties further acknowledge and agree that the amount of actual loss caused by a breach of this Agreement is incapable and difficult of precise estimation and that there would not be a convenient and adequate alternative to liquidated damages hereunder.

(e) Notwithstanding anything herein to the contrary, in the event this Agreement is terminated prior to the Closing for any reason, Buyer shall pay Seller or Seller shall pay Buyer, as the case may be, any amounts payable pursuant to Section 2.9.

**11.3 Further Assurances.** From time to time after the Closing Date, upon the reasonable request of Buyer, Seller shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and take such further action as Buyer may reasonably request in order more effectively to sell, assign, convey, transfer, reduce to possession and record title to Buyer to any of the Purchased Assets. Seller agrees to cooperate with Buyer in all reasonable respects to assure to Buyer the continued title to and possession of the Purchased Assets in the condition and manner contemplated by this Agreement; provided, however, Seller shall not be required to spend additional sums of money other than incidental expenses.

**11.4 Survival.** The obligations to indemnify contained in Article IX hereof, the agreements contained herein and, as limited by Article IX hereof, the representations and warranties made in this Agreement or made pursuant hereto shall survive the Closing and the consummation of the transactions contemplated by this Agreement, and any dissolution, merger or consolidation of Buyer or Seller and shall bind the legal representatives, assigns and successors of Buyer and Seller.

**11.5 Entire Agreement; Amendment; Waivers.** This Agreement, the TBA and the documents required to be delivered pursuant hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**11.6 Expenses.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the parties shall pay the fees and expenses of its respective counsel, accountants and other experts incident to the negotiation, drafting and execution of this Agreement, the TBA and consummation of the transactions contemplated hereby.

**11.7 Benefit; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and its respective proper successors and permitted assigns. This Agreement (and any rights, obligations or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the other party; provided, however, that Buyer may, without such consent, (a) prior to the Closing, (i) assign any or all of its rights and any claims under this Agreement to one or more of its creditors, (ii) assign any or all of its rights and interests hereunder to one or more of its Affiliates, (iii) designate one or more of its Affiliates to perform its obligations hereunder, and (iv) in the event of a termination of the TBA pursuant to or in response to a Governmental Termination Event (as defined in the TBA), assign its rights hereunder, within 120 days of such Governmental Termination Event, to a Person which Bahakel and Buyer believe in good faith is legally, technically, financially and otherwise qualified under the Communications Act to acquire the Licenses and own and operate the Station, and (b) after the Closing, assign any or all of its rights and any claims under this Agreement to any other Person. In the event Buyer assigns its rights hereunder pursuant to this Section 11.7, Seller shall reasonably cooperate with Buyer and its assignee to consummate the transactions contemplated hereby with such assignee.

#### **11.8 Confidentiality**

(a) Buyer agrees that prior to Closing, Buyer and its Affiliates, respective agents and representatives shall only use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with Buyer's financing of the transaction and Buyer's investigation of the Station and its assets in connection with this Agreement), and shall hold in strict confidence and not disclose (unless required under applicable laws or pursuant to a duly issued subpoena), (i) any data or information relating to Seller, its Affiliates, or the Station obtained from Seller or any of its directors, officers, employees, agents or representatives in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Station which is confidential in nature and not generally known to the public (clauses (i) and (ii) together, "Seller's Information"). If the transactions contemplated in this Agreement are not consummated for any

reason, Buyer shall return to Seller all data, information and any other written material obtained by Buyer from Seller in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Seller's Information to any third party or using any of Seller's Information for its own benefit or that of any other person, other than in connection with the filing of tax returns applicable to the Purchased Assets.

