

**ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT (this "Agreement") dated as of September 26, 2002, among Radio Lumpkin, Inc. ("Seller"), Charles A. McClure, Jr. ("C. McClure"), Joseph W. McClure ("J. McClure") and Margaret McClure Moore ("Moore" and together with C. McClure and J. McClure, collectively, the "McClure Stockholders") and ABG Georgia, LLC ("Buyer").

**Recitals**

The McClure Stockholders and Robert W. Bishop (collectively, with the McClure Stockholders, the "Stockholders") are the sole stockholders of Seller. Seller owns and operates radio broadcast station WKCW(FM), Lumpkin, Georgia (the "Station") pursuant to certain licenses, permits and authorizations (the "FCC Authorizations") issued by the Federal Communications Commission (the "FCC"). Buyer is a wholly-owned subsidiary of Archway Broadcasting Group, LLC. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (defined below), subject to the terms and conditions of this Agreement. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in Annex I.

**Agreement**

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

**ARTICLE I**

**SALE AND PURCHASE**

**1.1 Station Assets.**

Subject to and in reliance upon the representations, warranties and agreements herein set forth, and subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined) all right, title and interest of Seller in all properties, assets, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, wherever located, including its business and goodwill (except for Excluded Assets as defined in Section 1.2) used or held for use in connection with the business or operation of the Station (collectively, the "Station Assets"). Without limiting the foregoing, the Station Assets shall include the following:

(a) FCC Authorizations. All of the FCC Authorizations issued with respect to the Station, including without limitation all rights in and to the Station's call letters and any variations thereof, and all of those FCC Authorizations listed and described on Schedule 1.1(a)

attached hereto, and all applications therefore, together with any renewals or extensions thereof and additions thereto.

(b) Tangible Personal Property. All interests of Seller as of the date of this Agreement in all equipment, electrical devices, antennas, cables, vehicles, furniture, fixtures, towers, office materials and supplies, hardware, tools, spare parts, and other tangible personal property of every kind and description, used or held for use in connection with the business of operation of the Station as set forth in Schedule 1.1(b) attached hereto, and any additions and improvements thereto between the date of this Agreement and the Closing Date (collectively, the "Tangible Personal Property").

(c) Real Property. All interests of Seller as of the date of this Agreement in all land, leaseholds, licenses, rights-of-way and other interests of every kind and description in and to all of the real property and buildings and other improvements thereon, used or held for use in the business or operation of the Station, including without limitation those listed and described on Schedule 1.1(c) attached hereto, and any additions and improvements thereto between the date of this Agreement and the Closing Date (collectively, the "Real Property").

(d) Station Contracts. Those contracts and agreements used in connection with the business or operation of the Station, which contracts or agreements are listed and described on Schedule 1.1(d) attached hereto (the "Station Contracts").

(e) Intangible Property. All interests of Seller as of the date of this Agreement in all trademarks, trade names, service marks, franchises, patents, jingles, slogans, logotypes and other intangible rights, used or held for use in connection with the business or operation of the Station, including without limitation all right, title and interest in and to the mark consisting of the Station's call letters and any variations thereof, and all of those listed and described on Schedule 1.1(e) attached hereto, and those acquired by Seller between the date hereof and the Closing Date (collectively, the "Intangible Property").

(f) Programming and Copyrights. All interests of Seller as of the date of this Agreement in all programs and programming materials and elements of whatever form or nature used or held for use in the business or operation of the Station, whether recorded on tape or any other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights used or held for use in the business or operation of the Station, together with all such programs, materials, elements and copyrights acquired by Seller in the business or operation of the Station between the date hereof and the Closing Date.

(g) Files and Records. All FCC logs and other records that relate to the operation of the Station, and all files and other records of Seller relating to the business or operation of the Station (other than duplicate copies of such files ("Duplicate Records")), including without limitation all schematics, blueprints, engineering data, customer lists, reports, specifications, projections, statistics, promotional graphics, original art work, mats, plates, negatives and other advertising, marketing or related materials, and all other technical and financial information concerning the Station or the Station Assets.

(h) Claims. Any and all claims and rights against third parties if and to the extent that they relate to the Station Assets, including, without limitation, all rights under manufacturers' and vendors' warranties.

(i) Prepaid Items. All deposits, reserves and prepaid expenses relating to the Station and prepaid taxes relating to the Station or the Station Assets, which amounts will be subject to the adjustments in Section 1.6.

(j) Goodwill. All of Seller's goodwill in, and going concern value of, the Station.

(k) Accounts Receivable. All accounts receivable (including any notes receivable and other receivables) of Seller with respect to the Station (the "Accounts Receivable").

(l) Other Assets. All other assets of any nature whatsoever held by Seller for use in, or utilized by Seller with respect to the Station, other than the Excluded Assets.

The Station Assets shall be sold and conveyed to Buyer free and clear of all mortgages, liens, deeds of trust, security interests, pledges, restrictions, prior assignments, charges, claims, defects in title and encumbrances of any kind or type whatsoever (collectively, "Liens") except: (i) liens for real estate taxes not yet due and payable for which Buyer receives a Purchase Price adjustment under Section 1.6; (ii) such matters as are reflected on the surveys provided to Buyer by Seller or are visually obvious or apparent from a physical inspection of the Real Property; (iii) all easements, covenants, restrictions, reservations and rights of way, in each case, of record as of the date of Seller's execution of this Agreement; and (iv) the post-Closing obligations of Seller which Buyer will expressly assume under the Station Contracts (collectively the "Permitted Encumbrances").

## **1.2 Excluded Assets.**

There shall be excluded from the Station Assets and retained by Seller to the extent in existence on the Closing Date, all cash, cash equivalents, publicly traded securities, insurance policies and any other contracts and agreements not included in the Station Contracts, pension, profit sharing and all other employee benefit plans, and any Duplicate Records (the "Excluded Assets").

