

## AGREEMENT FOR LIKE-KIND EXCHANGE OF ASSETS

**THIS AGREEMENT FOR LIKE-KIND EXCHANGE OF ASSETS** (this "Agreement") is made and entered into this [ ], day of June, 2005, by and among **ETERNAL BROADCASTING, LLC**, a Nebraska limited liability company ("Eternal"), **NRG MEDIA, LLC**, a Delaware limited liability company ("NRG").

### WITNESSETH:

**WHEREAS**, Eternal owns and operates radio broadcast station KROR (FM), licensed to Hastings, Nebraska, pursuant to licenses issued by the Federal Communications Commission ("FCC"), and all of the assets used or useful in the operation of such station (the "Eternal Station");

**WHEREAS**, Waitt Radio Inc., a South Dakota corporation ("Waitt"), sells substantially all of the commercial advertising time for the Eternal Station pursuant to an Agreement for the Sale of Advertising Time by and between Waitt and Eternal, dated January \_\_, 2001 (the "JSA");

**WHEREAS**, NRG, WMMP, LLC, a South Dakota limited liability company ("WMMP"), Waitt, NewRadio Group, LLC, and the other parties identified therein have entered into that certain Contribution Agreement, effective as of March 1, 2005 (the "Contribution Agreement"), an application has been filed with the FCC to assign the licenses of radio broadcast station KLIQ(FM), Hastings, Nebraska, to NRG, and upon FCC approval and the consummation of the Contribution Agreement (the "NRG Assignment"), WMMP shall contribute station KLIQ (FM) and all of the assets used or useful in the operation of such station to NRG (the "NRG Station", and, together with the Eternal Station, the "Stations");

**WHEREAS**, NRG and Waitt have entered into that certain Local Marketing Agreement, effective as of March 1, 2005, pursuant to which Waitt agreed to provide NRG with air time on the radio broadcast stations identified therein, including the NRG Station (the "LMA"); and

**WHEREAS**, subject to the terms and conditions contained herein, Eternal and NRG desire to exchange the Eternal Station for the NRG Station in order to effect an exchange of like-kind property as defined by Section 1031 of the Internal Revenue Code (the "Exchange").

**NOW THEREFORE**, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, the parties hereto, intending to be legally bound, do hereby agree as follows:

## ARTICLE I EXCHANGE OF STATIONS

1.01 Eternal Station Assets. Subject to and in reliance upon (i) the representations, warranties and agreements herein set forth, and (ii) the terms and conditions herein contained, Eternal shall grant, convey, assign, transfer, deliver and exchange with NRG on the Closing Date (as hereinafter defined), all right, title and interest of Eternal in the properties, assets, and interests, real and personal, tangible and intangible, of every type and description, including as set forth on Schedule 1.01 (except for the Excluded Assets as defined in Section 1.03), used or

held for use primarily in the business or operation of the Eternal Station. Without limiting the foregoing, the assets to be exchanged shall include the following (the "Eternal Assets"):

- a. The Eternal Station FCC Licenses and all other licenses, permits or authorizations, if any, issued by the Federal Aviation Administration (the "FAA"), any other regulatory agency, or any Federal, state or local governmental authority in connection with the ownership and operation of the Eternal Station, as set forth in Schedule 1.01(a) (collectively, and including the Eternal Station FCC Licenses, the "Eternal Authorizations");
- b. All of Eternal's right, title and interest in and to the Eternal Station's transmitters, antenna towers, antenna systems, fixtures, equipment, machinery, tools, inventories of supplies, tapes, including recorded commercials and programming, spare parts, automobiles and other vehicles, furniture, computers, telephone systems, office equipment, and any other tangible assets or personal property, which are owned or leased by Eternal and used or held for use primarily in connection with the operation of the Eternal Station which assets and property (except for items of property with a fair market value less than One Thousand Dollars (\$1,000.00)) are set forth in Schedule 1.01(b) (collectively, the "Eternal Tangible Personal Property"), plus such additions thereto and minus such deletions therefrom as are permitted by the provisions of this Agreement;
- c. All right, title, and interest of Eternal in and to (i) the contracts, leases, agreements (including agreements through which Eternal provides programming and receives revenues), and commitments listed on Schedule 1.01(c) (including rights to deposits under leases or held by utilities or others), and (ii) any contracts, leases, agreements, and commitments which are entered into by Eternal in accordance with the provisions of this Agreement between the date hereof and the Closing Date which relate primarily to the operation of the Eternal Station, (collectively, the "Eternal Assumed Contracts"; for purposes of this Agreement, the term "Eternal Material Contracts" shall refer to those Contracts designated as "Material Contracts" in Schedule 1.01(c));
- d. Eternal's right, title and interest in and to all call letters used with respect to the Eternal Station, and all trade names, trademarks, service marks, copyrights, and patents (registered or unregistered, and including applications and licenses therefor), and all telephone numbers and listings, trade secrets, universal resource locators, domain names and website addresses used or held for use primarily in connection with the operation of the Eternal Station, including those listed and described in Schedule 1.01(d), together with the goodwill associated therewith, and any logograms, jingles, slogans, commercials and other promotional materials used in or relating to Eternal Station, and other intangible personal property associated therewith;
- e. The real property used or held for use primarily in connection with the operation of the Eternal Station, including the real property listed and described in Schedule 1.01(e), and including the fee estates and buildings, fixtures, and improvements thereon, leasehold interests, easements, rights to access, rights-of-way, and other real property interests which are owned by Eternal and used in or held for use primarily in connection with the operation of the Eternal Station

plus such additions thereto and minus such deletions therefrom as are permitted by the provisions of this Agreement (collectively, the "Eternal Real Property");

- f. Books, files, records, and computer systems and software relating to the Eternal Assets, the Eternal Station and the business or operation of the Eternal Station, including proprietary information, schematics, technical information and engineering data, machinery and equipment warranties, maps, computer discs and tapes, software, rights to use telephone numbers, drawings, blueprints, plans, and processes developed or acquired by Eternal and used or intended for use in connection with the Eternal Station or the Eternal Assets, programming information, books of accounts, financial statements, state sales tax books, records, and returns, employment records, customer lists and files, purchase and sales records, correspondence, advertising records, files, literature, copies of the Eternal Assumed Contracts, and the FCC required logs, files, and records, but not including (i) those books, files, and records set forth in Section 1.03, and (ii) any corporate or accounting books or records of Eternal which do not relate to the operation of the Eternal Station and the Eternal Assets, or which relate to Eternal's past or current income tax liabilities;
- g. All market data and information relating to the Eternal Station's markets in Eternal's possession or control; and
- h. All of the accounts receivable relating to the sale of advertising time and any other goods or services (the "Accounts Receivable") of the Eternal Station.

1.02 NRG Station Assets. Subject to and in reliance upon (i) the representations, warranties and agreements herein set forth, (ii) the consummation of the transactions under the Contribution Agreement, and (iii) subject to the terms and conditions herein contained, NRG shall grant, convey, assign, transfer, deliver and exchange with Eternal on the Closing Date, all right, title and interest of NRG in the properties, assets, and interests, real and personal, tangible and intangible, of every type and description, including as set forth on Schedule 1.02 (except for the Excluded Assets as defined in Section 1.03), used or held for use in the business or operation of the NRG Station. Without limiting the foregoing, the assets to be exchanged shall include the following (the "NRG Assets" and together with the Eternal Assets, the "Assets"):

- a. The NRG Station FCC Licenses and all other licenses, permits or authorizations, if any, issued by the FAA, any other regulatory agency, or any Federal, state or local governmental authority in connection with the ownership and operation of the NRG Station, as set forth in Schedule 1.02(a) (collectively, and including the NRG Station FCC Licenses, the "NRG Authorizations");
- b. All of NRG's right, title and interest in and to the NRG Station's transmitters, antenna towers, antenna systems, fixtures, equipment, machinery, tools, inventories of supplies, tapes, including recorded commercials and programming, spare parts, automobiles and other vehicles, furniture, computers, telephone systems, office equipment, and any other tangible assets or personal property, which are owned or leased by NRG and used or held for use primarily in connection with the operation of the NRG Station which assets and property (except for items of property with a fair market value less than One Thousand

Dollars (\$1,000.00)) are set forth in Schedule 1.02(b) (collectively, the "NRG Tangible Personal Property"), plus such additions thereto and minus such deletions therefrom as are permitted by the provisions of this Agreement;

- c. All right, title, and interest of NRG in and to (i) the contracts, leases, agreements (including agreements through which NRG provides programming and receives revenues), and commitments listed on Schedule 1.02(c) (including rights to deposits under leases or held by utilities or others), and (ii) any contracts, leases, agreements, and commitments which are entered into by NRG in accordance with the provisions of this Agreement between the date hereof and the Closing Date which relate primarily to the operation of the NRG Station (collectively, the "NRG Assumed Contracts" and together with the Eternal Assumed Contracts, the "Assumed Contracts"; for purposes of this Agreement, the term "NRG Material Contracts" shall refer to those Contracts designated as "Material Contracts" in Schedule 1.02(c));
- d. NRG's right, title and interest in and to all call letters used with respect to the NRG Station, and all trade names, trademarks, service marks, copyrights, and patents (registered or unregistered, and including applications and licenses therefor), and all telephone numbers and listings, trade secrets, universal resource locators, domain names and website addresses used or held for use primarily in connection with the operation of the NRG Station, including those listed and described in Schedule 1.02(d), together with the goodwill associated therewith, and any logograms, jingles, slogans, commercials and other promotional materials used in or relating to NRG Station, and other intangible personal property associated therewith;
- e. The real property used or held for use primarily in connection with the operation of the NRG Station, including the real property listed and described in Schedule 1.02(e), and including the fee estates and buildings, fixtures, and improvements thereon, leasehold interests, easements, rights to access, rights-of-way, and other real property interests which are owned by NRG and used in or held for use primarily in connection with the operation of the NRG Station plus such additions thereto and minus such deletions therefrom as are permitted by the provisions of this Agreement (collectively, the "NRG Real Property");
- f. Books, files, records, and computer systems and software relating to the NRG Assets, the NRG Station and the business or operation of the NRG Station, including proprietary information, schematics, technical information and engineering data, machinery and equipment warranties, maps, computer discs and tapes, software, rights to use telephone numbers, drawings, blueprints, plans, and processes developed or acquired by NRG and used or intended for use in connection with the NRG Station or the NRG Assets, programming information, books of accounts, financial statements, state sales tax books, records, and returns, employment records, customer lists and files, purchase and sales records, correspondence, advertising records, files, literature, copies of the NRG Assumed Contracts, and the FCC required logs, files, and records, but not including (i) those books, files, and records set forth in Section 1.03, and (ii) any corporate or accounting books or records of NRG which do not relate to the operation of the NRG Station and the NRG Assets, or which relate to NRG's past or current income tax liabilities; and

- g. All market data and information relating to the NRG Station's markets in NRG's possession or control.

1.03 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, the Assets do not include, and the parties shall not, and are not hereby agreeing to, exchange, assign, transfer, deliver, or convey to the other party: (a) cash and cash equivalents on hand or on deposit in banks (including certificates of deposit, commercial paper, treasury bills, and money market accounts), marketable securities, or inter-company or inter-affiliate accounts, and any similar accounts; (b) any insurance policies and contracts of insurance, and proceeds therefrom; (c) promissory notes, amounts due from employees, bonds, letters of credit, certificates of deposit, other similar items, and any cash surrender value in regard thereto; (d) any pension, profit-sharing, or employee benefit plans, including such party's interest in any welfare plan, pension plan, or benefit arrangement; (e) any collective bargaining agreements; (f) all tax returns and supporting materials, all original financial statements and supporting materials, all books and records that such party is required by law to retain, and all records relating to the exchange of the Assets; (g) any interest in and to any refunds or overpayments of federal, state or local franchise, income, or other taxes for periods prior to the Closing Date; (h) any contract, lease, or agreement other than the Assumed Contracts; (i) duplicate copies of the books and records necessary to enable each party to file its tax returns and reports; (j) all tangible and intangible personal property within the Assets disposed of or consumed in the ordinary course of business consistent with the past practices of the applicable party, and the terms and conditions of this Agreement, between the date of this Agreement and the Closing Date; (k) all Assumed Contracts that have terminated or expired prior to the Closing Date in the ordinary course of business consistent with the past practices of the applicable party, and the terms and conditions of this Agreement; (l) the name Eternal Broadcasting LLC, NRG Media, LLC, or any variants thereof; (m) the NRG Station's Accounts Receivable; and (n) the tangible personal property listed on Schedule 1.02(b) that are assets used by KLIQ but not being transferred to Eternal hereunder which shall be the subject of a lease and expense sharing agreement between NRG Media and Eternal to be reasonably approved by both parties at Closing and pursuant to which Eternal shall have the right to use such assets provided that they shall pay their proportionate amount of any related expenses and NRG shall have the right of any first call from the Burk remote control system and shall have no liability to Eternal or its assignee pursuant to such first call (collectively the "Excluded Assets").

1.04 Liabilities. The Assets shall be exchanged and conveyed to the other party free and clear of all, obligations, liens, security interests and encumbrances except for Permitted Encumbrances (as defined in Section 2.02(a)(ix)). Neither party will assume and or be liable for any liability, obligation, claim, lien, security interest or encumbrance of the conveying party other than those liabilities and obligations arising on or after the Closing Date under the Assumed Contracts assigned to the other party hereunder. Upon Closing (as hereinafter defined), NRG shall not assume the JSA, and Eternal shall provide evidence satisfactory to NRG regarding termination of the JSA. Upon Closing, Eternal shall not assume any obligations under the LMA, which shall terminate with respect to the NRG Station and NRG shall provide evidence satisfactory to Eternal regarding such termination of the LMA.

1.05 Excluded Liabilities. Except as expressly assumed by Eternal or NRG, as applicable, under Section 1.04, neither party shall assume or be obligated for any of the conveying party's respective liabilities or obligations, and each conveying party shall solely retain, pay, perform, defend and discharge all of its respective liabilities or obligations, of any and every kind whatsoever, direct or indirect, known or unknown, absolute or contingent, whether or not

disclosed in the Schedules to this Agreement, including the following liabilities and obligations (herein referred to as the "Excluded Liabilities"), including, without limitation:

- a. All liabilities and obligations of the parties to be paid or performed and arising before the Closing Date, in connection with the operation of the Stations, and the ownership of the Assets;
- b. Any Taxes which arise from the operation of the Stations, the business of the parties or the ownership of the Assets for periods or portions of periods that end on or prior to the Closing Date;
- c. Any liability or obligation of the parties in respect of indebtedness for borrowed money or any intercompany payable of the parties or any of their respective Affiliates;
- d. All liabilities and obligations under Environmental Laws (defined in Section 7.19) related to, associated with or arising out of (A) the occupancy, operation, use, or control of any of the Stations or the Real Property prior to the Closing Date; (B) all permits, licenses, and approvals issued or required under Environmental Laws for the construction, operation or removal of any structures, tanks, facilities, or equipment, and any uses or activities conducted, on any of the Real Property prior to the Closing Date; (C) any conditions whatsoever existing on, under, or in any of the Real Property prior to the Closing Date (including all facilities, improvements, structures, building materials, and equipment thereon, indoor air therein, surface water thereon or adjacent thereto, and soil or groundwater thereunder or adjacent thereto); (D) exposure or potential exposure to any Hazardous Materials (defined in Section 7.19) or Contaminant (defined in Section 7.19) on, under or in any Real Property prior to the Closing Date; or (E) any generation, storage, transport or arrangement for transport, or disposal or arrangement for disposal of a Hazardous Materials or Contaminant prior to the Closing Date on, at or from (1) any of the Real Property or (2) any real property or facility owned by a third party at which Hazardous Materials or Contaminants generated by the parties were sent prior to the Closing Date, including the liabilities and obligations associated with the matters set forth on Schedule 7.19 (in the case of Eternal) and Schedule 8.19 (in the case of NRG);
- e. Any costs and expenses incurred by the parties unrelated to negotiation and preparation of the Transaction Documents (hereinafter defined) and their performance and compliance with the agreements and conditions contained therein;
- f. Any of the parties' liabilities or obligations under the Transaction Documents;
- g. Any liabilities or obligations of the parties to be paid or performed after the Closing Date, in connection with the operation of the Stations and the ownership of the Assets, to the extent such liabilities and obligations, but for a breach or default by the parties, would have been paid, performed or otherwise discharged prior to the Closing Date, or to the extent the same arise out of any such breach or default;
- h. Any of the parties' liabilities or obligations relating to the Excluded Assets;

i. Any obligations or liabilities relating to or arising out of any claims or proceedings to the extent relating to actions of the parties or the conduct of the parties' business prior to the Closing Date;

j. Except as provided in Section 6.10, any obligations or liabilities arising out of the employment by the parties and/or termination by the parties of employees employed at the Stations or in connection with the parties' business prior to the Closing Date; and

k. Any obligation or liabilities arising out of or in connection with any contracts of the parties not assumed by Eternal or NRG, as applicable, under the Transaction Documents.

1.06 Agreed Exchange of Consideration. Subject to the adjustments provided in Section 1.08, the parties acknowledge and agree that the value of the Eternal Station is Eight Hundred Thousand Dollars (\$800,000.00) and the value of the NRG Station is Five Hundred Thirty Thousand Dollars (\$530,000.00) solely for purposes of this Exchange, and NRG shall pay an additional amount of immediately available funds by wire transfer to Eternal in the amount of Two Hundred Seventy Thousand Dollars (\$270,000.00) which shall be allocable within each general class of exchangeable property, and that Eternal agrees to exchange to NRG, and NRG agrees to exchange to Eternal all of their respective properties as described herein to qualify as a like-kind exchange of property under Section 1031 of the Internal Revenue Code so as to effect a tax free like-kind exchange of property.