(b) Seller agree that Seller and its Affiliates, agents and representatives shall only use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with their investigations and review of Buyer in connection with this Agreement), and shall hold in strict confidence and not disclose (unless required under applicable laws or pursuant to a duly issued subpoena or in connection with obtaining any required third party consents or approvals or filing any tax returns), (i) any data or information, relating to Buyer or its Affiliates obtained from Buyer, or from any of its directors, officers, employees, agents or representatives, in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Station or the Buyer (including, without limitation, of the Station's operations under the TBA) which is confidential in nature and not generally known to the public (clauses (i) and (ii) together "Buyer's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Seller shall return to Buyer all data, information and any other written material obtained by Seller from Buyer in connection with this transaction and any copies, summaries or extracts, thereof and shall refrain from disclosing any of Buyer's Information to any third party or using any of Buyer's Information for its own benefit or that of any other person other than in connection with the filing of tax returns.

(c) Notwithstanding any other provision to the contrary herein, the provisions of this Section 11.8 shall survive the termination of this Agreement.

**11.9 Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) if sent by telecopy or facsimile machine to the number shown below, on the date of such confirmed facsimile or telecopy transmission, or (iii) when properly deposited for delivery by commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, on the date that is two days after the date set forth in the records of such delivery service or on the return receipt and addressed as follows, unless and until either of such parties notifies the other in accordance with this Section of a change of address or change of telecopy number:

|              |   |
|--------------|---|
| If to Buyer: | Mission Broadcasting, Inc.<br>c/o David S. Smith<br>544 Red Rock Drive<br>Wadsworth, Ohio 44281<br>Telecopy No.: 330-336-8454 |
|--------------|---|

With a copy to (which shall not constitute notice to Buyer):

Drinker Biddle & Reath LLP  
1500 K Street, N.W., Suite 1100  
Washington, D.C. 20005-1209  
Attention: Howard M. Liberman  
Telecopy No.: 202-842-8465

If to Seller: Bahakel Communications, Inc.  
One Television Place  
Charlotte, NC 28205  
Attention: Russell Schwartz  
Telecopy No.: 704-358-3581

With a copy to (which shall not constitute notice to Seller):

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP  
1600 First Union Capital Center  
150 Fayetteville Street Mall  
Raleigh, NC 27601  
Attention: Mark J. Prak  
Coe W. Ramsey  
Telecopy No.: 919-839-0304

**11.10 Counterparts; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**11.11 Income Tax Position.** Neither Buyer nor Seller shall take a position for income tax purposes which is inconsistent with this Agreement; provided, however that nothing contained herein shall require Buyer or Seller to contest or litigate in any forum any proposed deficiency or adjustment by any taxing authority or agency that may challenge the manner in which the transactions under this Agreement are treated.

**11.12 Severability.** If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid, or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.

**11.13 No Reliance.** Except for (i) successors and any assignees permitted by Section 11.7 of this Agreement and (ii) lenders (and their successors and assigns) providing financing for the consummation of the transactions contemplated by this Agreement:

(a) no third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement; and

(b) Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**11.14 Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of each party have participated in the preparation hereof.

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

**11.16 Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Delaware, without regard to the conflict of law principles thereof.

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

**"BUYER"**

**MISSION BROADCASTING, INC.**

By: \_\_\_\_\_  
Name: David S. Smith  
Title: President

**"SELLER"**

**BAHAKEL COMMUNICATIONS, LTD.**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President

**BAHAKEL BROADCASTING COMPANY**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President

**TERRE HAUTE INDEPENDENT  
BROADCASTERS, INC.**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President

**INDIANA BROADCASTING PARTNERS**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President  
Terre Haute Independent  
Broadcasters, Inc.  
Managing Partner

**STAR CITY DEVELOPMENT CO., INC.**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President  
**[Solely with respect to, and only to the  
extent these provisions concern the Tower  
Site or the Studio Site, Sections 2.1, 2.3,  
4.5, 4.9, 4.10, 4.16, 4.21, 6.10 and Articles  
IX and XI]**

**KXEL BROADCASTING COMPANY, INC.**

By: \_\_\_\_\_  
Name: Beverly B. Poston  
Title: Executive Vice President  
**[Solely with respect to, and only to the  
extent these provisions concern the Guy  
Wire Lease, Sections 2.1, 2.3, 4.5, 4.9,  
4.10, 4.16, 4.21, 6.10 and Articles IX and  
XI]**