## **1.3 Liabilities.**

Except for the post-Closing obligations under the Station Contracts (the "Assumed Obligations"), Buyer shall not assume or be liable for any obligation, liability or indebtedness arising from the pre-Closing operation of the Station or any other liability or obligation of Seller (the "Retained Liabilities"). The Retained Liabilities include, without limitation: (i) any liability, obligation or indebtedness of Seller arising out of or relating to any contract, lease agreement, or instrument (other than the Assumed Obligations); (ii) any liability or obligation of Seller arising out of or relating to any employee benefit plan or otherwise relating to employment (all employment obligations shall be brought current by Seller as of the Closing Date, including the payment of all accrued benefits (including vacation pay) and severance pay and all commissions and bonuses, whether or not such benefits or bonuses are due as of the Closing Date); (iii) any liability or obligation of Seller arising out of or relating to any litigation,

proceeding or claim (whether or not such litigation, proceeding or claim is pending, threatened or asserted before, on or after the Closing Date); (iv) any other liabilities, obligations, debts or commitments of Seller whatsoever, whether accrued now or hereafter, whether fixed or contingent, whether known or unknown including, without limitation, any Taxes of Seller; (v) any claims asserted against the Station or any of the Station Assets relating to any event (whether act or omission) prior to the Closing Date; (vi) any liabilities, obligations, debts or commitments of Seller, any stockholder or any Affiliate thereof (1) arising by reason of any breach or violation or alleged breach or violation of any law, order, rule or requirement of any government authority, (2) arising under any Environmental and Safety Requirements (as defined in Section 2.17(a)), or (3) arising by reason of any breach or violation or alleged breach or violation by Seller or any stockholder of any agreement, contract, lease, license, commitment, instrument or Order (including, but not limited to, those judgments listed on Schedule 1.1(d)), in any such case to the extent such liability or order results from or arises out of events, facts or circumstances occurring or existing at or prior to the Closing, notwithstanding that the date on which any action or claims is commenced or made is after the Closing; or (vii) any liabilities, obligations, debts or commitments which Buyer may become liable for as a result of or in connection with the failure by Buyer or Seller to fully and properly comply with any bulk sales or transfers laws, or with respect to Seller's failure to comply with any law applicable to the transactions contemplated by this Agreement.

#### **1.4 Purchase Price.**

(a) The purchase price (the "Purchase Price") to be paid for the Station Assets shall be an amount equal to the sum of (i) Two Million Five Hundred Thousand Dollars (\$2,500,000) plus or minus (ii) the Closing Date Adjustments pursuant to Section 1.6 hereof plus (iii) the assumption of the Assumed Obligations. Upon Closing, the Closing Payment shall be paid by Buyer in immediately available funds pursuant to written instructions of Seller to be delivered by Seller to Buyer at least three (3) Business Days prior to Closing.

(b) Within five (5) Business Days of the date on which the Schedules to this Agreement (the "Schedules") have been delivered, in final form, to Buyer, Buyer shall deposit \$125,000 (the "Deposit") into escrow with Wachovia Bank, National Association (the "Escrow Agent") pursuant to the escrow agreement (the "Escrow Agreement") of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Sections 10.1(i) or (j), then the Deposit and any interest accrued thereon shall be disbursed by the Escrow Agent to Seller, which disbursement would constitute payment by Buyer to Seller as liquidated damages and except for the additional remedies provided in the following sentence, the sole and exclusive remedy of Seller for breach by Buyer of this Agreement (and Seller hereby waives all other legal and equitable remedies). If this Agreement is terminated for any other reason, then the Deposit and any interest accrued thereon shall be disbursed to Buyer and no Party shall have any further liability or obligation to the other Parties; provided, however, that in the event of (i) a termination of this Agreement pursuant to Sections 10.1(c) (only if such interruption of broadcast transmission is not the result of a force majeure), (f) (only if such termination pursuant thereto is a result of a failure to satisfy the conditions set forth in Sections 7.1 or 7.5) (g), (i) (only if such termination pursuant thereto is a result of a failure to satisfy the conditions set forth in Sections 6.1 or 6.5) or (j), or (ii) a

termination of the asset purchase agreement referred to in Section 7.9 pursuant to Sections 10.1(c) (only if such interruption of broadcast transmission is not the result of a force majeure), (f) (only if such termination pursuant thereto is a result of a failure to satisfy the conditions set forth in Sections 7.1 or 7.5 of such agreement) or (g) of such agreement, then, notwithstanding any other provision of this Agreement, the Party so terminating this Agreement shall also be entitled to receive from the other Party an amount equal to the reasonable fees and expenses incurred by such Party in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions as contemplated hereby but in no event shall the "Good Faith Deposit" be included in such fees and expenses. Seller and Buyer shall each instruct the Escrow Agent to disburse the Deposit and any interest accrued thereon to the party entitled thereto, and shall not by any act or omission delay or prevent any such disbursement; provided that in the event this Agreement is terminated by Buyer pursuant to Sections 1.10 or 10.1(h), written instructions executed solely by Buyer and delivered to the Escrow Agent shall be sufficient instruction for the Escrow Agent to disburse the Deposit plus any interest accrued thereon to Buyer.

(c) Upon Closing, the (i) Closing Payment less \$250,000 (the "Escrow Amount") shall be paid by Buyer to Seller in immediately available funds pursuant to written wire instructions of Seller to be delivered by Seller to Buyer at least three (3) Business Days prior to Closing, (ii) Deposit shall be paid by the Escrow Agent to Seller in immediately available funds pursuant to written wire instructions of Seller and Buyer to be delivered to the Escrow Agent as required pursuant to the terms of the escrow agreement among Buyer, Seller and the Post-Closing Escrow Agent (the "Post-Closing Escrow Agreement") and (iii) Escrow Amount shall be delivered by Buyer to an escrow agent mutually agreed upon by Buyer and Seller (the "Post Closing Escrow Agent") by wire transfer to an account specified by the Post Closing Escrow Agent at least three (3) Business Days prior to Closing, pursuant to the terms of a Post-Closing Escrow Agreement to be entered into among Seller, Buyer and the Post-Closing Escrow Agent.

## **1.5 Allocation.**

The Purchase Price shall be allocated among the Station Assets, the Noncompetition Agreements, the goodwill of the Station and the Assumed Obligations, in accordance with a statement (the "Statement of Allocation") prepared as described herein below. Buyer's accountants shall in good faith prepare and deliver the proposed Statement of Allocation to Seller within ninety (90) days after the Closing. Buyer and Seller shall in good faith make commercially reasonable efforts to agree upon a final Statement of Allocation. Seller and the McClure Stockholders shall complete and execute a Form 8594 Asset Acquisition Statement under Section 1060 of the Internal Revenue Code of 1986, as amended from time to time (the "Code") promptly upon agreement of such allocation, in a manner consistent with the final Statement of Allocation, deliver a copy of such form to Buyer and file a copy of such form with their respective tax returns for the period that includes the Closing Date. Buyer, Seller and the McClure Stockholders shall not take any action inconsistent with the final Statement of Allocation prepared in accordance with this Section 1.5, except as required by applicable Law.