1.07 Allocation. Allocation shall be as mutually agreed to between the parties in writing at, or before, Closing.

1.08 Adjustments. The parties shall make adjustments based on the following:

(a) All income and expenses related to the Assets being exchanged shall be adjusted and allocated between Eternal and NRG. The net amount by which adjustments, if any, are to be increased or decreased in accordance with this Section is herein referred to as the "Adjustment Amount."

(b) Without limiting the generality of the foregoing:

(i) Each respective owner shall receive a credit for the unapplied portion as of the Closing Date of any security deposits made by such party under the Assumed Contracts by the other party at Closing.

(ii) An adjustment shall be made in favor of Eternal or NRG, as applicable, for the amount, if any, of prepaid expenses that inure to the benefit of the other party after the Closing Date.

(c) To the extent not inconsistent with the express provisions of this Agreement, the adjustments made pursuant to this Section shall be made in accordance with generally accepted accounting principles ("GAAP").

(d) The prorations and adjustments provided for in this Section, to the extent practicable, shall be made on the Closing Date. As to those prorations and adjustments

not capable of being ascertained on the Closing Date, an adjustment and proration shall be made within sixty (60) days of the Closing Date.

(e) In the event of any disputes between the parties as to the Adjustment Amount, such disputes shall be determined by an independent certified public accountant which is mutually acceptable to both parties whose determination shall be final, and the fees and expenses of such accounting firm shall be borne equally by both parties.

1.09 Additional Fees. NRG shall bear any and all sales and use taxes arising out of the transactions contemplated by this Agreement. NRG shall bear any transfer, conveyance, recordation and filing fees, taxes or assessments, including fees in connection with the conveyance of real property and the recordation of instruments related thereto, imposed upon, or arising out of the assignment, conveyance, and transfer to either party of the Assets as contemplated by this Agreement, provided that the conveying party shall pay all income taxes or other fees based upon gain realized by each of the parties as a result of the conveyance of the Assets. NRG shall bear all of the FCC filing fees incurred in connection with the Applications. Each of NRG and Eternal shall pay their own professional fees (including legal and accounting expenses), applicable to this transaction.

1.10 Accounts Receivable. NRG shall retain the Accounts Receivable for the NRG Station accrued on or prior to the Closing Date (the "NRG Accounts Receivable"). NRG shall, on or as soon as practical following the Closing Date, deliver to Eternal a complete and detailed list of all the Accounts Receivable of its Station. During the period beginning on the Closing Date and ending one hundred twenty (120) days after the Closing Date (the "Collection Period"), Eternal shall use commercially reasonable efforts to collect the NRG Accounts Receivable on behalf of NRG in the usual and ordinary course of business, using the Station's credit, sales and other appropriate personnel in accordance with customary practice. Eternal shall not adjust any NRG Accounts Receivable or grant credit without the written consent of NRG. Within thirty (30) days after the end of the Collection Period, Eternal shall furnish NRG with a report of all amounts collected with respect to the NRG Accounts Receivable during the Collection Period, less any reasonable out-of-pocket collection costs paid by Eternal during the Collection Period, with respect to the NRG Accounts Receivable. NRG shall be responsible for sales or other commissions, or any related payroll or other taxes and withholdings, associated with or arising out of the NRG Accounts Receivable so collected. After the expiration of the Collection Period, NRG shall have the right to take all actions necessary to collect the NRG Accounts Receivable, including the commencement of legal action.

## **ARTICLE II CLOSING AND DELIVERIES**

### **2.01 Closing.**

- (a) The actual conveyance, transfer, assignment and delivery of the Assets shall take place five (5) business days after the date on which the latest FCC Consent (as defined in Section 3.01) for all Eternal FCC Licenses and all NRG FCC Licenses has become a Final Order (as defined in Section 10.01) (the "Closing Date"), at such place and hour as shall be mutually agreed upon by NRG and Eternal, including, that the Closing may be conducted by mail, facsimile, electronic transmission or courier delivery of documents executed in counterparts, subject to the satisfaction or waiver of the other conditions set forth in Articles 10, 11 and 12 of this Agreement. If the FCC denies an application for



assignment of any FCC License or if an FCC Consent is not obtained for any FCC License by March 31, 2006, then the parties may terminate this Agreement in accordance with Article X.

2.02 Closing Deliveries. At the Closing:

- (a) Eternal and/or NRG, as applicable, shall deliver, or shall cause to be delivered, to the other party, the following deliverables to the extent they relate to the Assets being transferred at the Closing (the "Closing Deliverables"):
  - (i) Certificates from the appropriate governmental officials regarding the organization, good standing and foreign qualifications of Eternal and NRG;
  - (ii) A duly executed bill of sale and assignment, dated the Closing Date, in form and substance reasonably satisfactory;
  - (iii) A duly executed assignment or assignments of the Eternal FCC Licenses and the NRG FCC Licenses and other Eternal Authorizations and other NRG Authorizations, dated the Closing Date, in form and substance reasonably satisfactory;
  - (iv) Duly executed titles for all titled property (including the motor vehicle titles) included in the Eternal Assets and the NRG Assets;
  - (v) In each case where the rights of Eternal under any of the Eternal Assumed Contracts listed in Schedule 1.01(c) and designated therein as Eternal Material Contracts are not assignable to NRG as provided herein without the consent of another party, the written consent to such assignment from each such other party (the "Eternal Material Consents"), together with such additional written consents to the assignment to NRG of other Eternal Assumed Contracts listed in Schedule 1.01(c) as Eternal shall have obtained as of the Closing Date (all of the consents referred to in this Section 2.02(a)(v), including the Eternal Material Consents, shall be referred to herein collectively as the "Eternal Consents");
  - (vi) In each case where the rights of NRG under any of the NRG Assumed Contracts listed in Schedule 1.02(c) and designated therein as NRG Material Contracts, are not assignable to Eternal as provided herein without the consent of another party, the written consent to such assignment from each such other party (the "NRG Material Consents") (the Eternal Material Consents and the NRG Material Consents collectively, the "Material Consents"), together with such additional written consents to the assignment to Eternal of other NRG Assumed Contracts listed in Schedule 1.02(c) as NRG shall have obtained as of the Closing Date (all of the consents referred to in this Section 2.02(a)(vi), including the NRG Material Consents, shall be referred to herein collectively as the "NRG Consents") (the Eternal Consents and the NRG Consents collectively, the "Consents");
  - (vii) For each real property fee or leasehold interest included in the Eternal Assets and the NRG Assets, such certificates of estoppel and non-disturbance and attornment commitments in favor of the other party and, if so requested by such party, its financing sources, as may be reasonably requested, from any mortgagees and from the respective landlords of such leaseholds or the tenants under any leases where Eternal

or NRG, as applicable, is the lessor, addressing such matters as such party may reasonably request;

- (viii) Such other assignments or documents, including any deeds for the Eternal Real Property, as are necessary in order to vest good and marketable title to the Eternal Assets in the name of NRG or its permitted assigns, free and clear of any claims, mortgages, liens, pledges, conditions, charges or encumbrances of any nature ("Encumbrances"), except for Eternal Permitted Encumbrances, or as may be otherwise permitted by this Agreement. "Eternal Permitted Encumbrances" shall mean (A) liens for current taxes not yet due and payable, (B) easements, covenants, conditions, and restrictions that are disclosed on Schedule 2.03(a)(viii), (C) liens arising under any Eternal Assumed Contract, and (D) other easements, covenants, and restrictions of record that affect any Eternal Real Property and do not have a material adverse effect on the value of such Eternal Real Property, or on the use of such Eternal Real Property in the conduct of the business or operations of the Eternal Station, as applicable;
- (ix) Such other assignments or documents, including any deeds for the NRG Real Property, as are necessary in order to vest good and marketable title to the NRG Assets in the name of Eternal or its permitted assigns, free and clear of any Encumbrances, except for NRG Permitted Encumbrances, or as may be otherwise permitted by this Agreement. "NRG Permitted Encumbrances" shall mean (A) liens for current taxes not yet due and payable, (B) easements, covenants, conditions, and restrictions that are disclosed on Schedule 2.03(a)(ix), (C) liens arising under any NRG Assumed Contract, and (D) other easements, covenants, and restrictions of record that affect any NRG Real Property and do not have a material adverse effect on the value of such NRG Real Property, or on the use of such NRG Real Property in the conduct of the business or operations of the NRG Station (the Eternal Permitted Encumbrances and the NRG Material Encumbrances collectively, the "Permitted Encumbrances");
- (x) Each of the Material Consents with no material adverse change to the terms of the Assumed Contracts with respect to which such Material Consent shall have been obtained, unless Eternal or NRG, as applicable, shall have consented in writing to such change; provided, however, no party shall be required to pay for, or give other consideration, to obtain such Material Consent;
- (xi) Subject to the provisions of Section 1.03, copies of all Authorizations, Assumed Contracts, blueprints, schematics, working drawings, plans, projections, statistics, engineering records, and all files and records regarding the Assets and used in connection with the Assets and the Stations' operations (provided, however, that such Assumed Contracts, blueprints, schematics, working drawings, plans, projections, statistics, engineering records, and all such files and records shall be deemed to have been delivered if the same shall be located at the premises of the respective Station on the Closing Date);
- (xii) A termination agreement in form and substance reasonably satisfactory to NRG, duly executed by Waitt and Eternal, terminating any ongoing obligations of each of the parties under the JSA, and a termination agreement in form and substance reasonably satisfactory to Eternal, duly executed by Waitt and NRG, terminating any ongoing obligations of each of the parties under the LMA with respect to the NRG Station;

- (xiii) The opinion of each of the party's respective corporate counsel and FCC counsel to NRG, dated the Closing Date in form and substance reasonably acceptable to Eternal, NRG and NRG's financing sources, subject to customary assumptions, exceptions and limitations;
- (xiv) Certificates dated as of the Closing Date executed by officers or members of the parties or their affiliates or subsidiaries, as applicable, certifying (A) that the representations and warranties of such parties contained in this Agreement and any exhibits, schedules or documents referenced herein (collectively, with this Agreement, the "Transaction Documents") are true and complete in all material respects as of the Closing Date, except for changes contemplated by the Transaction Documents and except for representations and warranties expressly made solely as of the prior date; and (B) that such parties have, in all material respects, performed all of their respective obligations and complied with all their respective covenants set forth in the Transaction Documents to be performed and complied with by it, prior to or on the Closing Date;
- (xv) Such other documents as Eternal, NRG or their respective legal counsel may reasonably request in order to carry out the purposes of this Agreement;
- (xvi) Environmental Assessments, Title Policies and surveys for the Eternal Real Property and Environmental Assessments, Title Policies and surveys for the NRG Real Property and any other documents as may be required in accordance with Sections 6.06 and 6.07;
- (xvii) Eternal shall deliver a bill of sale and assignment and executed titles for all motor vehicles used by the Eternal Station and assign the rights, interests and obligations under lease agreements for vehicles used by the Eternal Station, and NRG shall deliver a bill of sale and assignment and duly executed motor vehicle titles for all motor vehicles used by the NRG Station and assign the rights, interests and obligations under lease agreements for vehicles used by the NRG Station; and
- (xviii) Eternal shall obtain a license agreement for the CBSI Traffic Software from Wicks Broadcasting, Inc. in substantially the same form and on the same terms and conditions as granted to NRG, except the term of the license agreement shall be for twelve months on or before closing.
- (xviii) Such documents and instruments as may be reasonably necessary to evidence that the Assets are free and clear of all Encumbrances, other than Eternal Permitted Encumbrances and NRG Permitted Encumbrances, including appropriate lien releases.
- (b) The Parties shall, upon request, on or after the Closing Date, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and/or instruments, and doing any and all other acts as may be reasonably required by a party hereto or by their respective legal counsel in order to consummate or otherwise to implement the transaction contemplated by this Agreement.

### **ARTICLE III FCC APPROVAL**

#### **3.01 FCC Approval.**

- (a) Eternal and NRG shall jointly file with the FCC substantially complete applications (the "Applications") to request the FCC's consent to the voluntary assignment of the Eternal FCC Licenses and the NRG FCC Licenses (collectively, the "FCC Licenses") from each party to the other party ( each an "FCC Consent"), within ten (10) business days after the execution and delivery of this Agreement; provided, however, that if any FCC-imposed freeze on the filing of broadcast license assignment applications is in effect during such ten (10) business day period, then the Applications shall be filed not more than ten (10) business days after such freeze is lifted. NRG shall pay all expenses incurred by both parties in connection with the preparation and prosecution of the Applications and any filing fee associated with the Applications. The parties shall prosecute the Applications before the FCC, including opposing any petitions to deny or other objections filed against any of the Applications, with all reasonable diligence, in order to obtain the FCC Consent promptly and in order to carry out the provisions of this Agreement. If FCC reconsideration or review, or if judicial review, is sought with respect to the FCC Consent, by a third party or upon the FCC's own motion, the parties shall cooperate in opposing such requests for FCC reconsideration or review or for judicial review. Each of Eternal and NRG shall make available to the other, promptly after the filing thereof, copies of all reports filed by it or its affiliates on or prior to the Closing Date with the FCC in respect of the Stations.
- (b) If the FCC Consent imposes any condition upon any party hereto, such party shall use its commercially reasonable efforts to comply with such condition. If any party to this Agreement seeks FCC reconsideration or review, or judicial review, of a materially adverse condition imposed by the FCC, the other party shall cooperate fully with the party seeking reconsideration or review of such condition; provided, however, that neither party shall seek or cause to be sought, without the prior written consent of the other party, which consent shall not be unreasonably withheld, FCC reconsideration or review, or judicial review, of any condition or qualification that is not a materially adverse condition. For purposes of this Agreement, a "materially adverse condition" shall not include any condition generally applicable to the broadcast industry or a transaction of this kind.
- (c) The parties shall each use reasonable best efforts to obtain all consents, amendments or permits from governmental bodies which are required by the terms thereof or this Agreement for the consummation of the transactions contemplated by this Agreement and the Transaction Documents, and shall jointly, diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers.

### **ARTICLE IV COVENANTS OF ETERNAL**

4.01 Inspection Rights. Until the Closing, upon reasonable prior notice, Eternal shall, during regular business hours, make the studio and office facilities, books, accounts, records, contracts, and documents pertaining to the Eternal Station and the Eternal Assets available for examination and inspection by the other party and its agents, provided that, neither the

furnishing of such information nor any investigation made heretofore or hereafter shall affect the inspecting party's right to rely upon any representation or warranty made by the other party in the Transaction Documents, each of which shall survive any furnishing of information or any investigation, subject to Section 11.01. Any such examination and inspection shall be undertaken in a manner designed to minimize the disruption to the operation of the Eternal Station to the extent reasonably practicable.

4.02 No Changes. From and after the date hereof to the Closing Date, Eternal shall:

- (a) operate the Eternal Station and the Eternal Assets in the ordinary course of business, including, pay when due all obligations arising under the Eternal Assumed Contracts or any other agreements or commitments of the Eternal Station or the Eternal Assets which accrued prior to the Closing Date;
- (b) not dissolve, liquidate, merge or consolidate Eternal, nor sell, assign, lease, mortgage, pledge, or otherwise transfer, or dispose of any of the Eternal Assets, or create, assume, or permit to exist any Encumbrance upon any of the Eternal Assets, except for (i) Encumbrances in favor of NRG, (ii) Eternal Permitted Encumbrances; (iii) immaterial items of personal property included in the Eternal Assets which are sold, or otherwise disposed of in the ordinary and regular course of the operation of the business of the Eternal Station or the Eternal Assets; and (iv) transactions engaged in with the written consent of NRG first obtained;
- (c) except with the prior written consent of NRG, not increase or otherwise change the rate or nature of the compensation (including wages, salaries, and bonuses) which is paid or payable to any of Eternal Station's Transferred Employees (as defined in Section 6.10), except in connection with ordinary reviews or promotions consistent with Eternal's past practices or the replacement of incumbent personnel consistent with Eternal's past practices, pursuant to pre-existing written compensation and fringe-benefit plans;
- (d) except with the prior written consent of NRG, not enter into, nor become obligated under (i) any program contract, whether for cash or barter, or any Trade Agreement, relating to the Eternal Station or the Eternal Assets not terminable at the Closing without liability to NRG, except in the ordinary course of business consistent with Eternal's past practices, or (ii) any other agreement or commitment on behalf of the Eternal Station or the Eternal Assets requiring cash payments to third parties, except for normal commitments for personal property and services entered into in the ordinary and regular course of the operation of the Eternal Station or the Eternal Assets, consistent with Eternal's past and present practices, and which do not provide for payments, in the aggregate, in excess of Five Thousand Dollars (\$5,000.00) during the full terms of all such agreements and commitments, nor materially change, amend, terminate, or otherwise modify any agreement or commitment other than in the ordinary course of business;
- (e) maintain insurance policies on the Eternal Station and the Eternal Assets in accordance with Eternal's normal and customary business practices;
- (f) not make, nor commit to make, any payments, contributions, or awards under or into any profit-sharing or similar plan, program, or trust on behalf of employees of the Eternal Station, except in accordance with any such plan, program, or trust currently maintained by Eternal, and contributions which are made consistent with Eternal's past practices;

- (g) maintain and preserve the current operations of the Eternal Station and the Eternal Assets and, consistent with the ordinary course of business, all goodwill and the present relationships with suppliers, advertisers, and others having business relations with them;
- (h) not make any material changes in the broadcast hours or in the percentages of programming broadcast by the Eternal Station or make any other material changes in the programming policies of the Eternal Station, except such changes as in the good-faith judgment of Eternal are required by the public interest;
- (i) not do any act which would reasonably be expected to result in the expiration, revocation, suspension, or adverse modification of any of the Eternal Authorizations (other than to correct FCC records), nor fail to do any act necessary in order to prevent the expiration, revocation, suspension, or adverse modification of any of the Eternal Authorizations, nor fail to take all actions necessary to obtain the renewal of the Eternal Authorizations;
- (j) not assign, waive or release any material right of Eternal in the Eternal Assumed Contracts;
- (k) except as required by law, not enter into any collective bargaining agreement, or through negotiations or otherwise make any commitment or incur any liability to any labor organization with respect to the employees of the Eternal Station;
- (l) not transfer or grant any rights to intellectual property under any leases, licenses, agreements, trademarks, trade names, or copyrights included in the Eternal Assets, and respond substantively to any outstanding matters before the U.S. Patent and Trademark Office pertaining to the Eternal Assets;
- (m) not introduce any material change to Eternal's method of accounting with respect to the Eternal Assets;
- (n) not take any material action which is inconsistent with Eternal's obligations hereunder, or which would reasonably be expected to materially hinder or delay the consummation of the transactions contemplated by this Agreement, except as specifically required or permitted herein;
- (o) maintain all of the Eternal Assets (except for immaterial Eternal Assets with a fair market value, in the aggregate, not exceeding Five Thousand Dollars (\$5,000.00)), or replacements thereof (to the extent required pursuant to this Agreement) and improvements thereon in their current condition (ordinary wear and tear excepted) in the usual and customary manner, and in material compliance with the FCC's rules and regulations, and use, operate, and maintain all of the Eternal Assets in a reasonable manner;
- (p) maintain its books and records, including the record keeping and reporting requirements imposed by the FCC, in accordance with past practices and in material compliance with the FCC's rules and regulations;
- (q) promptly notify NRG, in writing, of any developments, except for matters affecting the radio broadcasting industry generally, which singularly or in concert with others are materially adverse to the business or operations of the Eternal Station or the Eternal

Assets, and of any material change in any of the information contained in Eternal's representations and warranties contained in Article 7 or in the Schedules;

- (r) make by the Closing Date all payments under the Eternal Assumed Contracts that are due to be paid by Eternal on or before the Closing Date, and, consistent with past practice, take all action reasonably necessary to preserve in full force and effect the existing rights of Eternal under the Eternal Assumed Contracts;
- (s) prior to the Closing Date, deliver to NRG a list of any contracts relating to the Eternal Station entered into by Eternal between the date hereof and the Closing Date of the type required to be listed in Schedule 1.01(c), together with copies of such contracts; and
- (t) comply in all material respects with all rules and regulations of the FCC, and all other laws, rules, and regulations to which Eternal, the Eternal Station, and the Eternal Assets are subject.