## 1.6 Adjustments.

(a) The operation of the Station and the income and normal operating expenses attributable thereto through the date preceding the Closing Date (the "Adjustment Date") shall be for the account of Seller and thereafter for the account of Buyer, and, if any income or expense is properly allocable or credited, then it shall be allocated, charged or prorated accordingly; provided, however, that notwithstanding the foregoing, pursuant to Section 1.1(k), Buyer shall acquire all of Seller's right, title, interest and claim in and to the Accounts Receivable which are outstanding at the time of the Closing. Expenses for goods or services received both before and after the Adjustment Date, power and utilities charges, frequency discounts, and rents and similar prepaid and deferred items shall be prorated between Seller and Buyer as of the Adjustment Date in accordance with generally accepted accounting principles. All special assessments and similar charges or liens imposed against the Real Property and Tangible Personal Property in respect of any period of time through the Adjustment Date, whether payable in installments or otherwise, shall be the responsibility of Seller, and amounts payable with respect to such special assessments, charges or liens in respect of any period of time after the Adjustment Date shall be the responsibility of Buyer, and such charges shall be adjusted accordingly. To the extent that any of the foregoing prorations and adjustments cannot be determined as of the Closing Date, Buyer and Seller shall conduct a final accounting and make any further payments, as required on a date mutually agreed upon, within ninety (90) days after the Closing.

(b) Within ten (10) Business Days prior to the Closing, Seller shall deliver to Buyer a preliminary list of all items to be prorated pursuant to Section 1.6(a) (the "Preliminary Proration Schedule"), and, to the extent agreed to by Buyer at or prior to the Closing, such prorations shall be credited against or added to the Purchase Price at Closing. In the event Buyer and Seller do not reach a final agreement on such prorations and adjustments at the Closing, Buyer shall deliver to Seller a schedule of its proposed prorations and adjustments (the "Proration Schedule") no later than 45 days after the Closing Date. The Proration Schedule shall be conclusive and binding upon Seller unless Seller provides Buyer with written notice of objection (the "Notice of Disagreement") within ten (10) Business Days after Seller's receipt of the Proration Schedule, which notice shall state the prorations of expenses proposed by Seller (the "Seller's Proration Amount"). Buyer shall have ten (10) Business Days from receipt of a Notice of Disagreement to accept or reject Seller's Proration Amount. If Buyer rejects Seller's Proration Amount, and the amount in dispute exceeds \$15,000, the dispute shall be promptly submitted to a mutually-agreeable disinterested certified public accounting firm not associated with either party (the "Referee") for resolution, such resolution to be made within 20 days after submission to the Referee and to be final, conclusive and binding on Seller and Buyer. Buyer and Seller agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. If the amount in dispute is equal to or less than \$15,000, such amount shall be divided equally between Buyer and Seller. Payment by Buyer or Seller, as the case may be, of the proration amounts determined pursuant to this Section 1.6(b) shall be due five (5) Business Days after the last to occur of (i) Seller's acceptance of the Proration Schedule or failure to give Buyer a timely Notice of Disagreement; (ii) Buyer's acceptance of the Seller's Proration Amount or failure to reject Seller's Proration Amount within ten (10) Business Days of receipt of a Notice of Disagreement; (iii) Buyer's rejection of Seller's Proration Amount in the event the amount in dispute equals or is less than \$15,000, and (iv) notice to Seller and Buyer of the resolution of the disputed amount by the Referee in the event that the amount in dispute

exceeds \$15,000. Any payment required by Seller to Buyer or by Buyer to Seller, as the case may be, under this Section 1.6(b) shall be paid by check or wire transfer of immediately available federal funds to the account of the payee with a financial institution in the United States as designated by Buyer in the Proration Schedule or by Seller in the Notice of Disagreement (or by separate notice in the event that Seller do not send a Notice of Disagreement). If either Buyer or Seller fail to pay when due any amount under this Section 1.6(b), interest on such amount will accrue from the date payment was due to the date such payment is made at a per annum rate equal to the prime rate plus two percentage points, and such interest shall be payable on demand.

(c) With respect to trade, barter or similar agreements for the sale of time for goods or services ("Barter Agreements") assumed by Buyer pursuant to Section 1.1(e), if any, if there exists on the Closing Date an aggregate negative barter balance (i.e., the amount by which the value of air time (based upon the Station's then prevailing rates) to be provided exceeds the fair market value of goods or services to be received therefor), then such excess will be treated as prepaid time sales and adjusted for as a proration in Buyer's favor. If, however, there exists on such date an aggregate positive barter balance (i.e., the amount by which the value of airtime (based upon the Station's then prevailing rates) to be provided is less than the fair market value of goods or services to be received therefor) with respect to Barter Agreements assumed by Buyer, there shall be no proration in Seller's favor.

#### **1.7 Closing.**

The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the "Closing") shall take place at a date and time designated by Buyer after the date of the FCC Consent (defined below) pursuant to the FCC's initial order, but in no event later than the earlier of (a) one year after the date of this Agreement (the "Final Closing Date") or (b) ten Business Days after the date the FCC Consent (defined below) becomes Final, in any case subject to the satisfaction or waiver of the last of the conditions required to be satisfied or waived pursuant to Articles VI or VII below (other than those requiring a delivery of a certificate or other document, or the taking of other action, at the Closing). Alternatively, the Closing may take place at such other place, time or date as the parties may mutually agree upon in writing. The date on which the Closing is to occur is referred to herein as the "Closing Date."

#### **1.8 FCC Application.**

(a) Within ten (10) Business Days after the expiration or earlier termination of the Due Diligence Period as provided in Section 1.10, Seller and Buyer shall file an application with the FCC (the "FCC Application") requesting the FCC's written consent to the assignment of the FCC Authorizations from Seller to Buyer pursuant to this Agreement. Seller and Buyer shall diligently take all steps that are necessary, proper or desirable to prepare and file the FCC Application and to expedite the prosecution of the FCC Application to a favorable conclusion. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC Application, shall furnish all information required by the FCC, and shall be represented at all meetings or hearings scheduled to consider the FCC Application.

(b) The FCC's written consent to the FCC Application is referred to herein as the "FCC Consent." For purposes of this Agreement, the term "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

(c) If the Closing occurs prior to Final FCC Consent, and prior to becoming Final the FCC Consent is reversed or otherwise set aside by a Final order of the FCC (or by a court of competent jurisdiction), then the purchase and sale of the Station Assets shall be rescinded. In such event, Buyer shall, after obtaining FCC consent, reconvey to Seller the Station Assets, and Seller shall repay to Buyer the Purchase Price and reassume the contracts and leases assigned and assumed at Closing. Any such reconveyance shall be consummated on a mutually agreeable date within thirty days of all requisite FCC approvals. In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and execution by Seller of instruments of assumption of the contracts and leases assigned and assumed at Closing) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission. In the event that Closing occurs hereunder prior to Final FCC Consent, then Seller's obligations under this Section shall survive the Closing.