4.03 Written Consents. Pending the Closing, Eternal shall proceed with all reasonable diligence and shall use commercially reasonable efforts to obtain (a) the written consents to the consummation of the transactions contemplated by this Agreement from all necessary persons, including, the consents of parties to Eternal Material Contracts (as defined in Section 7.11) where required and (b) for each real property fee or leasehold interest included in the Eternal Assets, certificates of estoppel and non-disturbance and attornment commitments in favor of NRG, and if so requested by NRG, or its financing sources, from any mortgagees and from the respective landlords of such leaseholds or the tenants under any leases where Eternal is the lessor, addressing such matters as NRG may reasonably request.

## **ARTICLE V COVENANTS OF NRG**

5.01 Inspection Rights. Until the Closing, upon reasonable prior notice, NRG shall, during regular business hours, make the studio and office facilities, books, accounts, records, contracts, and documents pertaining to the NRG Station and the NRG Assets available for examination and inspection by the other parties and their agents, provided that, neither the furnishing of such information nor any investigation made heretofore or hereafter shall affect the inspecting party's right to rely upon any representation or warranty made by the other party in the Transaction Documents, each of which shall survive any furnishing of information or any investigation, subject to Section 11.01. Any such examination and inspection shall be undertaken in a manner designed to minimize the disruption to the operation of the NRG Station to the extent reasonably practicable.

5.02 No Changes. From and after the date hereof to the Closing Date, NRG shall:

- (a) operate the NRG Station and the NRG Assets in the ordinary course of business, including, pay when due all obligations arising under the NRG Assumed Contracts or any other agreements or commitments of the NRG Station or the NRG Assets which accrued prior to the Closing Date;
- (b) not dissolve, liquidate, merge or consolidate NRG, nor sell, assign, lease, mortgage, pledge, or otherwise transfer, or dispose of any of the NRG Assets, or create, assume, or permit to exist any Encumbrance upon any of the NRG Assets, except for (i)

Encumbrances in favor of Eternal, (ii) NRG Permitted Encumbrances; (iii) immaterial items of personal property included in the Assets which are sold, or otherwise disposed of in the ordinary and regular course of the operation of the business of the NRG Station or the NRG Assets; (iv) transactions engaged in with the written consent of Eternal first obtained; and (v) NRG may permit liens to attach to NRG Assets as permitted pursuant to the Contribution Agreement (including any financing or re-financing of the indebtedness of NRG provided that NRG shall cause all liens related thereto to be released at Closing);

- (c) except with the prior written consent of Eternal, not increase or otherwise change the rate or nature of the compensation (including wages, salaries, and bonuses) which is paid or payable to any of NRG Station's Transferred Employees, except in connection with ordinary reviews or promotions consistent with NRG's past practices or the replacement of incumbent personnel consistent with NRG's past practices, pursuant to pre-existing written compensation and fringe-benefit plans;
- (d) except with the prior written consent of Eternal, not enter into, nor become obligated under (i) any program contract, whether for cash or barter, or any Trade Agreement, relating to the NRG Station or the NRG Assets not terminable at the Closing without liability to Eternal, except in the ordinary course of business consistent with past practices, or (ii) any other agreement or commitment on behalf of the NRG Station or the NRG Assets requiring cash payments to third parties, except for normal commitments for personal property and services entered into in the ordinary and regular course of the operation of the NRG Station and the NRG Assets, consistent with NRG's past and present practices, and which do not provide for payments, in the aggregate, in excess of Five Thousand Dollars (\$5,000.00) during the full terms of all such agreements and commitments, nor materially change, amend, terminate, or otherwise modify any agreement or commitment other than in the ordinary course of business;
- (e) maintain insurance policies on the NRG Station and the NRG Assets in accordance with NRG's normal and customary business practices;
- (f) not make, nor commit to make, any payments, contributions, or awards under or into any profit-sharing or similar plan, program, or trust on behalf of employees of the NRG Station, except in accordance with any such plan, program, or trust currently maintained by NRG, and contributions which are made consistent with past practices;
- (g) maintain and preserve the current operations of the NRG Station and the NRG Assets and, consistent with the ordinary course of business, all goodwill and the present relationships with suppliers, advertisers, and others having business relations with them;
- (h) not make any material changes in the broadcast hours or in the percentages of programming broadcast by the NRG Station, or make any other material changes in the programming policies of the NRG Station, except such changes as in the good-faith judgment of NRG are required by the public interest;
- (i) not do any act which would reasonably be expected to result in the expiration, revocation, suspension, or adverse modification of any of the NRG Authorizations (other than to correct FCC records), nor fail to do any act necessary in order to prevent the expiration, revocation, suspension, or adverse modification of any of the NRG



Authorizations, nor fail to take all actions necessary to obtain the renewal of the NRG Authorizations;

- (j) not assign, waive or release any material right of NRG in the NRG Assumed Contracts;
- (k) except as required by law, not enter into any collective bargaining agreement, or through negotiations or otherwise make any commitment or incur any liability to any labor organization with respect to the employees of the NRG Station;
- (l) not transfer or grant any rights to intellectual property under any leases, licenses, agreements, trademarks, trade names, or copyrights included in the NRG Assets, and respond substantively to any outstanding matters before the U.S. Patent and Trademark Office pertaining to the NRG Assets;
- (m) deliver to Eternal monthly income statements and balance sheets with respect to the operations of KLIQ pursuant to the normal course of accounting methods regularly applied by NRG and shall not introduce any material change to NRG's method of accounting with respect to the NRG Assets;
- (n) not take any material action which is inconsistent with NRG's obligations hereunder, or which would reasonably be expected to materially hinder or delay the consummation of the transactions contemplated by this Agreement, except as specifically required or permitted herein or except NRG may permit liens to attach to the NRG assets as required or permitted under the Contribution Agreement provided that NRG shall cause all such liens to be released at Closing;
- (o) maintain all of the NRG Assets (except for immaterial NRG Assets with a fair market value, in the aggregate, not exceeding Five Thousand Dollars (\$5,000.00)), or replacements thereof (to the extent required pursuant to this Agreement or the NRG LMA) and improvements thereon in their current condition (ordinary wear and tear excepted) in the usual and customary manner, and in material compliance with the FCC's rules and regulations, and use, operate, and maintain all of the NRG Assets in a reasonable manner;
- (p) maintain its books and records, including the record keeping and reporting requirements imposed by the FCC, in accordance with past practices and in material compliance with the FCC's rules and regulations;
- (q) promptly notify Eternal in writing, of any developments, except for matters affecting the radio broadcasting industry generally, which singularly or in concert with others are materially adverse to the business or operations of the NRG Station or the NRG Assets, and of any material change in any of the information contained in NRG's representations and warranties contained in Article 8 or in the Schedules;
- (r) make by the Closing Date all payments under the NRG Assumed Contracts that are due to be paid by NRG on or before the Closing Date, and, consistent with past practice, take all action reasonably necessary to preserve in full force and effect the existing rights of NRG under the NRG Assumed Contracts;

- (s) prior to the Closing Date, deliver to Eternal a list of any contracts relating to the NRG Station entered into by NRG between the date hereof and the Closing Date of the type required to be listed in Schedule 1.02(c), together with copies of such contracts; and
- (t) comply in all material respects with all rules and regulations of the FCC, and all other laws, rules, and regulations to which NRG, the NRG Station and the NRG Assets are subject.

5.03 Written Consents. Pending the Closing Date, NRG shall proceed with all reasonable diligence and shall use commercially reasonable efforts to obtain (a) the written consents to the consummation of the transactions contemplated by this Agreement from all necessary persons, including, the consents of parties to NRG Material Contracts (as defined in Section 8.11) where required and (b) for each real property fee or leasehold interest included in the NRG Assets, certificates of estoppel and non-disturbance and attornment commitments in favor of Eternal, and if so requested by Eternal, or its financing sources, from any mortgagees and from the respective landlords of such leaseholds or the tenants under any leases where NRG is the lessor, addressing such matters as Eternal may reasonably request.

## **ARTICLE VI SPECIAL COVENANTS AND AGREEMENTS**

6.01 Indemnification Regarding Brokers. Each of the parties agrees to indemnify each other, and to hold each other harmless, from and against any claims asserted by any broker or finder, or any person or entity acting or claiming to act in a similar capacity in connection with the transaction set forth herein or arising out of the representation made in Section 7.04 by Eternal and Section 8.04 by NRG.

6.02 No Bulk Sales. Eternal agrees with regard to the Eternal Assets, and NRG agrees with regard to the NRG Assets, to indemnify, defend, and hold harmless against any claims, liabilities, costs, or expenses, including reasonable attorneys' fees, that the other party may incur as a result of the failure to comply with the bulk sales provisions of the Uniform Commercial Code or similar law with respect to the transactions contemplated hereby.

6.03 Cooperation. Eternal and NRG shall cooperate fully with each other and with their respective counsel and accountants in connection with any actions reasonably required to be taken as part of their respective obligations under this Agreement, and shall execute such other documents as may be necessary and reasonable for the implementation and consummation of the transactions contemplated by this Agreement, and otherwise use their commercially reasonable efforts to consummate the transaction contemplated hereby and to fulfill their obligations hereunder. Notwithstanding the foregoing, the parties shall have no obligation (a) to expend funds out-of-pocket in order to obtain the Eternal Consents or the NRG Consents, or (b) to agree to any material adverse change in any Eternal Assumed Contract or NRG Assumed Contract, as applicable, in order to obtain an Eternal Consent or a NRG Consent with respect thereto.

6.04 Risk of Loss.

- (a) The risk of any loss, damage, impairment, confiscation or condemnation of any of the Eternal Assets shall be borne by Eternal at all times prior to the Closing, and by NRG at all times thereafter, subject to the provisions of this Section 6.04(a) and Section 10.01. In the event of any loss, damage, impairment, confiscation or condemnation of any

material portion of the Eternal Assets, or any condition which shall cause Eternal's representations and warranties to be inaccurate in any material respect (any of the foregoing being referred to herein as a "Eternal Casualty Loss"), Eternal shall apply any and all insurance proceeds to repair or replace the Eternal Assets affected by such Eternal Casualty Loss, and to the extent the costs of repair or replace exceed all such insurance proceeds, then the provisions of Section 10.01 shall apply.

- (b) The risk of any loss, damage, impairment, confiscation or condemnation of any of the NRG Assets shall be borne by NRG at all times prior to the Closing, and by Eternal at all times thereafter, subject to the provisions of this Section 6.04(b) and Section 10.01. In the event of any loss, damage, impairment, confiscation or condemnation of any material portion of the NRG Assets, or any condition which shall cause NRG's representations and warranties to be inaccurate in any material respect (any of the foregoing being referred to herein as a "NRG Casualty Loss"), NRG shall apply any and all insurance proceeds to repair or replace the NRG Assets affected by such NRG Casualty Loss, and to the extent the costs to repair or replace exceed all such insurance proceeds, then the provisions of Section 10.01 shall apply.

6.05 No Inconsistent Act. Pending the Closing, neither Eternal nor NRG shall (a) take any action which is materially inconsistent with their respective obligations hereunder or under any of the other Transaction Documents, or which would reasonably be expected to materially hinder or delay the consummation of the transaction contemplated by this Agreement, except as specifically required or permitted in this Agreement, or (b) take or fail to take any action which would render any of its representations set forth in Article 7 or 8, as the case may be, no longer accurate or which would be inconsistent with any warranty contained in Article 7 or 8, as the case may be.

6.06 Environmental Assessment. Prior to the Closing Date, each of Eternal and NRG shall obtain and deliver a Phase One Environmental Assessment dated not more than a year prior to the Closing Date (the "Environmental Assessment") for each of the real properties owned by such party and included in the Eternal Assets or the NRG Assets, as applicable. If the results of any of the Environmental Assessments indicates that a Phase Two and/or other assessments are recommended, the party owning such property, at the request of the other party, shall obtain such Phase Two and other assessments and deliver same at the Closing Date. Notwithstanding any other provision of this Agreement, the cost of the Environmental Assessments and any other Phase Two or other assessments and remedial action shall be paid by party originally owning such subject property.

6.07 Real Estate Issues. Prior to the Closing Date, each of Eternal and NRG shall obtain with respect to each parcel of owned Real Property of such party and included in the Assets, a survey and a commitment of a title insurance company reasonably acceptable to the other party to issue an ALTA owner's extended title insurance policy insuring the fee simple title (the "Title Policies") of the other party, and the lien of such party's financing sources in such title, in such amounts as may be reasonably requested, subject only to (a) the standard exceptions to title insurance that are customarily contained in such title policies; and (b) other Permitted Encumbrances. Notwithstanding any other provision of this Agreement, the premiums and any other costs associated with obtaining such title insurance will be paid by the party which is the transferor of such property. If requested by either party's financing sources, Eternal or NRG shall also obtain such surveys and title insurance of each parcel of leased Real Property, at the requesting party's sole expense.

6.08 Further Assurances. On and after the Closing Date, each party will take all action reasonably requested by the other to carry out the intent of this Agreement and to vest title to the Assets consistent with the such party's representations and warranties in Sections 7.07 and 8.07.

6.09 Control of the Stations. Prior to the Closing, neither party shall directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct the operations of the other party's Station in contravention of the rules, regulations and policies of the FCC; all such operations, including control and supervision of all of the Station's programs, employees (except as provided in Section 6.10), finances and policies, shall be the responsibility of the applicable party until the Closing Date.

6.10 Employees; Employee Benefit Plans.

- (a) Hiring of Employees. On the Closing Date, NRG and Eternal shall extend offers of employment to those employees of the other party identified on Schedule 6.10 on such terms and conditions that the offering party shall determine in its own discretion (such employees who accept the applicable offer of employment hereinafter referred to as the "Transferred Employees"). Each party shall terminate the employment of all of its Transferred Employees effective upon the Closing Date and shall pay to such Transferred Employees all amounts earned to date by, or owed to, such Transferred Employees in respect of wages, salaries, commissions, bonuses, cash reimbursement obligations and other compensation, and shall cooperate with, and use all reasonable efforts to assist, the other party in its efforts to secure satisfactory employment arrangements with the Transferred Employees to whom the other party makes offers of employment.
- (b) Employee Benefit Plans. Each Transferred Employee shall be eligible to become a participant in such employee benefit plans on the earliest date after the Closing Date as is permitted by the terms of such employee benefit plans and such other programs and arrangements as may be provided by the hiring party to similarly situated employees.
- (c) Retiree Benefits. Neither Eternal nor NRG shall have any responsibility with respect to retiree health benefits for current or former employees of the other party or their beneficiaries terminated on or before the Closing Date.
- (d) No Assumed Obligations. Neither party shall assume any of the other party's Employee Benefit Plans or Compensation Arrangements (defined in Section 7.16 below) or any obligation or liability thereunder. Each party shall be solely responsible for all other obligations and liabilities under its Employee Benefit Plans or Compensation Arrangements associated with any employees of such party. Without limiting the preceding sentences, each party acknowledges that it shall remain responsible for all workers' compensation claims of injury or occupational illness in respect of work performed by its Transferred Employees prior to the Closing Date, and all of such claims associated with all employees who are not Transferred Employees of such party regardless of the date of occurrence. Neither Eternal nor NRG shall become responsible for, or assume, any severance obligations of the other party.
- (e) No Third Party Beneficiaries. Nothing contained herein, expressed or implied, shall create any third-party beneficiary rights in any employee of the either party or any other Person (including any heir, beneficiary, executor, administrator, or representative of any

employee). Nothing contained herein, expressed or implied, is intended to confer upon any Transferred Employee any right to continued employment for any period of time by reason of this Agreement. Nothing contained herein is intended to confer upon any Transferred Employee any particular term or condition of employment.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES OF ETERNAL**

The parties acknowledge that Waitt, in discharging its duties under the JSA, through its respective personnel, agents and representatives, have been present at the Eternal Station, have observed the operations, and have assumed certain responsibility for such operations, all under the ultimate control of Eternal. Accordingly, notwithstanding anything else to the contrary herein, Eternal and NRG agree that Eternal's representations, warranties and covenants herein are qualified such that Eternal will be relieved of liability with respect to claims, events and conditions to the extent which the actions or inactions of Waitt or its respective agents, personnel or representatives, under color of the JSA, were or are a cause thereof. Subject to the foregoing, Eternal makes the following representations and warranties to NRG, all of which are true and correct as of the date hereof:

7.01 Good Standing. Eternal is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Nebraska. Eternal has all the requisite power and authority (a) to own, lease, and use the Eternal Assets as presently owned, leased, and used, (b) to conduct the business and operations of the Eternal Station and the Eternal Assets as presently conducted, and (c) to execute and deliver the Transaction Documents, and to perform and comply with all of the terms and conditions to be performed and complied with by Eternal hereunder and thereunder. Eternal holds all material rights, franchises, licenses, permits, authorizations, and approvals (governmental and otherwise), including the licenses and permits issued by the FCC, necessary to own and operate their properties and to carry on and conduct the business of the Eternal Station as is presently carried on and conducted. Eternal is not a participant in any joint venture or partnership with any other person or entity with respect to any part of the Eternal Station's operations or the Eternal Assets.