#### **1.9 Hart-Scott-Rodino.**

If necessary and as soon as possible (but in no event later than ten Business Days after the date of this Agreement), Buyer and Seller shall prepare and file with the Federal Trade Commission and the United States Department of Justice any documents that may be necessary to comply with the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") (including a request for early termination of the waiting period thereunder) and shall thereafter promptly furnish all materials thereafter requested by such agencies.

#### **1.10 Due Diligence.**

This Agreement is being executed prior to Buyer's completion of a due diligence review of the Station and the Station Assets (including, without limitation, the financial condition of the foregoing). Buyer shall have until the close of business of the sixtieth day following the delivery of the Schedules in final form (the "Due Diligence Period") to complete such review. If the results of such review are not satisfactory to Buyer, in its sole discretion, Buyer may terminate this Agreement by written notice to Seller prior to the expiration of the Due Diligence Period and Buyer shall not have any liability to Seller or its stockholders as a result of such termination.

#### **1.11 McClure Stockholder Undertaking.**

If any McClure Stockholder holds any right, title or interest in or to any assets, properties, interests in properties or rights intended to be conveyed by Seller to Buyer pursuant to this



Agreement, whether by reason of any defects in corporate organization of Seller or the proper maintenance of corporate status or good standing of Seller or otherwise, then all provisions of this Agreement shall apply to such assets, properties, interests in properties and rights notwithstanding that they are not held by Seller, and all such provisions of this Agreement shall be binding on each McClure Stockholder as well as Seller.

#### **1.12 Certain Contracts.**

Notwithstanding any other provision of this Agreement to the contrary, to the extent that the assignment by Seller of any Station Contract to be assigned hereunder shall require the consent or approval of another party thereto, this Agreement shall not constitute an assignment or attempted assignment thereof or an assumption by Buyer of Seller's obligations thereunder if such assignment or attempted assignment would, without the consent of such other party, constitute a breach thereof. Seller and the McClure Stockholders shall use commercially reasonable efforts to obtain the written consent or approval to the assignment to Buyer of each such Station Contract with respect to which such consent is required for such assignment. Until such consent or approval is obtained, each Party agrees to cooperate with the other Parties in any reasonable arrangement necessary or desirable to provide to Buyer the benefits of such Station Contracts.

#### **1.13 Right of Endorsement.**

Effective as of the Closing, Seller and the McClure Stockholders hereby constitute and appoint Buyer, and its successors and assigns, the true and lawful attorney of Seller and the McClure Stockholders with full power of substitution, in the name of Buyer or the name of Seller and/or the McClure Stockholders, on behalf of and for the benefit of Buyer, (a) to collect all Station Assets, (b) to endorse, without recourse, checks, notes and other instruments in connection with the Station and attributable to the Station Assets, (c) to institute and prosecute all Proceedings which Buyer may deem proper in order to collect, assert or enforce any claim, right or title in or to the Station Assets, (d) to defend and compromise all Proceedings with respect to any of the Station Assets and (e) to do all such reasonable acts and things with respect to the Station Assets as Buyer may deem advisable, subject to the consent of Seller, which consent shall not be unreasonably withheld. Seller and the McClure Stockholders agree that the foregoing powers are coupled with an interest and shall be irrevocable by Seller and the McClure Stockholders directly or indirectly by the dissolution of Seller or in any other manner. Buyer shall retain for its own account any amounts collected pursuant to the foregoing powers and Seller and/or the McClure Stockholders shall promptly pay to Buyer any amounts received by Seller or the McClure Stockholders after the Closing with respect to the Station Assets.

#### **1.14 Payoff of Indebtedness**

On the Closing Date, the Seller will provide Buyer and such lenders with customary payoff letters from all holders of all secured indebtedness of Seller in form and substance satisfactory to Buyer, and make arrangements satisfactory to Buyer for such holders to provide to Buyer recordable form mortgage and lien releases, canceled notes, trademark and patent assignments and other documents requested by Buyer simultaneously with, or promptly

following, the Closing. Buyer may direct the Seller to pay any such indebtedness with any cash or cash equivalents available to the Seller on the Closing Date.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF SELLER AND THE MCCLURE STOCKHOLDERS**

Except as set forth in the Schedules to be delivered by Seller to Buyer on or before the tenth Business Day following the date hereof, which sets forth certain disclosures concerning Seller and its business, each section of which only qualifies the correspondingly numbered representation or warranty in this Article II, to induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller and the McClure Stockholders, as applicable, represent and warrant to Buyer as follows.

#### **2.1 Organization.**

Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (as first set forth above). Seller has the requisite power and authority to own and operate the Station, to carry on the Station's business as now conducted by it, and to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered Seller pursuant hereto (collectively, the "Seller Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof. No Person other than the Stockholders has any right to or interest in the outstanding capital stock of Seller or has any right, contingent or otherwise, to purchase, acquire or own, directly or indirectly, any equity interest in Seller.

#### **2.2 Authority.**

The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when executed and delivered by Seller and/or a McClure Stockholder and the other parties thereto will be, a legal, valid and binding agreement of Seller and/or such McClure Stockholder, enforceable in accordance with its respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

#### **2.3 No Conflicts.**

Except as set forth in Schedule 2.3, neither the execution and delivery by Seller and/or any McClure Stockholder of this Agreement and the Seller Ancillary Agreements or the consummation by Seller and/or any McClure Stockholder of any of the transactions contemplated hereby or thereby nor compliance by Seller and/or any McClure Stockholder with

or fulfillment by Seller and/or any McClure Stockholder of the terms, conditions and provisions hereof or thereof will:

(i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, an event of default or an event creating rights of acceleration, termination or cancellation or a loss of rights under, or result in the creation or imposition of any Lien upon any of the Station Assets under, the charter or other organizational documents of Seller, or any contract, lease, agreement or instrument, or any governmental license, permit or authorization, or any Order or award to which Seller and/or any McClure Stockholder is a party or any of the Station Assets is subject or by which Seller and/or any McClure Stockholder is bound, or any statute, other law or regulatory provision affecting Seller, the Station Assets and/or any McClure Stockholder; or

(ii) require the approval, consent, authorization or act of, or the making by Seller 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 HSR Act and the Communications Act (defined below).

#### **2.4 Financial Statements.**

Schedule 2.4 contains (i) the balance sheets of the business of the Station as of the last day of the two most recent calendar years which were prepared by a CPA and were used to file Income Tax Returns, respectively, and the related statements of income for the years then ended and (ii) the balance sheet (the "Station Balance Sheet") of the business of the Station as of last day of the most recent calendar quarter (the "Balance Sheet Date") and the related statement of income for the three months then ended. Such balance sheets and statements of income have been prepared in accordance with generally accepted accounting principles consistently applied and present fairly in all material respects the financial position and results of operations of the Station as of their respective dates and for the respective periods covered thereby.

#### **2.5 Operations Since Balance Sheet Date.**

From the Balance Sheet Date through the date of this Agreement there has been: (i) no Material Adverse Change suffered by Seller or the Station; and (ii) no damage, destruction, loss or claim (whether or not covered by insurance) or condemnation or other taking which also could materially adversely affect the Station Assets, the Station or its business. Since the Balance Sheet Date the business of the Station has been conducted only in the ordinary course and in conformity with past practice.

#### **2.6 No Undisclosed Liabilities.**

Seller is not subject, with respect to the Station, to any liability (including, without limitation, unasserted claims, whether known or unknown), whether absolute, contingent, accrued or otherwise, which is not shown or reserved for in the Balance Sheet, other than liabilities of the same nature as those set forth in the Balance Sheet and incurred in the ordinary course of business after the Balance Sheet Date.

## 2.7 Taxes.

Seller and each other corporation included in any consolidated or combined tax return and part of an affiliated group, within the meaning of Section 1504 of the Code, which Seller is or has been a member (A) have timely paid all Taxes required to be paid by them through the date hereof (including any Taxes shown due on any Tax Return) and (B) have filed or caused to be filed in a timely manner all Tax Returns required to be filed by them with the appropriate Governmental Entities in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns are true and complete. All Taxes shown to be due on each of the Tax Returns filed by Seller has been timely paid in full. (i) No Liens have been filed and neither Seller nor any McClure Stockholder has been notified by the Internal Revenue Service or any other taxing authority that any issues have been raised (and are currently pending) by the Internal Revenue Service or any other taxing authority in connection with any Tax Return of Seller, and no waivers of statutes of limitations have been given or requested with respect to Seller or any McClure Stockholder; (ii) there are no pending Tax audits of any Tax Returns of Seller; (iii) no unresolved deficiencies or additions to Taxes have been proposed, asserted or assessed against Seller or any member of any affiliated or combined group of which Seller was or is a member; (iv) Seller has made full and adequate provision (x) on the Latest Balance Sheets for all Taxes payable by it for all periods prior to the date of the Latest Balance Sheets and (y) on its books for all Taxes payable by it for all periods beginning on or after the date of the Latest Balance Sheets; (v) Seller has not nor will Seller incur any Tax Liability from and after the date of the Latest Balance Sheets other than Taxes incurred in the ordinary course of business and consistent with previous years; (vi) Seller has not been nor is now a "personal holding company" within the meaning of Section 542 of the Code; (vii) Seller and each of its predecessors have complied in all respects with all applicable Laws relating to the collection or withholding of Taxes (such as sales Taxes or withholding Taxes from the wages of employees) and Seller is not liable for any Taxes for failure to comply with such Laws; (viii) Seller is not nor has Seller ever been a party to any Tax sharing agreement; and (ix) Seller has not any obligation to make (or possibly make) any payments that will be non-deductible under, or would otherwise constitute a "parachute payment" within the meaning of, Section 280G of the Code (or any corresponding provision of state, local or foreign income tax law). Seller has not agreed to and Seller is not required to make any adjustments pursuant to Section 481 of the Code, and the Internal Revenue Service has not proposed any such adjustments or changes in the accounting methods of Seller.

## 2.8 Station Assets.

Except for the Excluded Assets, the Station Assets constitute all the assets used or held for use in the business or operation of the Station. Seller has good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Encumbrances and monetary liens which will be satisfied at Closing. Schedule 2.8 specifies the locations of the Station Assets. Upon delivery to Buyer at Closing of the documents contemplated by Section 8.1(a), Seller will thereby transfer to Buyer good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Encumbrances.

## **2.9 FCC Authorizations.**

(a) Seller is the holder of the FCC Authorizations listed and described on Schedule 1.1(a). Such FCC Authorizations constitute all of the licenses and authorizations required under the Communications Act of 1934, as amended (the "Communications Act"), or the rules, regulations and policies of the FCC for, and used in the operation of, the Station. The FCC Authorizations are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending or threatened any action by or before the FCC to revoke, suspend, cancel, rescind or modify any of the FCC Authorizations (other than Proceedings to amend FCC rules of general applicability), and there is not now issued or outstanding or pending or threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller or the Station. The Station is operating in compliance with the FCC Authorizations, the Communications Act, and the rules, regulations and policies of the FCC.

(b) All reports and filings required to be filed with, and all regulatory fees required to be paid to, the FCC by Seller with respect to the Station (including without limitation all required equal employment opportunity reports) have been timely filed and paid. All such reports and filings are accurate and complete. Seller maintains public files for the Station as required by FCC rules. With respect to FCC licenses, permits and authorizations, Seller is operating only those facilities for which an appropriate FCC Authorization has been obtained and is in effect, and Seller is meeting the conditions of each such FCC Authorization.

(c) Seller is aware of no facts indicating that Seller is not in compliance with all requirements of the FCC, the Communications Act, or any other applicable federal, state and local statutes, regulations and ordinances. Seller is aware of no facts and Seller has received no notice or communication, formal or informal, indicating that the FCC is considering revoking, suspending, canceling, rescinding or terminating any FCC Authorization.

(d) The operation of the Station does not cause or result in exposure of workers or the general public to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields 3 kHz to 300 GHz" (ANSI/IEEE C95.1-1992), issued by the American National Standards Institute, and renewal of the FCC Authorizations would not constitute a "major action" within the meaning of Section 1.1301, et seq., of the FCC's rules.

(e) There are no facts known to Seller which, under the Communications Act, or the existing rules and regulations of the FCC, would disqualify Seller as the assignor of the FCC Authorizations. Should any other fact come to the attention of Seller that would cause the FCC to deny the FCC Consent or to impose any non-routine condition on the grant of the FCC Consent, Seller shall promptly notify Buyer and take all reasonable measures to remove such impediments.

(f) All tower registrations required to be filed with the FCC or any other governmental agency by Seller or by the owner of any transmitting tower used by the Station have been filed. All proofs of performance and measurements that are required to be made by

Seller with respect to the Station's transmission facilities have been completed and filed as required. All information contained in the foregoing documents is true, complete and accurate in all material respects.