7.02 Right, Power and Authority. Eternal has taken all requisite action in order to authorize the execution, delivery, and performance of the Transaction Documents and any other instruments contemplated thereby and the consummation of the exchange of the Eternal Assets for the NRG Assets and the other transactions contemplated hereby and thereby. The execution, delivery and performance of the Transaction Documents (to the extent that Eternal is a party thereto) have been duly authorized and approved by all necessary action of Eternal and do not require any further authorization or consent of Eternal or its members. The Transaction Documents have been duly executed and delivered by Eternal and are the legal, valid, and binding obligations of Eternal enforceable against Eternal in accordance with their terms, except to the extent limited by (a) bankruptcy, insolvency, moratorium, reorganization, and other laws of general applicability relating to or affecting the enforcement of creditors' rights, (b) principles of public policy, and (c) court-applied general principles of equity.

7.03 No Conflicts or Defaults. Neither the execution, delivery, nor performance of the Transaction Documents by Eternal, nor the consummation or the exchange of the Eternal Assets for the NRG Assets or any other transaction contemplated thereby, after the giving of notice, or the lapse of time, or both, (a) conflicts with, results in a breach of, or constitutes a default under, the articles of organization, limited liability company agreement, or other organizational instruments, of Eternal, or any Federal, state or local law, statute, ordinance, rule,

or regulation, or any court or administrative order, judgment, award, decree or process applicable to Eternal; (b) conflicts with, constitutes grounds for termination of, results in an organizational breach of, constitutes a default under, violates any right of first refusal or similar right granted to a third party under, or accelerates or permits the acceleration of any performance required by the terms of, any contract, agreement, arrangement, commitment, plan, instrument, license, or permit to which Eternal is a party or by which Eternal or the Eternal Assets are bound and which relates to the ownership or operation of the Eternal Station or the Eternal Assets; provided, however, that certain Eternal Assumed Contracts listed in Schedule 1.01(c) are not assignable without the consent of another party; (c) results in the creation of any Encumbrance, other than Eternal Permitted Encumbrances, upon any of the Eternal Assets utilized or required in connection with the operation of the Eternal Station, other than as expressly contemplated by this Agreement; or (d) requires the approval, consent, authorization or act of, or the making by Eternal of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except for such of the foregoing as are necessary pursuant to the Communications Act (defined below).

7.04 Broker's Fee. Neither the Transaction Documents, nor the consummation of the transactions contemplated thereby, were induced or procured through the services of any person, firm, corporation, or other entity acting on behalf of or representing Eternal as broker, finder, investment banker, financial advisor, or in any similar capacity.

7.05 Eternal FCC Licenses and Other Eternal Authorizations.

- (a) Set forth on Schedule 1.01(a) is a list of all of the Eternal FCC Licenses and other Eternal Authorizations issued for the operation of the Eternal Station and all applications for modification, extension or renewal thereof, and any applications for any new licenses, permits, permissions or authorizations pending on the date hereof.
- (b) The Eternal FCC Licenses are all of the licenses, permits, and other authorizations issued by the FCC used or necessary to lawfully operate the Eternal Station in the manner and to the full extent as now operated, and the Eternal FCC Licenses are validly issued in the name of, or have been validly assigned to Eternal as identified on Schedule 1.01(a) and are validly held by Eternal. Eternal has delivered to NRG true and complete copies of the Eternal FCC Licenses including any and all amendments and other modifications thereto. Except as set forth on Schedule 1.01(a), the Eternal FCC Licenses are in full force and effect, are valid for the balance of the current license term applicable generally to radio stations licensed to communities in the state where the Eternal Station is located, and are free and clear of any conditions or restrictions that do, or could reasonably be expected to, limit the full operation of the Eternal Station in the manner and to the full extent as it is now operated (other than restrictions under the terms of the Eternal FCC Licenses themselves or generally applicable under the rules and regulations of the FCC). Eternal has not received any notice of any violations of the Eternal FCC Licenses or the Communications Act of 1934, as amended or the rules and regulations thereunder (collectively, the "Communications Act") that remain pending and unresolved. There is no action by or before the FCC currently pending or, to the Knowledge of Eternal, threatened to revoke, cancel, rescind, modify or refuse to renew in the ordinary course any of the Eternal FCC Licenses. There are no applications, protests, proceedings, or complaints pending at the FCC or, to the Knowledge of Eternal, threatened which may have an adverse effect on the Eternal Assets, or the operation of the Eternal Station (other than rulemaking proceedings that apply to the radio broadcasting industry generally). Eternal has no Knowledge of any reason

reasonably likely to result in any of the Eternal FCC Licenses not being renewed in the ordinary course for a full term without material conditions or qualifications or of any reason reasonably likely to result in any of the Eternal FCC Licenses being revoked. The Eternal Station is in compliance in all material respects with the Communications Act, including the equal employment opportunity rules and the FCC's policy on human exposure to radio frequency radiation. To the Knowledge of Eternal, there are no facts pertaining to the Eternal Station, or any persons or entities affiliated therewith, which, under the Communications Act, would (i) disqualify Eternal from assigning, or transferring control (as the case may be), of the Eternal FCC Licenses to NRG or from consummating the transactions contemplated by the Transaction Documents, or (ii) materially delay the obtaining of the approvals required for the transactions contemplated by the Transaction Documents. Access to the Eternal Station' transmission facilities is restricted in accordance with the Communications Act in all material respects.

- (c) All information provided by Eternal contained in any applications for modification, extension or renewal of the Eternal FCC Licenses and any pending applications for any new licenses, permits, permissions or authorizations relating to the Eternal Station pending on the Closing Date, including, but not limited to, those listed on Schedule 1.01(a) is true, complete and accurate in all material respects and was updated to the extent required by the Communications Act as circumstances may have changed during the pendency thereof.
- (d) Each tower owned by Eternal that is included in the Eternal Assets, as of the date of this Agreement, is registered and such registration is posted on the tower as required under the Communications Act (such towers, the "Eternal Owned Towers"). For purposes of this Agreement, the term "Knowledge" when used with regard to Eternal means the actual knowledge of Dean Sorenson, Richard Chapin or Dan Zabka and the knowledge that such individuals should reasonably be expected to have in connection with the exercise of their customary duties.

7.06 No Undisclosed Liabilities. Except as fairly disclosed to NRG and set forth in Schedule 7.06, Eternal is not subject, with respect to the Eternal Assets, the Eternal Station or the operations thereof, to any liability, whether absolute, contingent, accrued or otherwise.

7.07 Title to Assets: Eternal has good and marketable title to all of the Eternal Assets (or a

valid leasehold or license interest, in the case of any leased or licensed assets, as applicable), free and clear of any Encumbrances or other charges or rights of others of any kind, except for (a) Eternal Permitted Encumbrances and (b) the mortgages, pledges, liens, encumbrances, or other charges or rights of others listed in Schedule 7.07(a), all of which will be removed on or

- (b) Except as disclosed in Schedule 1.01(e) and for Eternal Permitted Encumbrances, there are no encroachments upon the owned Eternal Real Property by any buildings, structures, or improvements located on adjoining real estate. Except for Eternal Permitted Encumbrances and except as provided in agreements set forth on Schedule 1.01(e) which are assignable to NRG: (i) none of the buildings, structures, or improvements (including without limitation any ground radials, guy wires or guy anchors) constructed on the owned Eternal Real Property encroaches upon adjoining real estate, and (ii) all such buildings, structures, and improvements are constructed in conformity in all material respects with or are “grandfathered” with respect to all “setback” lines, easements, and other restrictions, or rights of record, or that have been established by any applicable building or safety code or zoning ordinance. Such “grandfathered” approvals shall survive the transfer of the owned Eternal Real Property to NRG. Except for Eternal Permitted Encumbrances, no guy wires supporting any Eternal Owned Tower, and to the Knowledge of Eternal, no guy wires supporting any leased tower, pass over the lands of others except where appropriate easements have been obtained. To the Knowledge of Eternal, neither the whole nor any part of any Eternal Real Property leased by Eternal, is subject to any pending or threatened suit for condemnation or other taking by any public authority. There exists no writ, injunction, decree, order or judgment, nor any litigation, pending, or, to the Knowledge of Eternal, threatened, relating to Eternal's use, lease, occupancy or operation of any of the Eternal Real Property. To the Knowledge of Eternal, Eternal's use and occupancy of the Eternal Real Property complies in all material respects with all regulations, codes, ordinances, and statutes of all applicable governmental authorities, including, without limitation, all environmental protection and sanitary laws and regulations, occupational safety and health regulations, and electrical codes. Except as provided on Schedule 7.13, there are no material structural defects in the buildings, structures, and improvements located on the owned Eternal Real Property. Each of the Eternal Owned Towers, and to the Knowledge of Eternal, each of the leased towers, can structurally support all of the permitted equipment in accordance with law, governmental approvals, and generally accepted engineering practices governing similar towers.
- (c) Schedule 1.01(e) sets forth a list of each lease (written and oral) or similar agreement included in the Eternal Assets under which Eternal is lessee of, or holds or operates, any Eternal Real Property owned by any third person as of the date of this Agreement, which are the sole and complete agreements concerning Eternal's rights and obligations with respect to the leased premises (the “Eternal Real Property Leases”). Each Eternal Real Property Lease is legal, valid, binding, enforceable in accordance with their terms and in full force and effect (subject to expiration or termination in accordance with their terms). Eternal is not, and to the Knowledge of Eternal, no other party is in default, violation or breach in any material respect under any Eternal Real Property Lease, and no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would (i) constitute a default, violation or breach by Eternal in any material respect thereunder, or (ii) to the Knowledge of Eternal, constitute a default, violation or breach by any other party in any material respect thereunder. No amount payable under any Eternal Real Property Lease is past due (other than amounts being contested in good faith through appropriate proceedings for which adequate reserves have been established in accordance with GAAP consistently applied on the balance sheets and statements of income of Eternal). Eternal has not received any notice of a default, offset or counterclaim under any Eternal Real Property Lease or any other communication asserting any material non-compliance with any Eternal Real Property Lease. Eternal has the exclusive right to use and occupy that portion of the premises leased under each



Eternal Real Property Lease. Eternal enjoys peaceful and undisturbed possession of that portion of the premises leased by Eternal under the Eternal Real Property Leases. Except as set forth on Schedule 1.01(e), Eternal's interests under the Eternal Real Property Leases are free and clear of all Encumbrances other than Eternal Permitted Encumbrances. Eternal has delivered to NRG, true and complete copies of the Eternal Real Property Leases, together, in the case of any subleases or similar occupancy agreements, with copies of all other leases. Except as disclosed in Schedule 1.01(e), Eternal has full legal power and authority to assign its rights under the Eternal Real Property Leases to NRG in accordance with this Agreement on terms and conditions no less favorable in any material respect (with respect to the Eternal Real Property Leases individually or in the aggregate) than those contained in the Eternal Real Property Leases on the date hereof (as the Eternal Real Property Leases may be modified prior to the Closing in accordance with the provisions of this Agreement), and such assignment will not affect the validity, enforceability and continuity of any such lease.

7.09 No Litigation or Violations of Law.

- (a) Except for matters affecting the radio broadcasting industry generally, and except for those matters set forth in Schedule 7.09(a), there is no suit or litigation at law or in equity, no arbitration or mediation proceedings, and no proceeding before or by any court, commission, agency, or other administrative or regulatory body or authority, pending or, to the Knowledge of Eternal, threatened against Eternal, which could reasonably be expected to adversely effect the Eternal Station, the Eternal Assets, or Eternal's ability to perform in accordance with the terms of the Transaction Documents. Eternal has complied in all material aspects with all laws, regulations, rules, writs, injunctions, ordinances, decrees or orders of any court or of any Federal, state, municipal or other governmental body which affect or are applicable to the Eternal Assets, the Eternal Station, and the operation of Eternal's radio business.
- (b) To Eternal's Knowledge, neither the ownership nor use of its properties, nor the conduct of the business or operations of the Eternal Station or the Eternal Assets, conflicts in any material way with the rights of any other person, firm, corporation or entity.
- (c) There are no unsatisfied judgments outstanding against Eternal, the Eternal Assets, the Eternal Station, or the business of Eternal which might have a material adverse effect on the continued operation of the Eternal Station or impair the value of the Eternal Assets or which might adversely affect Eternal's ability to perform in accordance with the Transaction Documents.
- (d) There are no claims pending or, to the Knowledge of Eternal, threatened, and to the Knowledge of Eternal, there are no investigations pending or threatened against Eternal in respect of the Eternal Assets, the Eternal Station or the business of Eternal which might adversely affect the continued operation of the Eternal Station or impair the value of the Eternal Assets, or which might adversely affect Eternal's ability to perform in accordance with the Transaction Documents (other than any of the foregoing generally affecting similarly-situated companies and that are not specific to Eternal);
- (e) As of the date of this Agreement there is no action, suit or proceeding pending or, to the Knowledge of Eternal, threatened, which questions the legality or propriety of the transactions contemplated by the Transaction Documents;

- (f) Except as described in Schedule 7.09(f), the Eternal Station' transmitting and studio equipment is operating in accordance with the terms and conditions of the Eternal FCC Licenses and all underlying construction permits and the Communications Act in all material respects. The Eternal Station is not causing interference in violation of FCC rules to the transmission of any other broadcast station or communications facility and Eternal has not received any written complaints with respect thereto, and, to the Knowledge of Eternal, no other broadcast station or communications facility is causing interference in violation of FCC rules to the Eternal Station's transmissions or the public's reception of such transmissions;
- (g) Eternal has not received any notification from the FCC that Eternal's employment practices fail to comply with FCC rules and policies;
- (h) Eternal has duly filed all material ownership reports, employment reports, tax returns and other material documents, reports and statements which Eternal is required to have filed with the FCC or any other governmental authorities having jurisdiction over Eternal have been complied with. At the time of filing, all information provided by Eternal, and to the Knowledge of Eternal, all information provided by unaffiliated third parties, contained in the foregoing documents was true, complete and accurate in all material respects and was updated to the extent required by applicable law and the Communications Act as circumstances may have changed during the pendency thereof. The Eternal Station's public inspection files are located at the Eternal Station's respective main studios and are in material compliance with the Communications Act; and
- (i) Except as set forth on Schedule 7.13, all towers and other structures on the Eternal Real Property are painted, lighted and registered in accordance with the requirements of the FCC Licenses, the FCC, FAA and all applicable requirements of federal, state and local law in all material respects. Appropriate notification to the FAA has been filed for such towers where required by the Communications Act.

#### 7.10 Intellectual Property.

- (a) Schedule 1.01(d) contains a list of (i) all call signs, United States and foreign patents, pending patent applications, trademark registrations, pending trademark applications, registered trade names, registered service marks, registered copyrights, logos, domain names, and other similar intangible property rights, issued to, licensed to, assigned to, filed by, or used to promote or identify the Eternal Station, or otherwise used in connection with Eternal's radio business, and (ii) all agreements, contracts and understandings therefor (collectively, the "Eternal Intellectual Property").
- (b) Except as disclosed in Schedule 1.01(d), Eternal either: (i) owns the entire right, title and interest in and to the Eternal Intellectual Property listed in Schedule 1.01(d), free and clear of Encumbrances except for Eternal Permitted Encumbrances; or (ii) has the valid right and license to use the Eternal Intellectual Property in the operation of the Eternal Station.
- (c) (i) All patents and registrations identified in Schedule 1.01(d) are in force, and all applications identified in Schedule 1.01(d) are pending without challenge (other than office actions that may be pending before the Patent and Trademark Office or its foreign equivalents); (ii) the Eternal Intellectual Property owned or licensed by Eternal and material to the Eternal Assets or the Eternal Station is valid and enforceable; and (iii)

Eternal has the right to bring actions for infringement or unauthorized use of the Eternal Intellectual Property owned or licensed by Eternal and material to the operation of the Eternal Station.

- (d) (i) No written claim has been made or asserted that alleges the Eternal Intellectual Property owned or licensed by Eternal and material to the conduct of the Eternal Station infringes the intellectual property of any third party; (ii) no litigation, arbitration or other proceeding is currently pending with respect to the Eternal Intellectual Property owned or licensed by Eternal; and (iii) no written claim has been made or asserted that challenges the validity or ownership of any Eternal Intellectual Property owned or licensed by Eternal and material to the Eternal Station or the Eternal Assets.
- (e) To the Knowledge of Eternal, the operation of the Eternal Station or the Eternal Assets does not infringe any copyright, patent, trademark, trade name, service mark, or other similar right of any third party, Eternal has not sold, licensed or otherwise disposed of any of the Eternal Intellectual Property to any person or entity and except for those agreements entered into in the ordinary course of operating the Eternal Station and set forth on Schedule 1.01(c), Eternal has not agreed to indemnify any person or entity for any patent, trademark or copyright infringement.

7.11 Contracts. Schedule 1.01(c), sets forth (a) all program contracts, affiliation agreements, real and personal property leases, and other contracts, agreements, and commitments to which Eternal or the Eternal Station are a party as of the Closing Date and which relate to the Eternal Assets, or the operation of the business or affairs of the Eternal Station, and (b) all leases under which Eternal is the lessor of tower space on any tower included in the Eternal Assets or used in the operation of the business of the Eternal Station. Eternal has delivered to NRG true and complete copies of all such written contracts, leases, agreements, and commitments, and true and complete memoranda of all material oral contracts, leases, agreements, and commitments (including any and all amendments and other modifications to such contracts). Except as otherwise disclosed in Schedule 1.01(c) all of the Eternal Assumed Contracts (the "Eternal Contracts"), are in full force and effect, and are valid, binding, and enforceable in accordance with their terms, subject to the qualifications set forth in Sections 7.02(a), (b), and (c). Eternal is not in material breach, nor to Eternal's Knowledge is any other party in material breach, of the terms of any of the Eternal Contracts. Except as expressly set forth in Schedule 1.01(c), to the Knowledge of Eternal, no party to any Eternal Contract has any intention (i) to terminate such Eternal Contract, or to amend the terms thereof, (ii) to refuse to renew the same upon its expiration of its term, or (iii) to renew the same upon its expiration only upon terms and conditions which are more onerous than those pertaining to such existing Eternal Contract. Except as disclosed on Schedule 1.01(c), all oral contracts set forth thereon are terminable by Eternal at will or upon no more than thirty (30) days notice. Assuming that the Eternal Consents shall have been obtained, and except as set forth on Schedule 1.01(c), Eternal has full legal power and authority to assign its rights under the Eternal Contracts to NRG in accordance with this Agreement, and such assignment will not affect the validity, enforceability, and continuation of any of the Eternal Contracts. Schedule 1.01(c) lists all trade agreements in effect as of the Closing Date, the value of the goods and services to be provided to Eternal thereunder, and the value of the advertising time to be supplied by Eternal thereunder, in each case as of the most recent date at which it is practicable to determine such amounts.

7.12 Insurance. Set forth on Schedule 7.12 is an accurate and complete description of the policies of fire and extended coverage and casualty, liability and other forms of insurance (excluding real property title insurance) that Eternal maintains as of the date of this Agreement

in respect to the Eternal Assets, the Eternal Station, and Eternal's radio business, in such amounts and against such risks and losses as will provide adequate insurance coverage for the replacement cost of the Eternal Assets and the Eternal Station with respect to all risks normally insured against by a Person or entity carrying on the same business as Eternal. All insurance policies listed on Schedule 7.12 are in full force and effect and there are no outstanding claims under any insurance policy or default with respect to provisions in any such policy which claim or default individually or in the aggregate would reasonably be expected to have a material adverse effect on the Eternal Assets or the Eternal Station.

7.13 Assets in Good Repair. Except as provided in Schedule 7.13, the Eternal Assets are in operating condition and repair (ordinary wear and tear excepted), are maintained in accordance with customary engineering practice in all material respects, and are available for immediate use and are otherwise sufficient for use in the business or operations of the Eternal Station and the Eternal Assets. Except as provided in Schedule 7.13, the Eternal Station's transmitting facilities are being operated within full power as authorized by the Eternal FCC Licenses.

7.14 Operational Assets.

- (a) The Eternal Assets, and those additional properties and assets of Eternal identified in Section 1.03, constitute all of the assets and properties that Eternal owns or leases in connection with its operation of the Eternal Station and the Eternal Assets as of the Closing Date.
- (b) Schedule 1.01(b) contains descriptions of all material items which comprise all personal property necessary to conduct the business or operations of the Eternal Station as now conducted, except for those assets described in Section 1.03 and except for items of property with an aggregate fair market value not in excess of One Thousand and No/100 Dollars (\$1,000.00). The Eternal Tangible Personal Property will permit the Eternal Station to be operated by NRG in substantially the manner currently operated by Eternal and substantially in accordance with the terms of the Eternal FCC Licenses and the rules and regulations of the FCC, and with all other applicable Federal, state, and local statutes, ordinances, rules and regulations.

7.15 Required Permits and Consents. Except for the FCC Consent and the Eternal Consents described in Schedule 7.15, no consent, approval, permit, or authorization of, or declaration to, or filing with, any governmental or regulatory authority or any other third party is required to be obtained by Eternal in order (a) to consummate the transactions contemplated by the Transaction Documents, or (b) to permit Eternal to assign or transfer the Eternal Assets to NRG. Eternal holds or possesses all licenses, franchises, permits, privileges, immunities, approvals and other authorizations from a governmental body (other than the Eternal FCC Licenses) that are necessary to entitle Eternal to own or lease, operate and use its assets and to carry on and conduct its business substantially as conducted immediately prior to the date of this Agreement (collectively, the "Eternal Governmental Permits"). Schedule 7.15 sets forth a list and brief description of each such Eternal Governmental Permit held by Eternal as of the date hereof. Eternal has fulfilled and performed in all material respects its obligations under each of the Eternal Governmental Permits, and to the Knowledge of Eternal, no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a material breach or material default under any such Eternal Governmental Permit. No notice of cancellation, of default or of any dispute concerning any such Eternal Governmental Permit, or of any event, condition or state of facts described in the preceding sentence, has been received by Eternal. To the Knowledge of Eternal, each such Eternal

Governmental Permit is valid, subsisting and in full force and effect (subject to expiration or termination in accordance with its terms), and may be assigned and transferred to NRG in accordance with this Agreement and at the time of assignment or transfer of control to NRG will be in full force and effect, in each case without (i) the occurrence of any breach, default or forfeiture of rights thereunder or (ii) the consent, approval or act of, or the making of any filing with, any governmental body or other party.

7.16 Employee Benefits. To the Knowledge of Eternal, there is no pending, threatened or anticipated governmental audit or examination of any Employee Benefit Plans, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any other "Compensation Arrangements," of Eternal whether or not written, applicable to the employees of Eternal or any entity related to Eternal (under the terms of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")). For purposes of the Transaction Documents, "Compensation Arrangements" means any bonus, deferred compensation, incentive compensation, stock purchase, stock option, severance or termination pay, or profit sharing plan, program, agreement, or arrangement and any other employee benefit plan, program, agreement or arrangement for the benefit of any current or former employee, director, or independent contractor. There exists no action, suit, or claim (other than routine claims for benefits) with respect to any such plans or arrangements pending, or, to the Knowledge of Eternal, threatened or anticipated, against any such Employee Benefit Plan or Compensation Arrangement. Except for the Eternal Assumed Contracts, neither NRG nor any entity related to NRG under Section 414 of the Code, or any officers, directors, partners, employees, or affiliates of the same, shall have any liability, obligation, or responsibility with respect to claims or liabilities arising or accruing under any Employee Benefit Plan or Compensation Arrangement maintained or provided by Eternal or any other entity related to Eternal under Section 414 of the Code which relates to any period whatsoever. Eternal has complied in all material respects with Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code (hereinafter collectively referred to as "COBRA"), and except as provided in Section 6.10, will provide such continuation of health benefit coverage to the extent required by reason of the events occurring prior to or on the Closing Date or by reason of the transactions contemplated by this Agreement. Neither NRG nor any entity related to NRG under Section 414 of the Code, or any officers, directors, partners, employees, or affiliates of the same, shall have any liability, obligation, or responsibility with respect to penalties, claims, or liabilities arising or accruing under COBRA with respect to any group health plan maintained by or contributed to by Eternal or any entity related to Eternal under Section 414 of the Code.

7.17 Labor Matters.

- (a) Schedule 7.17 contains a true and accurate list setting forth: (i) the names of all individuals currently employed by Eternal (whether active or on leave of absence) in connection with the operation of the Eternal Station as of the date hereof; (ii) the location of employment of each employee, (iii) the type of employment of each employee (i.e., full-time or part-time) and (iv) the employment status of each employee (i.e., active or on specified leave by type).
- (b) Eternal is not a party to any (i) labor collective bargaining union or similar agreement or (ii) except as set forth on Schedule 7.17, any employment, consulting, noncompete, severance, retention, compensation, deferred compensation, stock or cash based incentive or other similar agreement, arrangement, commitment or understanding (whether written or oral) with salaried or non-salaried employees in each case in connection with Eternal's radio business or the Eternal Station.

- (c) (i) No union or similar organization represents employees of the Eternal Station and, to the Knowledge of Eternal, no such organization is attempting to organize such employees; (ii) there are no unfair labor practice charges pending or, to the Knowledge of Eternal, threatened against Eternal; (iii) there is no pending or threatened strike, slowdown, picket, work stoppage, or arbitration proceedings involving labor matters or other labor disputes affecting the Eternal Station; and (iv) Eternal has not experienced any strike, work stoppage or other significant labor difficulties of any nature at the Eternal Station in the past two (2) years.
- (d) Eternal is and has been in compliance in all material respects with all state and federal laws, ordinances, rules, regulations and requirements relating to labor and employment laws, any employment tax or withholding obligations, any obligations arising under a collective bargaining agreement or any obligations arising under employee benefit plans in each case with respect to the Eternal Station.

7.18 Taxes.

- (a) Eternal has filed or caused to be filed all Federal income tax returns and all other Federal, state, county, local, or city tax returns which are required to have been filed by Eternal, and Eternal has paid or caused to be paid all taxes shown on said returns or on any tax assessment received by Eternal to the extent that such taxes have become due, or have set aside on their books reserves (segregated to the extent required by GAAP) adequate with respect thereto and except as specified, disclosed or scheduled there is no known, threatened or anticipated tax liability. All information provided in such tax returns is true, complete and accurate in all material respects. To Eternal's Knowledge, no events have occurred which could impose upon NRG any transferee liability for any taxes, penalties, or interest due or to become due from Eternal.
- (b) There is no claim or assessment pending, or, to the Knowledge of Eternal, threatened (whether orally or in writing) against Eternal for any alleged deficiency in taxes, and to the Knowledge of Eternal there is no audit or investigation currently being conducted that could cause Eternal to be liable for any taxes. There are no agreements in effect to extend or waive the period of limitations for the assessment or collection of any tax for which Eternal may be liable other than statutory extensions which result from filing tax returns by the extended due date. No claim has been made in a jurisdiction where Eternal does not file tax returns that Eternal is or may be subject to taxation by that jurisdiction.

7.19 Environmental Protection. Solely in respect of the Eternal Station and the Eternal Assets, and except as set forth in Schedule 7.19:

- (a) The operation of the Eternal Station is, and at all times since its acquisition, has been in material compliance with all applicable Environmental Laws, Eternal holds all material permits required under Environmental Laws for the operation of the Eternal Station, and no modification or change to the operations of the Eternal Station will be required upon the renewal of any such permits other than modifications or changes required due to changes in law occurring after the date hereof.
- (b) (i) No claims arising under Environmental Laws are pending or, to the Knowledge of Eternal, threatened against Eternal, (ii) there are no writs, injunctions, decrees, orders or judgments outstanding or, to the Knowledge of Eternal, threatened relating to

compliance with or liability under any Environmental Law, and (iii) Eternal has no material liability under any Environmental Law, that could reasonably be expected to have a material adverse effect on the Eternal Station or any of the Eternal Assets.

- (c) There have been no Releases of Hazardous Materials by Eternal or by any of its affiliates or, to the Knowledge of Eternal, by third parties, in, on or under the Eternal Real Property or any other real property formerly owned, leased or used by Eternal, that could result in any material investigation or material remedial action by any governmental body pursuant to any Environmental Law, that could reasonably be expected to have a material adverse effect on the Eternal Station or any of the Eternal Assets.
- (d) No facility or property of Eternal nor, to the Knowledge of Eternal, any facility or property to which Eternal transported or arranged for the transportation of any Hazardous Materials is listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA), or on any similar federal or state list of sites requiring investigation or remediation.
- (e) (i) There are no structures, improvements, equipment, activities, fixtures or facilities on any Eternal Real Property that are constructed with, use or otherwise contain radioactive materials, lead or urea formaldehyde unless the same are in satisfactory condition, ordinary wear and tear excepted, and in compliance in all material respects with Environmental Laws, (ii) there are no asbestos-containing materials, polychlorinated biphenyls, or underground storage tanks, or underground piping associated with such tanks on the Eternal Real Property, except those that comply with applicable Environmental Laws and are disclosed on Schedule 7.19, and (iii) there are no abandoned underground storage tanks on the Eternal Real Property that have not been either abandoned in place or removed pursuant to an Environmental Law (provided that the representations and warranties made in this Section 7.19 with respect to the Eternal Real Property Leases are limited to matters or conditions related to activities of Eternal on the Eternal Real Property Leases or as to which Eternal has Knowledge).
- (f) There are no liens, restrictive covenants or other land use restrictions under Environmental Laws on any of the Eternal Real Property, and no government actions have been taken, or, to the Knowledge of Eternal, are in process that could subject any of such Eternal Real Property to such liens, restrictive covenants or other land use restrictions, and Eternal is not required to place any notice or restriction relating to Hazardous Materials in any deed to such property (provided that the representations and warranties made in this Section 7.19 with respect to the Eternal Real Property Leases are limited to matters resulting from the operation of Eternal's radio business prior to the Closing and otherwise are limited to the Knowledge of Eternal).
- (g) Except for customary provisions relating to the Indemnification of the lessor by the lessee in respect of lessee's creation of Environmental Conditions or violation of Environmental Laws that may be contained in the Eternal Real Property Leases, Eternal has not released any person nor waived any rights or defenses with respect to any Environmental Conditions or any claim arising under any Environmental Law.
- (h) There is no Environmental Report in the possession or control of Eternal or any of its affiliates relating to the Eternal Station or the Eternal Assets that has not been delivered or made available to NRG.

- (i) For purposes of this Agreement, the following defined terms have the meanings ascribed to them below:
- (i) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., any amendments thereto, any successor statutes, and any regulations promulgated thereunder.
  - (ii) "Contaminant" means any waste, pollutant, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or petroleum-derived substance or waste, or any constituent of any such substance or waste.
  - (iii) "Environmental Conditions" means the state of the environment, including natural resources (e.g. flora and fauna), soil, surface water, ground water, any drinking water supply, subsurface strata or ambient air or indoor air.
  - (iv) "Environmental Laws" means all applicable foreign, federal, state, district and local laws, including common law, all applicable rules, policy statements and regulations promulgated thereunder, and all applicable orders, consent decrees, judgments, governmental notices, permits and governmental demand letters issued, promulgated or entered pursuant thereto, relating to pollution or protection of the environment (including, without limitation, indoor air, ambient air, surface water, ground water, land surface, or subsurface strata), or relating to human health or safety, including, without limitation, (i) laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials or Contaminants; (ii) laws relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, management, disposal, recovery, transport or other handling of Hazardous Materials or Contaminants; and (iii) laws relating to Environmental conditions. Environmental Laws shall include, without limitation, CERCLA, as amended, RCRA, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, the Occupational Safety and Health Act, as amended, and all analogous laws promulgated or issued by any Governmental Body that are enacted and currently in effect.
  - (v) "Environmental Reports" means any and all written analyses, summaries or explanations, known by, and identified in the environmental records of Eternal or NRG, as applicable, of (i) any Environmental Conditions in, on or about the Eternal Real Property or the NRG Real Property, as applicable, or (ii) the compliance of Eternal or NRG, as applicable, with, or liability under, any Environmental Laws.
  - (vi) "Hazardous Materials" means all pollutants, contaminants, chemicals, wastes, and any other carcinogenic, ignitable, corrosive, reactive, toxic, infectious, radioactive or otherwise hazardous substances or materials (whether solids, liquids or gases) subject to regulation, control or remediation under Environmental Laws but excluding materials occurring naturally at or about any facility. By way of example only, the term Hazardous Materials includes petroleum, urea formaldehyde, flammable, explosive and radioactive materials, PCBs, toxic or dangerous mold or fungi, pesticides, herbicides, asbestos, acids, metals, solvents and waste waters.
  - (vii) "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor



environment or into or out of any property, including the movement of Contaminants through or in the air, soil, surface water, groundwater or property.

7.20 Accounts Receivable. All Accounts Receivable listed on Schedule 7.20 have arisen from bona fide services provided in the ordinary course of business to third parties which are not affiliates of Eternal or any of its officers, directors or employees. To the Knowledge of Eternal, all Accounts Receivable listed on Schedule 7.20 are subject to no setoffs or counterclaims. A complete and accurate list of the accounts receivable, showing each customer and the aging of its accounts receivable, is contained on Schedule 7.20. Eternal has not been notified of any customer disputing or otherwise refusing to remit payment in the ordinary course of business.