**2.10 Real Property.**

(a) Schedule 1.1(c) contains a description of all real property used or held for use in the business or operation of the Station. Subject to Permitted Encumbrances, Seller has good and marketable fee simple title to all owned Real Property ("Owned Real Property"), including all real property described on Schedule 1.1(c) as owned, and including all buildings and other improvements thereon. Schedule 1.1(c) includes a description of each lease or similar agreement (including the rental, expiration date, renewal and the location of the real property covered by such lease or other agreement) under which Seller is lessee or licensee of, or holds, uses or operates, any real property in the business or operation of the Station (the "Real Property Leases"). The Owned Real Property includes, and the Real Property Leases provide, sufficient access to the Station's facilities without need to obtain any other access rights. Neither the whole nor any part of any Real Property is subject to any pending or threatened suit for condemnation or other taking by any public authority. All buildings and other improvements included in the Real Property are in good operating condition and repair, and free from material defect or damage, and comply with applicable zoning, health and safety laws and codes. Seller has delivered to Buyer copies of all title insurance policies in its possession that are applicable to the Real Property.

(b) There are no developments affecting any of the Station Assets pending or, to the knowledge of Seller threatened, which might materially detract from the value, materially interfere with any present or intended use or materially adversely affect the marketability of such Station Assets.

(c) The plants, buildings, structures and equipment included in the Station Assets have no material defects, are in good operating condition and repair and have been reasonably maintained consistent with standards generally followed in the industry (giving due account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present uses and, in the case of plants, buildings and other structures (including, without limitation, the roofs thereof), are structurally sound.

(d) With respect to the Real Property:

(i) no portion thereof is subject to any pending condemnation Proceeding by any public or quasi-public authority and, to the best knowledge of Seller, there is no threatened condemnation Proceeding with respect thereto;

(ii) no notice of any increase in the assessed valuation of the Real Property and no notice of any contemplated special assessment has been received by Seller or any McClure Stockholder and, to the best knowledge of Seller, there is no threatened increase in the assessed valuation or special assessment pertaining to any of the Real Property;

(iii) there are no leases or other agreements, written or oral, to which Seller is a party, granting to any party or parties (other than Seller) the right of use or occupancy of any portion of any parcel of Real Property;

(iv) there are no parties (other than Seller or its lessees disclosed pursuant to paragraph (iii) above) in possession of the Real Property; and

(v) with respect to the Real Property, there have been no discussions or correspondence with the landlord thereof concerning renewal terms for those leases scheduled to expire within 12 months of the date of this Agreement.

## **2.11 Personal Property.**

Schedule 1.1(b) contains a list of all machinery, equipment, vehicles, furniture and other tangible personal property owned by Seller and used or held for use in the business or operation of the Station. Each item of Tangible Personal Property is in good operating condition and repair, is free from material defect or damage, is functioning in the manner and purposes for which it was intended, and has been properly maintained in accordance with industry standards.

## **2.12 Contracts.**

Each of the Station Contracts (including without limitation each of the Real Property Leases) constitutes a valid and binding obligation of Seller and, to the best knowledge of Seller, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally) and is in full force and effect and (except for those Station Contracts which by their terms will expire prior to the Closing Date or will be otherwise terminated prior to the Closing Date in accordance with the provisions hereof) may be transferred to Buyer pursuant to this Agreement and will be in full force and effect at the time of such transfer, in each case, except as set forth in Schedule 2.3, without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder and without the consent, approval or act of, or the making of any filing with, any other party. Seller has performed its obligations under each of the Station Contracts, and Seller is not in, or alleged to be in, breach or default under any of the Station Contracts, and, to the best knowledge of Seller, no other party to any of the Station Contracts has breached or defaulted thereunder, and no event has occurred and no condition or state of facts exists which, with the passage of time or the giving of notice or both, would constitute such a default or breach by Seller or, to the best knowledge of Seller, by any such other party. Complete and correct copies of each of the Station Contracts, together with all amendments thereto, have been delivered to Buyer by Seller.

## **2.13 Intangible Property.**

Seller has all right, title and interest in and to all trademarks, service marks, trade names, copyrights and all other intangible property necessary to the conduct of the Station as presently operated. Schedule 1.1(e) contains a description of all material Intangible Property. Seller has received no notice of any claim that any Intangible Property or the use thereof conflicts with, or infringes upon, any rights of any third party (and there is no basis for any such claim of conflict). The Station has the sole and exclusive right to use the Intangible Property. No service provided

by the Station or any programming or other material used, broadcast or disseminated by the Station infringes upon any copyright, patent or trademark of any other party.

#### **2.14 Employees.**

(a) Schedule 2.14 contains a list of all of the Station's employees and their position and rate of compensation, and a description of all Seller's employee benefit plans (i) that cover any employees of Seller or the Station (A) that are maintained, sponsored or contributed to by Seller or (B) with respect to which Seller is obligated to contribute or has any Liability or potential Liability, whether direct or indirect or (ii) with respect to which Seller has any Liability or potential Liability on account of the maintenance or sponsorship thereof or contribution thereto by any present or former ERISA Affiliate of Seller. Seller has delivered to Buyer copies of all Seller's handbooks, policies and procedures relating to the Station's employees. Seller has complied with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, and is not liable for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing. There is no (i) unfair labor practice charge or complaint against Seller in respect of the Station's business pending or threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, or (ii) strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station's business.

(b) Seller is not delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other compensation for any services performed by them to date or amounts required to be reimbursed to such employees and upon termination of the employment of any such employees, neither Buyer, Seller nor any Station will by reason of anything done prior to the Closing be liable to any of such employees for severance pay or any other payments.

(c) Neither Seller nor any of the ERISA Affiliates is or have not ever maintained or been obligated to contribute to a Multiple Employer Plan, a Multi-Employer Plan or a Defined Benefit Pension Plan.

#### **2.15 Compliance with Law.**

Seller has complied with all Laws or franchises of any Governmental Entity which are applicable to the Station Assets, the Station or the Station's business. There is no Proceeding pending or threatened against Seller in respect of the Station Assets, the Station or the Station's business. To the best knowledge of Seller, there are no claims or investigations pending or threatened against Seller in respect of the Station Assets, the Station or the Station's business. There is no Proceeding pending or threatened against Seller which questions the legality or propriety of the transactions contemplated by this Agreement.

#### **2.16 Insurance.**

Seller maintains insurance policies relating to the Station bearing the policy numbers, for the terms, with the companies, in the amounts, providing the general coverage set forth on Schedule 2.16 hereto. All of such policies are in full force and effect and Seller is not in default



thereunder. Seller has not received notice from any issuer of any such policies of its intention to cancel, terminate or refuse to renew any policy issued by it.

## **2.17 Environmental.**

(a) To the Seller's knowledge, Seller has complied and is in compliance with all Environmental and Safety Requirements (including without limitation all permits, licenses and other authorizations that may be required thereunder) for the occupation of the Real Property and the operation of the Station or otherwise related to the Real Property or the Station. Schedule 2.17 contains a list of all permits, licenses and authorizations required under all Environmental and Safety Requirements. To the Seller's knowledge, Seller has accurately prepared and timely filed with the appropriate Governmental Entities all reports, notifications, and filings required pursuant to Environmental and Safety Requirements affecting the Real Property or the Station. Neither Seller nor any McClure Stockholder has received written or oral notice of any Proceeding, hearing, investigation, charge, complaint, claim, demand or notice against Seller or any of its stockholders alleging any violation of, any liability (contingent or otherwise) or any corrective or remedial obligation under any Environmental and Safety Requirements or involving any of its current or past operations or any Real Property currently or formerly used by Seller or related to the Station. Neither Seller nor any McClure Stockholder has expressly or by operation of law assumed, undertaken or become subject to any Liability of any other Person under any Environmental and Safety Requirements. Schedule 1.1(c) sets forth a complete and accurate list of all real property owned, leased or operated by Seller or any predecessor of Seller or owned, leased or operated in connection with the Station. To the Seller's knowledge, none of the following exists, nor has ever existed, at any of the Real Property or any other real property previously owned or operated by Seller: (i) underground storage tanks, (ii) asbestos-containing material in any form or condition, (iii) materials or equipment containing polychlorinated biphenyls or (iv) landfills, surface impoundments or disposal areas. No Environmental Lien has attached to any property owned, leased or operated by Seller. Neither Seller nor any McClure Stockholder has been notified that it is potentially responsible or liable under or received any requests for information or other correspondence concerning any site or facility under CERCLA or any similar law. Neither Seller nor any McClure Stockholder has entered into or received any consent, compliance order, administrative order or any other Order pursuant to Environmental and Safety Requirements and under which there are continuing obligations.

(b) None of Seller, any McClure Stockholder or, to the Seller's knowledge, any previous owner or operator of the Real Property has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled or released any substance including without limitation any hazardous substance, or owned or operated any property or facility (and no such property or facility is contaminated by any such substance) in a manner that has given or would give rise to Liabilities pursuant to CERCLA, SWDA or any other Environmental and Safety Requirement, including any Liability for response costs, corrective action costs, personal injury, property damage, natural resources damage or attorney fees, or any investigative, corrective or remedial obligations. The transactions contemplated by this Agreement do not impose any obligations under any Environmental and Safety Requirements for site investigation or cleanup, or notification to any Governmental Entities or third parties. To the Seller's knowledge, no facts, events or conditions relating to the past or present properties, operations or facilities of Seller would prevent compliance by Seller or Buyer with, or give rise to any Liability or investigatory,

corrective or remedial obligation of Buyer with respect to, Environmental and Safety Requirements, including, without limitation, any Liability related to environmental contamination or violations of health and safety requirements.

(c) Seller has provided Buyer with true, correct, and complete copies of all environmental reports and studies in the possession, custody or control of Seller or any McClure Stockholder with respect to the Station or any of the Real Property or real property owned or leased by Seller and, to the knowledge of Seller, there are no other environmental reports or studies with respect thereto.

**2.18 No Finder.**

Except for Stan Raymond and Associates, whose fee shall be paid by Seller, no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

**2.19 Creditors; Bankruptcy, Etc.**

Neither Seller nor any McClure Stockholder is involved in any Proceeding by or against Seller or any McClure Stockholder as a debtor in any court under Title 11 of the United States Bankruptcy Code or any other insolvency or debtors' relief act, whether state or Federal, or for the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official of Seller or any McClure Stockholder or for a substantial part of Seller's or any McClure Stockholder's property.

**2.20 Litigation.**

Except as disclosed in Schedule 2.20, there are no Proceedings pending or, to the best knowledge of Seller, threatened against Seller or any of its stockholders and, to the best knowledge of Seller, there is no basis for any of the foregoing.

**2.21 Customers and Suppliers.**

In the last 12 months no material changes have occurred to the customer, vendor or supplier base other than in the ordinary course of business. As of the date of this Agreement, none of Seller, the Station or any McClure Stockholder has received any notice or otherwise has any reason to believe that any of the customers, vendors or suppliers of Seller or any Station intends to terminate or reduce or otherwise materially and adversely change its business with Seller or any Station.

**2.22 Insider Interests.**

Except as disclosed in Schedule 2.22 and except for compensation to regular employees of Seller or the Station, no current or former Affiliate of Seller, is now, or has been during the last five fiscal years, (i) a party to any transaction or contract with Seller or any Station, (ii) indebted to Seller or any Station, or (iii) the direct or indirect owner of an interest in any Person which is a present or potential competitor, supplier, vendor or customer of Seller or any Station

(other than non-affiliated holdings in publicly held companies), nor does any such Person receive income from any source other than Seller or a Station which should properly accrue to Seller or a Station. None of the McClure Stockholders (nor any Affiliate of a McClure Stockholder) is a guarantor or otherwise liable for any Liability (including indebtedness) of Seller.

**2.23 Bank Accounts; Powers of Attorney.**

Schedule 2.23 sets forth a true and complete list of (i) all bank accounts and safe deposit boxes of Seller and all persons who are signatories thereunder or who have access thereto and (ii) the names of all Persons holding general or special powers of attorney from Seller and a summary of the terms thereof.

**2.24 Disclosure.**

With respect to Seller, the Station and the Station Assets, this Agreement, the Seller Ancillary Agreements and the information provided by Seller in connection with Buyer's due diligence review of the Company do not and will not contain any untrue statement or misrepresentation of material fact or omit to state a material fact required to be made in order to make the statements herein and therein not misleading in light of the circumstances in which they are made. There is no fact which has not been disclosed to Buyer of which Seller or any McClure Stockholder is aware and which constitutes, or could reasonably be anticipated to constitute, a Material Adverse Effect to the Station or the Station Assets.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller and the McClure Stockholders to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to Seller and the McClure Stockholders as follows:

**3.1 Organization.**

Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (first set forth above). Buyer has the requisite power and authority to execute and deliver this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer (collectively, the "Buyer Ancillary Agreements"), to consummate the transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and thereof.