7.21 Insolvency Proceedings. None of Eternal, the Eternal Assets or the Eternal Station are the subject of any pending or threatened insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary. Eternal has not made an assignment for the benefit of creditors or taken any action in contemplation of or which would constitute a valid basis for the institution of any such insolvency proceedings. After giving effect to the transactions contemplated by the Transaction Documents, Eternal (a) will have sufficient capital to carry on its business and transactions, (b) will be able to pay its debts as they mature or become due, and (c) will own assets the fair value of which will be greater than the sum of all liabilities (including contingent liabilities) not specifically assumed by NRG pursuant to the terms of the Transaction Documents. Eternal is not insolvent nor will it become insolvent as a result of entering into or consummating the transactions contemplated by the Transaction Documents.

7.22 No Misleading Statements. No representation or warranty made by Eternal in this Agreement or in any document, instrument, or certificate provided to NRG pursuant to the Transaction Documents, contains any untrue statement of a material fact or omits a material fact necessary in order to make such statements or information not misleading in any material respect.

## **ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF NRG**

As an inducement to Eternal to enter into the Transaction Documents and to consummate the transactions contemplated thereby, subject to consummation of the transactions contemplated in the Contribution Agreement ( all representations are made in a form as if such transactions have been completed), NRG makes the following representations and warranties to Eternal, all of which are true and correct as of the date hereof:

8.01 Good Standing. NRG is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, and is duly qualified to conduct business in the State of Nebraska. Upon the NRG Assignment, NRG shall have all the requisite power and authority (a) to own, lease, and use the NRG Assets as presently owned, leased, and used, (b) to conduct the business and operations of the NRG Station and the NRG Assets as presently conducted, and (c) to execute and deliver the Transaction Documents, and to perform and comply with all of the terms and conditions to be performed and complied with by NRG hereunder and thereunder. NRG holds all material rights, franchises, licenses, permits, authorizations, and approvals (governmental and otherwise), including the licenses and permits issued by the FCC, necessary to own and operate their properties and to carry on and conduct the business of the NRG Station as is presently carried on and conducted.

**8.02 Right, Power and Authority.** NRG has taken all requisite action in order to authorize the execution, delivery, and performance of the Transaction Documents and any other instruments contemplated thereby and the consummation of the exchange of the NRG Assets for the Eternal Assets and the other transactions contemplated hereby and thereby. The execution, delivery and performance of the Transaction Documents (to the extent that NRG is a party thereto) shall have been duly authorized and approved by all necessary action of NRG and do not require any further authorization or consent of NRG, or their respective stockholders, members or partners, as the case may be. The Transaction Documents shall have been duly executed and delivered by NRG and shall be the legal, valid, and binding obligations of NRG enforceable against NRG in accordance with their terms, except to the extent limited by (a) bankruptcy, insolvency, moratorium, reorganization, and other laws of general applicability relating to or affecting the enforcement of creditors' rights, (b) principles of public policy, and (c) court-applied general principles of equity.

**8.03 No Conflicts or Defaults.** Neither the execution, delivery, nor performance of the Transaction Documents by NRG, nor the consummation or the exchange of the NRG Assets for the Eternal Assets or any other transaction contemplated thereby, after the giving of notice, or the lapse of time, or both, (a) conflicts with, results in a breach of, or constitutes a default under, any certificate of formation or limited liability company agreement, or other organizational instruments, of NRG, or any Federal, state or local law, statute, ordinance, rule, or regulation, or any court or administrative order, judgment, award, decree or process applicable to NRG; (b) conflicts with, constitutes grounds for termination of, results in an organizational breach of, constitutes a default under, violates any right of first refusal or similar right granted to a third party under, or accelerates or permits the acceleration of any performance required by the terms of, any contract, agreement, arrangement, commitment, plan, instrument, license, or permit to which NRG is a party or by which NRG or the NRG Assets are bound and which relates to the ownership or operation of the Stations or the Assets; provided, however, that certain NRG Assumed Contracts listed in Schedule 1.02(c) are not assignable without the consent of another party; (c) results in the creation of any Encumbrance, other than NRG Permitted Encumbrances, upon any of the NRG Assets utilized or required in connection with the operation of the NRG Station, other than as expressly contemplated by this Agreement; or (d) require the approval, consent, authorization or act of, or the making by NRG of any declaration, filing or registration with, any third party or any foreign, federal, state or local court, governmental or regulatory authority or body, except for such of the foregoing as are necessary pursuant to the Communications Act.

**8.04 Broker's Fee.** Neither the Transaction Documents, nor the consummation of the transactions contemplated thereby, was induced or procured through the services of any person, firm, corporation, or other entity acting on behalf of or representing NRG as broker, finder, investment banker, financial advisor, or in any similar capacity.

**8.05 NRG FCC Licenses and Other NRG Authorizations.**

- (a) Set forth on Schedule 1.02(a) is a list of all of the NRG FCC Licenses and other NRG Authorizations issued for the operation of the NRG Station and all applications for modification, extension or renewal thereof, and any applications for any new licenses, permits, permissions or authorizations pending on the date hereof.
- (b) The NRG FCC Licenses are all of the licenses, permits, and other authorizations issued by the FCC used or necessary to lawfully operate the NRG Station in the manner and to the full extent as they are now operated, and the NRG FCC Licenses are validly issued

in the name of, or have been validly assigned to, the NRG entity identified on Schedule 1.02(a) and are validly held by such entity. NRG has delivered to Eternal true and complete copies of the NRG FCC Licenses, including any and all amendments and other modifications thereto. Except as set forth on Schedule 1.02(a), the FCC Licenses are in full force and effect, are valid for the balance of the current license term applicable generally to radio stations licensed to communities in the state where the NRG Station are located, and are free and clear of any conditions or restrictions that do, or could reasonably be expected to, limit the full operation of the NRG Station in the manner and to the full extent that it is now operated (other than restrictions under the terms of the NRG FCC Licenses themselves or generally applicable under the rules and regulations of the FCC). NRG has not received any notice of any violations of the NRG FCC Licenses or the Communications Act that remain pending and unresolved. There is no action by or before the FCC currently pending or, to the Knowledge of NRG, threatened to revoke, cancel, rescind, modify or refuse to renew in the ordinary course any of the NRG FCC Licenses. There are no applications, protests, proceedings, or complaints pending at the FCC or, to the Knowledge of NRG, threatened which may have an adverse effect on the NRG Assets, or the operation of the NRG Station (other than rulemaking proceedings that apply to the radio broadcasting industry generally). NRG has no Knowledge of any reason reasonably likely to result in any of the NRG FCC Licenses not being renewed in the ordinary course for a full term without material conditions or qualifications or of any reason reasonably likely to result in any of the NRG FCC Licenses being revoked. The NRG Station is in compliance in all material respects with the Communications Act, including the equal employment opportunity rules and the FCC's policy on human exposure to radio frequency radiation. To the Knowledge of NRG, there are no facts pertaining to the NRG Station, or any persons or entities affiliated therewith, which, under the Communications Act would (i) disqualify NRG from assigning, or transferring control (as the case may be), of the NRG FCC Licenses to Eternal or from consummating the transactions contemplated by the Transaction Documents, or (ii) materially delay the obtaining of the approvals required for the transactions contemplated by the Transaction Documents. Access to the NRG Station' transmission facilities is restricted in accordance with the Communications Act in all material respects.

- (c) All information provided by NRG contained in any applications for modification, extension or renewal of the NRG FCC Licenses, and any pending applications for any new licenses, permits, permissions or authorizations relating to the NRG Station pending on the Closing Date, including, but not limited to, those listed on Schedule 1.02(a) is true, complete and accurate in all material respects and was updated to the extent required by the Communications Act as circumstances may have changed during the pendency thereof.
- (d) Each tower owned by NRG that is included in the NRG Assets, as of the date of this Agreement, is registered and such registration is posted on the tower as required under the Communications Act (such towers, the "NRG Owned Towers"). For purposes of this Agreement, the term "Knowledge" when used with regard to NRG means the actual knowledge of Mary Quass, George Pelletier and Dave Brock and the knowledge which Mary Quass and George Pelletier should reasonably be expected to have in connection with the exercise of their customary duties.

8.06 No Undisclosed Liabilities. Except as fairly disclosed to Eternal and set forth in Schedule 8.06, NRG is not subject, with respect to the NRG Assets, the NRG Station or the operations thereof, to any liability, whether absolute, contingent, accrued or otherwise.

8.07 Title to Assets. NRG has good and marketable title to all of the NRG Assets (or a valid leasehold or license interest, in the case of any leased or licensed assets, as applicable), free and clear of any Encumbrances or other charges or rights of others of any kind, except for (a) NRG Permitted Encumbrances and (b) the mortgages, pledges, liens, encumbrances, or other charges or rights of others listed in Schedule 8.07(a), all of which will be removed on or before the Closing Date.

8.08 Real Estate.

(a) Schedule 1.02(e) describes all interests, including all leasehold interests, in real estate included in the NRG Assets and the nature of the right, title, or interest that NRG has in such real estate, including a legal description of such real estate. Except for leases to third parties set forth on Schedule 1.02(e), no real property other than that listed on Schedules 1.02(e) is used in, held for use in connection with, or necessary for the conduct of the business or operation of the NRG Station as they are now operated (other than easements, rights of access, and the like included in the NRG Assets). NRG has marketable fee simple title (free and clear of any Encumbrances other than NRG Permitted Encumbrances) to the NRG Real Property owned by NRG.

(b) Except as disclosed in Schedule 1.02(e) and for NRG Permitted Encumbrances, there are no encroachments upon the owned NRG Real Property by any buildings, structures, or improvements located on adjoining real estate. Except for NRG Permitted Encumbrances and except as provided in agreements set forth on Schedule 1.02(e): (i) none of the buildings, structures, or improvements (including without limitation any ground radials, guy wires or guy anchors) constructed on the owned NRG Real Property encroaches upon adjoining real estate, and (ii) all such buildings, structures, and improvements are constructed in conformity in all material respects with or are "grandfathered" with respect to all "setback" lines, easements, and other restrictions, or rights of record, or that have been established by any applicable building or safety code or zoning ordinance. Such "grandfathered" approvals shall survive the transfer of the owned NRG Real Property to Eternal. Except for NRG Permitted Encumbrances, no guy wires supporting any NRG Owned Tower, and to the Knowledge of NRG, no guy wires supporting any leased tower, pass over the lands of others except where appropriate easements have been obtained. To the Knowledge of NRG, neither the whole nor any part of any NRG Real Property leased by NRG, is subject to any pending or threatened suit for condemnation or other taking by any public authority. There exists no writ, injunction, decree, order or judgment, nor any litigation, pending, or, to the Knowledge of NRG, threatened, relating to NRG's use, lease, occupancy or operation of any of the NRG Real Property. To the Knowledge of NRG, NRG's use and occupancy of the NRG Real Property complies in all material respects with all regulations, codes, ordinances, and statutes of all applicable governmental authorities, including, without limitation, all environmental protection and sanitary laws and regulations, occupational safety and health regulations, and electrical codes. Except as provided on Schedule 8.13, there are no material structural defects in the buildings, structures, and improvements located on the owned NRG Real Property. Each of the NRG Owned Towers, and to the Knowledge of NRG, each of the leased towers, can structurally

support all of the permitted equipment in accordance with law, governmental approvals, and generally accepted engineering practices governing similar towers.

- (c) Schedule 1.02(e) sets forth a list of each lease (written and oral) or similar agreement under which NRG is lessee of, or holds or operates, any NRG Real Property owned by any third person as of the date of this Agreement, which are the sole and complete agreements concerning NRG's rights and obligations with respect to the leased premises (the "NRG Real Property Leases"). Each NRG Real Property Lease is legal, valid, binding, enforceable in accordance with their terms and in full force and effect (subject to expiration or termination in accordance with their terms). NRG is not, and to the Knowledge of NRG, no other party is in default, violation or breach in any material respect under any NRG Real Property Lease, and no event has occurred and is continuing that constitutes or, with notice or the passage of time or both, would (i) constitute a default, violation or breach by NRG in any material respect thereunder, or (ii) to the Knowledge of NRG, constitute a default, violation or breach by any other party in any material respect thereunder. No amount payable under any NRG Real Property Lease is past due (other than amounts being contested in good faith through appropriate proceedings for which adequate reserves have been established in accordance with GAAP consistently applied on the balance sheets and statements of income of NRG). NRG has not received any notice of a default, offset or counterclaim under any NRG Real Property Lease or any other communication asserting any material non-compliance with any NRG Real Property Lease. NRG has the exclusive right to use and occupy that portion of the premises leased under each NRG Real Property Lease. NRG enjoys peaceful and undisturbed possession of that portion of the premises leased by NRG under the NRG Real Property Leases. Except as set forth on Schedule 1.02(e), NRG's interests under the NRG Real Property Leases are free and clear of all Encumbrances other than NRG Permitted Encumbrances. NRG has delivered to Eternal, true and complete copies of the NRG Real Property Leases, together, in the case of any subleases or similar occupancy agreements, with copies of all other leases. Except as disclosed in Schedule 1.02(e), NRG has full legal power and authority to assign their rights under the NRG Real Property Leases to Eternal in accordance with this Agreement on terms and conditions no less favorable in any material respect (with respect to the NRG Real Property Leases individually or in the aggregate) than those contained in the NRG Real Property Leases on the date hereof (as the NRG Real Property Leases may be modified prior to the Closing in accordance with the provisions of this Agreement), and such assignment will not affect the validity, enforceability and continuity of any such lease.

8.09 No Litigation or Violations of Law.

- (a) Except for matters affecting the radio broadcasting industry generally, and except for those matters set forth in Schedule 8.09(a), there is no suit or litigation at law or in equity, no arbitration or mediation proceedings, and no proceeding before or by any court, commission, agency, or other administrative or regulatory body or authority, pending or, to the Knowledge of NRG, threatened against NRG, which could reasonably be expected to adversely effect the NRG Station, the NRG Assets, or NRG's ability to perform in accordance with the terms of the Transaction Documents. NRG has complied in all material aspects with all laws, regulations, rules, writs, injunctions, ordinances, decrees or orders of any court or of any Federal, state, municipal or other governmental body which affect or are applicable to the NRG Assets, the NRG Station, and the operation of NRG's radio business.

- (b) To NRG's Knowledge, neither the ownership nor use of its properties, nor the conduct of the business or operations of the NRG Station or the NRG Assets, conflicts in any material way with the rights of any other person, firm, corporation or entity.
- (c) There are no unsatisfied judgments outstanding against NRG, the NRG Assets, the NRG Station, the business of NRG which might have a material adverse effect on the continued operation of the NRG Station or impair the value of the NRG Assets or which might adversely affect on NRG's ability to perform in accordance with the Transaction Documents.
- (d) There are no claims pending or, to the Knowledge of NRG, threatened, and to the Knowledge of NRG, there are no investigations pending or threatened, against NRG in respect of the NRG Assets, the NRG Station or the business of NRG which might adversely affect the continued operation of the NRG Station or impair the value of the NRG Assets or which might adversely affect on NRG's ability to perform in accordance with the Transaction Documents (other than any of the foregoing generally affecting similarly-situated companies and that are not specific to NRG);
- (e) As of the date of this Agreement there is no action, suit or proceeding pending or, to the Knowledge of NRG, threatened, which questions the legality or propriety of the transactions contemplated by the Transaction Documents;
- (f) Except as described in Schedule 8.09(f), the NRG Station' transmitting and studio equipment is operating in accordance with the terms and conditions of the NRG FCC Licenses and all underlying construction permits, and the Communications Act in all material respects. The NRG Station is not causing interference in violation of FCC rules to the transmission of any other broadcast station or communications facility and NRG has not received any written complaints with respect thereto, and, to the Knowledge of NRG, no other broadcast station or communications facility is causing interference in violation of FCC rules to the NRG Station' transmissions or the public's reception of such transmissions;
- (g) NRG has not received any notification from the FCC that NRG's employment practices fail to comply with FCC rules and policies;
- (h) NRG has duly filed all material ownership reports, employment reports, tax returns and other material documents, reports and statements which NRG is required to have filed with the FCC or any other governmental authorities having jurisdiction over NRG have been complied with. At the time of filing, all information provided by NRG, and to the Knowledge of NRG, all information provided by unaffiliated third parties, contained in the foregoing documents was true, complete and accurate in all material respects and was updated to the extent required by applicable law and the Communications Act as circumstances may have changed during the pendency thereof. The NRG Station' public inspection files are located at the NRG Station' respective main studios and are in material compliance with the Communications Act; and
- (i) Except as set forth on Schedule 8.13, all towers and other structures on the NRG Real Property are painted, lighted and registered in accordance with the requirements of the FCC Licenses, the FCC, FAA and all applicable requirements of federal, state and local law in all material respects. Appropriate notification to the FAA has been filed for such towers where required by the Communications Act.

#### 8.10 Intellectual Property.

- (a) Schedule 1.02(d) contains a list of (i) all call signs, United States and foreign patents, pending patent applications, trademark registrations, pending trademark applications, registered trade names, registered service marks, registered copyrights, logos, domain names, and other similar intangible property rights, issued to, licensed to, assigned to, filed by, or used to promote or identify the NRG Station, or otherwise used in connection with the NRG station, and (ii) all agreements, contracts and understandings therefor (collectively, the "NRG Intellectual Property").
- (b) Except as disclosed in Schedule 1.02(d), NRG either: (i) owns the entire right, title and interest in and to the NRG Intellectual Property listed in Schedule 1.02(d), free and clear of Encumbrances except for NRG Permitted Encumbrances; or (ii) has the valid right and license to use the NRG Intellectual Property in the operation of the NRG Station.
- (c) (i) All patents and registrations identified in Schedule 1.02(d) are in force, and all applications identified in Schedule 1.02(d) are pending without challenge (other than office actions that may be pending before the Patent and Trademark Office or its foreign equivalents); (ii) the NRG Intellectual Property owned or licensed by NRG and material to the NRG Assets or the NRG Station is valid and enforceable; and (iii) NRG has the right to bring actions for infringement or unauthorized use of the NRG Intellectual Property owned or licensed by NRG and material to the operation of the NRG Station.
- (d) (i) No written claim has been made or asserted that alleges the NRG Intellectual Property owned or licensed by NRG and material to the conduct of the NRG Station infringes the intellectual property of any third party; (ii) no litigation, arbitration or other proceeding is currently pending with respect to the NRG Intellectual Property owned or licensed by NRG; and (iii) no written claim has been made or asserted that challenges the validity or ownership of any NRG Intellectual Property owned or licensed by NRG and material to the NRG Station or the NRG Assets.
- (e) To the Knowledge of NRG, the operation of the NRG Station or the NRG Assets does not infringe any copyright, patent, trademark, trade name, service mark, or other similar right of any third party. NRG has not sold, licensed or otherwise disposed of any of the NRG Intellectual Property to any person or entity and except for those agreements entered into in the ordinary course of operating the NRG Station and set forth on Schedule 1.02(c), NRG has not agreed to indemnify any person or entity for any patent, trademark or copyright infringement.

8.11 Contracts. Schedule 1.02(c), sets forth (a) all program contracts, affiliation agreements, real and personal property leases, and other contracts, agreements, and commitments to which NRG or the NRG Station is a party as of the Closing Date and which relate to the NRG Assets, or the operation of the business or affairs of the NRG Station, and (b) all leases under which NRG is the lessor of tower space on any tower included in the NRG Assets or used in the operation of the business of the NRG Station. NRG has delivered to Eternal true and complete copies of all such written contracts, leases, agreements, and commitments, and true and complete memoranda of all material oral contracts, leases, agreements, and commitments (including any and all amendments and other modifications to such contracts). Except as otherwise disclosed in Schedule 1.02(c), all of the NRG Assumed Contracts (collectively the "NRG Contracts"), are in full force and effect, and are valid, binding, and enforceable in accordance with their terms, subject to the qualifications set forth in Sections 8.02(a), (b), and

(c). NRG is not in material breach, nor to NRG's Knowledge is any other party in material breach, of the terms of any of the NRG Contracts. Except as expressly set forth in Schedule 1.02(c), to the Knowledge of NRG, no party to any NRG Contract has any intention (i) to terminate such NRG Contract, or to amend the terms thereof, (ii) to refuse to renew the same upon its expiration of its term, or (iii) to renew the same upon its expiration only upon terms and conditions which are more onerous than those pertaining to such existing NRG Contract. Except as disclosed on Schedule 1.02(c), all oral contracts set forth thereon are terminable by NRG at will or upon no more than thirty (30) days notice. Assuming that the NRG Consents shall have been obtained, and except as set forth on Schedule 1.02(c), NRG has full legal power and authority to assign its rights under the NRG Contracts to Eternal in accordance with this Agreement, and such assignment will not affect the validity, enforceability, and continuation of any of the NRG Contracts. Schedule 1.02(c) lists all trade agreements in effect as of the Closing Date, the value of the goods and services to be provided to NRG thereunder, and the value of the advertising time to be supplied by NRG thereunder, in each case as of the most recent date at which it is practicable to determine such amounts.

8.12 Insurance. Set forth on Schedule 8.12 is an accurate and complete description of the policies of fire and extended coverage and casualty, liability and other forms of insurance (excluding real property title insurance) that NRG maintains as of the date of this Agreement in respect to the NRG Assets, the NRG Station and NRG's radio business, in such amounts and against such risks and losses as will provide adequate insurance coverage for the replacement cost of the NRG Assets and the NRG Station with respect to all risks normally insured against by a Person or entity carrying on the same business as NRG. All insurance policies listed on Schedule 8.11 are in full force and effect and there are no outstanding claims under any insurance policy or default with respect to provisions in any such policy which claim or default individually or in the aggregate would reasonably be expected to have a material adverse effect on the NRG Assets or the NRG Station.

8.13 Assets in Good Repair. Except as provided in Schedule 8.13, the NRG Assets are in operating condition and repair (ordinary wear and tear excepted), are maintained in accordance with customary engineering practice in all material respects, and are available for immediate use and are otherwise sufficient for use in the business or operations of the NRG Station and the NRG Assets. Except as provided in Schedule 8.13, the NRG Station's transmitting facilities are being operated within full power as authorized by the NRG FCC Licenses.

8.14 Operational Assets.

- (a) The NRG Assets, and those additional properties and assets of NRG identified in Section 1.03, constitute all of the assets and properties that NRG owns or leases in connection with its operation of the NRG Station and the NRG Assets as of the Closing Date.
- (b) Schedule 1.02(b) contains descriptions of all material items which comprise all personal property necessary to conduct the business or operations of the NRG Station as now conducted, except for those assets described in Section 1.03 and except for items of property with an aggregate fair market value not in excess of One Thousand and No/100 Dollars (\$1,000.00). The NRG Tangible Personal Property will permit the NRG Station to be operated by Eternal in substantially the manner currently operated by NRG and substantially in accordance with the terms of the NRG FCC Licenses and the rules and regulations of the FCC, and with all other applicable Federal, state, and local statutes, ordinances, rules and regulations.



**8.15 Required Permits and Consents.** Except for the FCC Consent and the NRG Consents described in Schedule 8.15, no consent, approval, permit, or authorization of, or declaration to, or filing with, any governmental or regulatory authority or any other third party is required to be obtained by NRG in order (a) to consummate the transactions contemplated by the Transaction Documents, or (b) to permit NRG to assign or transfer the NRG Assets to Eternal. NRG holds or possesses all licenses, franchises, permits, privileges, immunities, approvals and other authorizations from a governmental body (other than the NRG FCC Licenses) that are necessary to entitle NRG to own or lease, operate and use its assets and to carry on and conduct its business substantially as conducted immediately prior to the date of this Agreement (collectively, the "NRG Governmental Permits"). Schedule 8.15 sets forth a list and brief description of each such NRG Governmental Permit held by NRG as of the date of this Agreement. NRG has fulfilled and performed in all material respects its obligations under each of the NRG Governmental Permits, and to the Knowledge of NRG, no event has occurred or condition or state of facts exists which constitutes or, after notice or lapse of time or both, would constitute a material breach or material default under any such NRG Governmental Permit. No notice of cancellation, of default or of any dispute concerning any such NRG Governmental Permit, or of any event, condition or state of facts described in the preceding sentence, has been received by NRG. To the Knowledge of NRG, each such NRG Governmental Permit is valid, subsisting and in full force and effect (subject to expiration or termination in accordance with its terms), and may be assigned and transferred to Eternal in accordance with this Agreement and at the time of assignment or transfer of control to Eternal will be in full force and effect, in each case without (i) the occurrence of any breach, default or forfeiture of rights thereunder or (ii) the consent, approval or act of, or the making of any filing with, any governmental body or other party

**8.16 Employee Benefits.** To the Knowledge of NRG, there is no pending, threatened or anticipated governmental audit or examination of any of its Employee Benefit Plans or Compensation Arrangements. There exists no action, suit, or claim (other than routine claims for benefits) with respect to any such plans or arrangements pending, or, to the Knowledge of NRG, threatened or anticipated, against any such Employee Benefit Plan or Compensation Arrangement. Except for the NRG Assumed Contracts, neither Eternal nor any entity related to Eternal under Section 414 of the Code, or any officers, directors, partners, employees, or affiliates of the same, shall have any liability, obligation, or responsibility with respect to claims or liabilities arising or accruing under any Employee Benefit Plan or Compensation Arrangement maintained or provided by NRG or any other entity related to NRG under Section 414 of the Code which relates to any period whatsoever. NRG has complied in all material respects with COBRA, and, except as provided under Section 6.10, will provide such continuation of health benefit coverage to the extent required by reason of the events occurring prior to or on the Closing Date or by reason of the transactions contemplated by this Agreement. Neither Eternal nor any entity related to Eternal under Section 414 of the Code, or any officers, directors, partners, employees, or affiliates of the same, shall have any liability, obligation, or responsibility with respect to penalties, claims, or liabilities arising or accruing under COBRA with respect to any group health plan maintained by or contributed to by NRG or any entity related to NRG under Section 414 of the Code.

**8.17 Labor Matters.**

- (a) Schedule 8.17 contains a true and accurate list setting forth: (i) the names of all individuals currently employed by NRG (whether active or on leave of absence) in connection with the operation of the NRG Station as of the date hereof; (ii) the location of employment of each employee, (iii) the type of employment of each employee (i.e.,

full-time or part-time) and (iv) the employment status of each employee (i.e., active or on specified leave by type).

- (b) NRG is not a party to any (i) labor collective bargaining union or similar agreement or (ii) except as set forth on Schedule 8.17, any employment, consulting, noncompete, severance, retention, compensation, deferred compensation, stock or cash based incentive or other similar agreement, arrangement, commitment or understanding (whether written or oral) with salaried or non-salaried employees in each case in connection with NRG's radio business or the NRG Station.
- (c) (i) No union or similar organization represents employees of the NRG Station and, to the Knowledge of NRG, no such organization is attempting to organize such employees; (ii) there are no unfair labor practice charges pending or, to the Knowledge of NRG, threatened against NRG; (iii) there is no pending or threatened strike, slowdown, picket, work stoppage, or arbitration proceedings involving labor matters or other labor disputes affecting the NRG Station; and (iv) NRG has not experienced any strike, work stoppage or other significant labor difficulties of any nature at the NRG Station in the past two (2) years.
- (d) NRG is and has been in compliance in all material respects with all state and federal laws, ordinances, rules, regulations and requirements relating to labor and employment laws, any employment tax or withholding obligations, any obligations arising under a collective bargaining agreement or any obligations arising under employee benefit plans in each case with respect to the NRG Station.

#### 8.18 Taxes.

- (a) NRG has filed or caused to be filed all Federal income tax returns and all other Federal, state, county, local, or city tax returns which are required to have been filed by NRG, and NRG has paid or caused to be paid all taxes shown on said returns or on any tax assessment received by NRG to the extent that such taxes have become due, or have set aside on their books reserves (segregated to the extent required by GAAP) adequate with respect thereto and except as specified, disclosed or scheduled there is no known, threatened or anticipated tax liability. All information provided in such tax returns is true, complete and accurate in all material respects. To NRG's Knowledge, no events have occurred which could impose upon NRG any transferee liability for any taxes, penalties, or interest due or to become due from NRG.
- (b) There is no claim or assessment pending, or, to the Knowledge of NRG, threatened (whether orally or in writing) against NRG for any alleged deficiency in taxes, and to the Knowledge of NRG there is no audit or investigation currently being conducted that could cause NRG to be liable for any taxes. There are no agreements in effect to extend or waive the period of limitations for the assessment or collection of any tax for which NRG may be liable other than statutory extensions which result from filing tax returns by the extended due date. No claim has been made in a jurisdiction where NRG does not file tax returns that NRG is or may be subject to taxation by that jurisdiction.

8.19 Environmental Protection. Solely in respect the NRG Station and the NRG Assets, except as set forth in Schedule 8.19:

- (a) The operation of the NRG Station is and at all times during the past seven (7) years has been in material compliance with all applicable Environmental Laws, NRG holds all material permits required under Environmental Laws for the operation of the NRG Station, and no modification or change to the operations of the NRG Station will be required upon the renewal of any such permits other than modifications or changes required due to changes in law occurring after the date hereof.
- (b) (i) No claims arising under Environmental Laws are pending or, to the Knowledge of NRG, threatened against NRG, (ii) there are no writs, injunctions, decrees, orders or judgments outstanding or, to the Knowledge of NRG, threatened relating to compliance with or liability under any Environmental Law, and (iii) NRG has no material liability under any Environmental Law that could reasonably be expected to have a material adverse effect on the NRG Station or the NRG Assets.
- (c) There have been no Releases of Hazardous Materials by NRG or by any of its affiliates or, to the Knowledge of NRG, by third parties, in, on or under the NRG Real Property or any other real property formerly owned, leased or used by NRG, that could result in any material investigation or material remedial action by any governmental body pursuant to any Environmental Law that could reasonably be expected to have a material adverse effect on the NRG Station or the NRG Assets.
- (d) No facility or property of NRG nor, to the Knowledge of NRG, any facility or property to which NRG transported or arranged for the transportation of any Hazardous Materials is listed or proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA), or on any similar federal or state list of sites requiring investigation or remediation.
- (e) (i) There are no structures, improvements, equipment, activities, fixtures or facilities on any NRG Real Property that are constructed with, use or otherwise contain radioactive materials, lead or urea formaldehyde unless the same are in satisfactory condition, ordinary wear and tear excepted, and in compliance in all material respects with Environmental Laws, (ii) there are no asbestos-containing materials, polychlorinated biphenyls, or underground storage tanks, or underground piping associated with such tanks on the NRG Real Property, except those that comply with applicable Environmental Laws and are disclosed on Schedule 8.19, and (iii) there are no abandoned underground storage tanks on the NRG Real Property that have not been either abandoned in place or removed pursuant to an Environmental Law (provided that the representations and warranties made in this Section 8.19 with respect to the NRG Real Property Leases are limited to matters or conditions related to activities of NRG on the NRG Real Property Leases or as to which NRG has Knowledge.
- (f) There are no liens, restrictive covenants or other land use restrictions under Environmental Laws on any of the NRG Real Property, and no government actions have been taken, or, to the Knowledge of NRG, are in process that could subject any of such NRG Real Property to such liens, restrictive covenants or other land use restrictions, and NRG is not required to place any notice or restriction relating to Hazardous Materials in any deed to such property (provided that the representations and warranties made in this Section 8.19 with respect to the NRG Real Property Leases are limited to matters

resulting from the operation of NRG's radio business prior to the Closing and otherwise are limited to the Knowledge of NRG).

- (g) Except for customary provisions relating to the indemnification of the lessor by the lessee in respect of lessee's creation of Environmental Conditions or violation of Environmental Laws that may be contained in the NRG Real Property Leases, NRG has not released any person nor waived any rights or defenses with respect to any Environmental Conditions or any claim arising under any Environmental Law.
- (h) There is no Environmental Report in the possession or control of NRG or any of its affiliates relating to the NRG Station or the NRG Assets that has not been delivered or made available to Eternal.

8.20 Insolvency Proceedings. None of NRG, the NRG Assets, or the NRG Station are the subject of any pending or threatened insolvency proceedings of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary. NRG has not made an assignment for the benefit of creditors or taken any action in contemplation of or which would constitute a valid basis for the institution of any such insolvency proceedings. After giving effect to the transactions contemplated by the Transaction Documents, NRG (a) will have sufficient capital to carry on its business and transactions, (b) will be able to pay its debts as they mature or become due, and (c) will own assets the fair value of which will be greater than the sum of all liabilities (including contingent liabilities) not specifically assumed by Eternal pursuant to the terms of the Transaction Documents. NRG is not insolvent nor will it become insolvent as a result of entering into or consummating the transactions contemplated by the Transaction Documents.

8.21 No Misleading Statements. No representation or warranty made by NRG in this Agreement or in any document, instrument, or certificate provided to Eternal pursuant to the Transaction Documents, contains any untrue statement of a material fact or omits a material fact necessary in order to make such statements or information not misleading in any material respect.

## **ARTICLE IX CONDITIONS PRECEDENT TO THE OBLIGATIONS OF ETERNAL AND NRG**

The obligations of each of NRG and Eternal hereunder to close the transactions herein contemplated and to deliver its respective Closing Deliverables under Section 2.03 are subject to the following conditions precedent (unless any such conditions are waived in writing by such party, in its sole discretion):

### **9.01 Conditions**

- (a) No proceeding (other than proceedings generally applicable to the radio broadcast industry) shall be pending, the reasonably likely effect of which would be to revoke, cancel, fail to renew, suspend, or adversely modify the FCC Licenses;
- (b) Each FCC Consent shall have been granted without any "materially adverse condition" (as defined in Section 3.01(b)) having been imposed upon either Eternal or NRG, except as may be the result of such party's actions or failure to take any action reasonably required to obtain such FCC Consent, such FCC Consent shall be in full force and effect, and, unless waived by the parties, each such FCC Consent shall have become a

Final Order. For the purpose of this Agreement, an action or order of the FCC granting the FCC's Consent shall be deemed to have become a "Final Order" when such action or order shall have been issued by the FCC in writing, setting forth the FCC Consent, and so long as (i) such action or order shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, and (ii) no protest, request for stay, reconsideration or review by the FCC on its own motion or by any third party, petition for FCC reconsideration or for rehearing, application for FCC review, or judicial appeal of such action or order shall be pending, when the period provided by law for initiating such protest, request for stay, reconsideration or review by the FCC on its own motion, petition for FCC reconsideration or for rehearing, application for FCC review, or judicial appeal of such action or order shall have expired; and

- (c) The documents and instruments required to be delivered by each party pursuant to Section 2.02 shall have been delivered to the other party.

9.02 No Challenges. No proceeding or formal investigation by or before any court or governmental agency shall be pending or threatened which would reasonably be expected to prevent the consummation of the transactions contemplated by this Agreement.

## **ARTICLE X TERMINATION**

10.01 Termination Prior to Closing. Notwithstanding anything contained herein to the contrary, at any time prior to the Closing, this Agreement may be terminated as follows:

- (a) By mutual consent of all of the parties to this Agreement; or
- (b) by either Eternal or NRG, pursuant to written notice to the other party, if any of the following occur:
  - (i) if the Closing has not occurred prior to March 31, 2006 due to the parties' failure to satisfy or waive the conditions set forth in Section 9.01, provided, however, that neither party shall unreasonably withhold its consent to extend such date in the event that the satisfaction or waiver of such condition is immanent;
  - (ii) the FCC denies applications for assignment of any FCC Licenses;
- (c) by NRG, pursuant to written notice upon the material breach by Eternal of any of its representations, warranties, covenants or agreements set forth in the Transaction Documents which are not cured within any applicable cure period in the Transaction Documents; provided however that NRG is not also in material breach.
- (d) by Eternal, pursuant to written notice upon the material breach by NRG of any of its representations, warranties, covenants or agreements set forth in the Transaction Documents which are not cured within any applicable cure period in the Transaction Documents; provided however that Eternal is not also in material breach.
- (e) by either party if the Contribution Agreement is terminated or if the transactions, as related to the NRG Station, under the Contribution Agreement have not closed by March 31, 2006.

10.02 Effect of Termination. In the event of a termination of this Agreement pursuant to Section 10.01 hereof, each of the parties hereto agree to cooperate with each other in good faith and to take all actions necessary to effectuate: (i) the termination of this Agreement and the Transaction Documents, and (ii) the parties will cooperate and will take all action necessary to cause the FCC to dismiss any applications pending before the FCC that contemplate the assignment of FCC licenses to the other party, and to make any other filings with, or notices to, the FCC as may be necessary or appropriate in connection with the termination of this Agreement.

10.03 Specific Performance. Each of Eternal and NRG acknowledges and agrees that the Assets are unique and that the parties would be damaged irreparably in the event that one of the parties fails to transfer the Assets to the other party upon satisfaction of the conditions set forth in Article 9 of this Agreement. Accordingly, Eternal and NRG agree that each party may be entitled to specific performance and injunctive or other equitable relief as remedies for any breach by of the other party of its obligations hereunder. The parties agree to waive the posting of any bond in connection with any such remedies.

## **ARTICLE XI INDEMNIFICATION**

11.01 Survival of Representations, Warranties and Obligations. All representations, warranties, covenants and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement; provided, however, that, except as otherwise provided in this Article 11, the representations and warranties contained in Articles 7 and 8 of this Agreement shall terminate fifteen (15) months after the Closing Date. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, (a) the representations and warranties contained in Sections 7.16 and 8.16 (ERISA) and Sections 7.18 and 8.18 (Tax) shall survive for the full period of any applicable statute of limitations plus sixty (60) days, and (b) the representations and warranties contained in Sections 7.02 and 8.02 (Authority) and Sections 7.07 and 8.07 (Title) shall survive without limitation.

11.02 Indemnification by Eternal. On and after the Closing Date, Eternal (subject to the provisions of Section 11.03) shall indemnify NRG (the "Eternal Indemnity Parties") and hold the Eternal Indemnity Parties harmless from and against, and shall reimburse them for any and all losses, liabilities, damages, obligations, actions, suits, proceedings, claims, demands, assessments, judgments, costs, and expenses, including reasonable legal fees and expenses (whether or not arising out of third-party claims) (collectively, "Losses") arising out of, resulting from, relating to, in the nature of or caused by:

- (a) any untrue representation, breach of warranty, or nonfulfillment of any covenant by Eternal contained herein or in any certificate, document, or instrument delivered or to be delivered by Eternal under this Agreement; and
- (b) any and all liabilities and obligations of Eternal not included in the Assumed Obligations, including any failure of Eternal to perform and discharge any of its Excluded Liabilities.

11.03 Indemnification Limitations of Eternal. Eternal's obligation to indemnify the Eternal Indemnity Parties and to hold them harmless from and against, and to reimburse them for Losses pursuant to Section 11.02(a), shall be subject to the following limitations:

- (a) the Eternal Indemnity Parties shall not be entitled to any indemnification from Eternal under Section 11.02(a), until the aggregate Losses incurred by the Eternal Indemnity Parties in connection with the matters set forth in Section 11.02(a) exceed Ten Thousand and No/100 Dollars (\$10,000.00) (the "Eternal Claim Basket") whereupon the amount of such claims exceeding the Eternal Claim Basket shall be recoverable in accordance with the terms hereof; provided that the Eternal Claim Basket shall at no time apply to claims by Eternal Indemnity Parties under Section 11.02(a) for breaches of the representations and warranties contained in Section 7.02 (Right, Power and Authority), Section 7.04 (Broker's Fee), Section 7.07 (Title to Assets) or Section 7.18 (Tax).
- (b) the Eternal Indemnity Parties shall not be entitled to indemnification from Eternal under Section 11.02(a), for Losses in excess of an aggregate amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Eternal Cap"); provided, however, that the Eternal Cap shall not apply to claims by Eternal Indemnity Parties under Section 11.02(a) for breaches of the representations and warranties contained in Section 7.02 (Right, Power and Authority), Section 7.04 (Broker's Fee), Section 7.07 (Title to Assets), or Section 7.18 (Tax);
- (c) no Eternal Indemnity Party shall be entitled to indemnification from Eternal under Section 11.02(a) for any claim unless such Eternal Indemnity Party shall have notified Eternal in writing of such claims for indemnification within fifteen (15) months after the Closing Date, provided, however, that this time limitation shall not apply to claims by Eternal Indemnity Parties under Section 11.02(a) for breaches of representations and warranties contained in Section 7.02 (Right, Power and Authority), Section 7.04 (Broker's Fee), Section 7.07 (Title to Assets), or Section 7.18 (Tax), which claims shall be subject to the applicable survival period in Section 11.01.

11.04 Indemnification by NRG. NRG (subject to the provisions of Section 11.05) shall indemnify Eternal (the "NRG Indemnity Parties") and hold the NRG Indemnity Parties harmless from and against, and shall reimburse them for any and all Losses arising out of, resulting from, relating to, in the nature of or caused by:

- (a) any untrue representation, breach of warranty, or nonfulfillment of any covenant by NRG contained herein or in any certificate, document, or instrument delivered or to be delivered by NRG under this Agreement; and
- (b) any and all liabilities and obligations of NRG not included in the Assumed Obligations, including any failure of NRG to perform and discharge any of its Excluded Liabilities.

11.05 Indemnification Limitations of NRG. NRG's obligation to indemnify the NRG Indemnity Parties and to hold them harmless from and against, and to reimburse them for Losses pursuant to Section 11.04 hereof, shall be subject to the following limitations:

- (a) the NRG Indemnity Parties shall not be entitled to any indemnification from NRG under Section 11.04(a), until the aggregate Losses incurred by the NRG Indemnity Parties in connection with the matters set forth in Section 11.04(a) exceed Ten Thousand and No/100 Dollars (\$10,000.00) (the "NRG Claim Basket") whereupon the amount of such claims exceeding the NRG Claim Basket shall be recoverable in accordance with the terms hereof; provided that the NRG Claim Basket shall at no time apply to claims by NRG Indemnity Parties under Section 11.04(a) for breaches of the representations and

warranties contained in Section 8.02 (Right, Power and Authority), Section 8.04 (Broker's Fee), Section 8.07 (Title to Assets) or Section 8.18 (Tax).

- (b) the NRG Indemnity Parties shall not be entitled to indemnification from NRG under Section 11.04(a) for Losses in excess of an aggregate amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "NRG Cap"); provided, however, that the NRG Cap shall not apply to claims by NRG Indemnity Parties under Section 11.04(a) for breaches of the representations and warranties contained in Section 8.02 (Right, Power and Authority), Section 8.04 (Broker's Fee), Section 8.07 (Title to Assets) or Section 8.18 (Tax);
- (c) no NRG Indemnity Party shall be entitled to indemnification from NRG under Section 11.04(a) for any claim unless such NRG Indemnity Party shall have notified NRG in writing of such claims for indemnification within fifteen (15) months after the Closing Date provided, however, that this time limitation shall not apply to claims by NRG Indemnity Parties under Section 11.04(a) for breaches of representations and warranties contained in Section 8.02 (Right, Power and Authority), Section 8.04 (Broker's Fee), Section 8.07 (Title to Assets) or Section 8.18 (Tax), which claims shall be subject to the applicable survival period in Section 11.01;

11.06 Indemnification Procedure. The procedure for indemnification pursuant to Sections 11.02 and 11.04 shall be as follows:

- (a) The party claiming indemnification (the "Claimant") shall promptly give written notice to the party from whom such indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties hereto or brought by a third party against Claimant, specifying in such notice (i) the factual basis for such claim, and (ii) the amount of the claim, if known. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant within ten (10) business days after written notice of such action, suit, or proceeding was given to Claimant; provided, however, that failure of Claimant to give such notice within such ten business day period shall limit Claimant's right to indemnification hereunder only to the extent the Indemnifying Party's defense of such claim is actually prejudiced by such delay.
- (b) Following receipt of notice from Claimant of a claim, the Indemnifying Party shall have thirty (30) days, or such lesser time in the event that thirty (30) days is not practical, in which to make such investigation of the claim as Indemnifying Party shall deem necessary or desirable. For the purposes of such investigation, Claimant agrees to make available to the Indemnifying Party and/or to its authorized representative(s) the information relied upon by Claimant to substantiate the claim. If Claimant and the Indemnifying Party shall have agreed at or prior to the expiration of the said thirty (30) day period (or any mutually agreed-upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to Claimant the amount so agreed upon. If Claimant and the Indemnifying Party shall not have agreed to the validity and amount of such claim within the said thirty (30) day period (or any mutually agreed-upon extension thereof), Claimant may seek appropriate legal remedy.
- (c) With respect to any claim by a third party as to which Claimant is entitled to indemnification hereunder, the Indemnifying Party shall have the right at its own expense to participate in or to assume control of the defense of such claim, and Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-



pocket expenses incurred by Claimant as the result of a request to Claimant by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, Claimant shall have the right to participate in the defense of such claim at Claimant's own expense; provided, however, that Claimant's participation shall not interfere with the Indemnifying Party's defense of such claim. If the Indemnifying Party does not elect to assume control or otherwise to participate in the defense of any third-party claim, the Indemnifying Party shall be bound by the results obtained by Claimant with respect to such claim.

- (d) If a claim, whether between the parties hereto or by a third party, shall require immediate action, the parties hereto will make every effort to reach a decision with respect thereto in good faith as expeditiously as possible.
- (e) The indemnification rights provided in Sections 11.02 and 11.04 shall extend to the partners, members, shareholders, directors, officers, employees, and representatives of Claimant, although for the purpose of the procedures set forth in this Section 11.06, any indemnification claims by such parties shall be made by and through Claimant.

11.07 Exclusive Remedy. After the Closing, the exclusive remedy of Eternal or NRG with respect to any claim of the type described in Sections 11.02(a) or 11.04(a) shall be a claim for indemnification pursuant to the terms and conditions of this Article 11, except in the case of fraud or willful and knowing misrepresentation.

## **ARTICLE XII MISCELLANEOUS**

12.01 Respective Costs. Except as otherwise specifically provided herein, each party will pay all costs and expenses (including attorneys' fees, accountants' fees, and other professional fees and expenses) incurred by such party in connection with the negotiation, preparation, execution, delivery, and performance of the Transaction Documents, and the consummation of the transactions contemplated by this Agreement.

12.02 Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules, to this Agreement unless the context shall otherwise require, and references to "herein," "hereof," "hereunder," and words of similar import shall refer to this Agreement as a whole rather than specific sections hereof unless the context shall otherwise require. Any reference in this Agreement to "Stations" shall include all of the Stations collectively, and each Station individually.

12.03 Entire Understanding. The Transaction Documents, including the recitals to the Transaction Documents and the Schedules and Exhibits attached to this Agreement and the other Transaction Documents, contain the entire understanding among the parties hereto with respect to the transactions contemplated herein and therein, and supersede all negotiations, representations, warranties, commitments, offers, letters of intent, contracts, agreements, understandings, and writings not set forth herein or therein. No waiver and no modification or amendment of any provision of this Agreement shall be effective, unless specifically made in writing and duly signed by all parties hereto.

#### 12.04 Confidentiality.

- (a) Except as necessary for the consummation of the transactions contemplated by this Agreement, and except as and to the extent required by law, each party will keep confidential, and shall cause its representatives, advisors, attorneys and financing sources to keep confidential, any information obtained from the other party in connection with the transactions contemplated by this Agreement. If this Agreement is terminated, each party will return to any other party that furnished it with information in connection with the transactions contemplated by this Agreement all such information.
- (b) No party shall publish any press release or make any other public announcement concerning this Agreement or the transactions contemplated hereby without the prior written consent of each other party; provided, however, that nothing contained in this Agreement shall prevent any party, after notification to and consultation with the other party, from making any filings with governmental authorities that, in its judgment, may be required or advisable in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

12.05 Headings. The Article headings contained herein are for convenience and for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

12.06 Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one (1) and the same instrument. Any such counterpart signature page may be delivered by electronic means or facsimile and shall become binding on the delivering party upon receipt by the other party.

12.07 Choice of Law; Jurisdiction. This Agreement shall be governed by, and shall be construed in accordance with, the internal laws of the State of Nebraska governing contracts made and to be performed entirely within such State, without reference to any choice-of-law principles of the laws of such State. If any provision herein shall be held to be invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative or administrative action, such holding or action shall be strictly construed and shall not affect the validity or the enforceability of any other provision herein. All action and proceedings to enforce obligations of the parties under this Agreement shall be initiated in an appropriate state or federal court in Nebraska to the exclusion of all other courts, and the parties consent to the jurisdiction and venue of any such court and waive any argument that venue in such forum is not convenient.

12.08 Benefit and Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the parties hereto. Except as set forth in Section 12.11 and transfers by each of Eternal and NRG to its respective wholly owned subsidiaries, no party may transfer by operation of law or assign any of its rights, interests or obligations under this Agreement without the prior written consent of the other party hereto. No assignment by any of the parties shall be permitted after the applications requesting FCC Consent to the transactions contemplated herein have been filed with the FCC if such an assignment would result in a situation in which a new file number will be assigned to any such application under 47 C.F.R. § 73.3572.

12.09 Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be delivered in person or sent by overnight private

commercial delivery service or by certified or registered United States mail, postage prepaid, or by facsimile, and addressed as follows:

To Eternal:

Eternal Broadcasting, LLC  
751 Wells Fargo Center  
Lincoln, NE 68508  
Facsimile: (402) 475-5293  
Attention: Richard Chapin

with copies to (which shall not constitute notice to Eternal):

Davenport, Evans, Hurwitz & Smith, L.L.P.  
206 West 14th Street  
P. O. Box 1030  
Sioux Falls, SD 57101-1030  
Facsimile: (605) 335-3639  
Attention: Scott B. Anderson

To NRG:

NRG Media, LLC  
2875 Mt. Vernon Rd SE  
Cedar Rapids, IA 52403  
Facsimile: 319-286-9383  
Attn: Mary Quass

with copies to (which shall not constitute notice to NRG):

Alta Communications, Inc.  
200 Clarendon Street  
51<sup>st</sup> Floor  
Boston, MA 02116  
Facsimile: 617-262-9779  
Attention: Robert Emmert  
Lane MacDonald

and

Goodwin Procter LLP  
53 State Street  
Boston, MA 02109  
Facsimile: 617-523-1231  
Attention: John J. Egan III

and

E. Preston P.C.  
5416 South Valdai Way  
Aurora, CO 80015  
Facsimile: 720-870-3315  
Attn: Eric L. Preston, Esq.

and

Law Offices of Lawrence Bernstein  
1818 N Street, N.W.  
Suite 700  
Washington, DC 20036  
Facsimile: 202-331-9306  
Attn: Lawrence Bernstein, Esq.

and

Koley Jessen P.C., A Limited Liability Organization  
1125 South 103rd Street, Suite 800  
Omaha, NE 68124  
Facsimile: 402-390-9005  
Attention: Matthew D. Maser

All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 13.09, shall be effective upon such delivery. Either party may from time to time change its address for the purpose of the giving of notices to that party, by giving to the other party a notice specifying a new address in compliance with the provisions of this Section 13.09.

12.10 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

12.11 Assignment. Each of Eternal and NRG, as applicable, are permitted if reasonably required, to assign to a qualified intermediary, pursuant to a form of assignment described in Treas. Regs. §1.1031(k)-1(g)(4)(iv), their respective rights under this Agreement to acquire the Assets to be exchanged between the parties. The assignment shall provide for such assigning party to deliver title to and ownership of the exchanged property directly to the other party without the need for the qualified intermediary to take title thereto. Both Eternal and NRG, are hereby notified and consent to such assignment. An assignment pursuant to this Section shall not prejudice enforcement of the rights, obligations and responsibilities by one party against the other.

12.12 Unwind. In the event of an unwind event under the Contribution Agreement, NRG shall immediately assign its rights and obligations hereunder to Waitt Radio, Inc., and NRG shall take such steps as may be reasonably necessary to cause Waitt Radio, Inc. to immediately assume such rights and obligations.

12.13 Re-Sale of NRG Station; Confidentiality. The parties acknowledge that, after the Closing, Eternal may sell the NRG Station to a third party. Notwithstanding anything set forth herein to the contrary, this Agreement shall not restrict Eternal's right to sell the NRG Station or Eternal's right to enter into discussions and disclose information regarding the NRG Station as

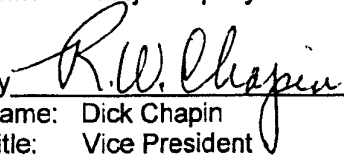
long as the third party buyer agrees to enter into a confidentiality agreement on terms consistent with Section 12.04 hereof.

*[signatures on following page]*

**Signature Page To Agreement For Like-Kind Exchange Of Assets**

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

ETERNAL BROADCASTING, LLC, a Nebraska  
limited liability company

By:   
Name: Dick Chapin  
Title: Vice President

NRG MEDIA, LLC  
By: Quass Communications, LLC

By: \_\_\_\_\_  
Name: Mary Quass  
Title: Manager

**Signature Page To Agreement For Like-Kind Exchange Of Assets**

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

ETERNAL BROADCASTING, LLC, a Nebraska  
limited liability company

By \_\_\_\_\_

Name: Dick Chapin

Title: Vice President

NRG MEDIA, LLC

By: Quass Communications, LLC

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

Name: Mary Quass

Title: Manager

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