**3.2 Authority.**

The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when executed and delivered by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its

respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

### **3.3 No Conflicts.**

Neither the execution and delivery by Buyer of this Agreement and the Buyer Ancillary Agreements or the consummation by Buyer of any of the transactions contemplated hereby or thereby nor compliance by Buyer with or fulfillment by Buyer of the terms, conditions and provisions hereof or thereof will: (i) conflict with the charter or other organizational documents of Buyer or any Order to which Buyer is subject; or (ii) require the approval, consent, authorization or act of, or the making by Buyer 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 HSR Act and the Communications Act.

### **3.4 Qualification.**

Buyer is qualified under the Communications Act and the rules, regulations and policies of the FCC to hold the FCC Authorizations.

## **ARTICLE IV**

### **COVENANTS OF SELLER AND THE MCCLURE STOCKHOLDERS**

Seller and the McClure Stockholders, as applicable, covenant and agree that from the date hereof until the completion of the Closing:

#### **4.1 Operation of the Business.**

(a) Seller shall (i) continue to carry on the business of the Station and keep its books and accounts, records and files in the usual and ordinary manner in which the business has been conducted in the past; (ii) operate the Station in accordance with the terms of the FCC Authorizations and in compliance with the Communications Act, FCC rules, regulations and policies, and all other applicable Laws, and maintain the FCC Authorizations in full force and effect and timely file and prosecute any necessary applications for renewal of the FCC Authorizations; (iii) use best efforts to preserve the business organization of the Station intact, retain substantially as at present the Station's employees, consultants and agents, and preserve the goodwill of the Station's suppliers, advertisers, customers and others having business relations with it; (iv) keep all Tangible Personal Property and Real Property in good operating condition (ordinary wear and tear excepted) and repair and maintain adequate and usual supplies of inventory, office supplies, spare parts and other materials as have been customarily maintained in the past; (v) preserve intact the Station Assets and maintain in effect its current insurance policies with respect to the Station and the Station Assets; and (vi) collect the Station's accounts receivable only in the ordinary course of business consistent with past practice.

Nothing contained in this Agreement shall give Buyer any right to control the programming, operations or any other matter relating to the Station prior to the Closing, and Seller shall have complete control of the programming, operations and all other matters relating to the Station up to the Closing.

(b) Notwithstanding Section 4.1(a), Seller shall not, without the prior written consent of Buyer: (i) sell, lease, transfer, or agree to sell, lease or transfer, any Station Assets except for non-material sales or leases, in the ordinary course of business of items which are being replaced by assets of comparable or superior kind, condition and value; (ii) grant any raises to employees of the Station, pay any substantial bonuses or enter into any contract of employment with any employee or employees of the Station; (iii) amend or terminate any existing time sales contracts with respect to the Station except in the ordinary course of business, or enter into any trade or barter agreement with respect to the Station; (iv) amend or terminate any of the Station Contracts or enter into any contract, lease or agreement with respect to the Station except those entered into in the ordinary course of business that will be paid and performed in full before Closing; (v) by any act or omission cause any representation or warranty set forth in Article II to become untrue or inaccurate; or (vi) discount, or otherwise reduce the amount receivable in respect of, any of the Station's accounts receivable.

#### **4.2    Reports.**

Seller shall provide Buyer with copies of the regular monthly internal operating statements relating to the Station for the monthly accounting periods between the date of this Agreement and the Closing Date by the 20th day of each calendar month for the preceding calendar month, which shall present fairly in all material respects the financial position of the Station and the results of operations for the period indicated in accordance with generally accepted accounting principles. Such monthly statements shall show: (i) the actual results for such month and a comparison of the prior year actual results for such month, and (ii) account for items of non-recurring income and expense separately and (iii) account for and separately state all intercompany allocations of expenses relating to the Station, all of which shall be presented fairly in all material respects and in accordance with generally accepted accounting principles.

#### **4.3    Access.**

(a) At the request of Buyer and subject to Buyer's obligations of confidentiality hereunder, Seller shall from time to time give or cause to be given to the officers, employees, accountants, counsel, agents, consultants and representatives of Buyer: (i) full and free access during normal business hours to all facilities, properties, accounts, books, deeds, title papers, insurance policies, licenses, agreements, contracts, commitments, records and files of every character, equipment, machinery, fixtures, furniture, vehicles, notes and accounts payable and receivable of Seller with respect to the Station; (ii) reasonable access to the executive personnel of Seller and the Station; (iii) reasonable access to customers of Seller and the Station; (iv) all such other information concerning the Station Assets and the affairs of the Station as Buyer may reasonably request; and (v) copies of any of the foregoing documents requested by Buyer or the officers, employees, accountants, counsel, agents, consultants and representatives of Buyer, such copies to be delivered as soon as practicable following any such request, in all cases in order that Buyer has full opportunity to make such investigation as Buyer shall reasonably desire to make

in connection with its due diligence review of the affairs of Seller, the Station and the Station Assets, and Seller and the McClure Stockholders shall cooperate fully in connection therewith. Any investigation or examination by Buyer shall not in any way diminish or obviate any representations or warranties of Seller made in this Agreement or in connection herewith. The Parties agree to use their reasonable efforts to minimize any disruptions to any other Party's business in connection with the conduct of the due diligence process contemplated herein.

(b) On and after the Closing Date, Seller will afford promptly to Buyer and its agents reasonable access to their respective books of account, financial and other records (including, without limitation, accountant's work papers), information, employees and auditors to the extent necessary or useful for Buyer in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Station or the Station Assets; provided that any such access by Buyer shall not unreasonably interfere with the conduct of the business of Seller.

(c) In connection with this Section 4.3 and Buyer's due diligence review of Seller, Seller will not, to the best of Seller's knowledge, provide information to Buyer that contains any misrepresentation of material fact or omits to state a material fact required to make in order to make the information provided therein not misleading in light of the circumstances in which such information is provided.

#### **4.4    Consents.**

Seller shall use commercially reasonable efforts to obtain all of the consents noted on Schedule 2.3 hereto. If Seller does not obtain a consent required to assign a Station Contract hereunder, Buyer shall not be required to assume such Station Contract. Marked with an asterisk on Schedule 2.3 are those consents the receipt of which is a condition precedent to Buyer's obligation to close under this Agreement (the "Required Consents").

#### **4.5    Estoppel Certificates; Title Insurance; Liens; Surveys.**

Seller, at Seller's expense, will obtain and deliver to Buyer (i) written estoppel certificates (the "Estoppel Certificates") duly executed by the lessors under the Real Property Leases, in form and substance satisfactory to Buyer, (ii) commitments from a title company acceptable to Buyer to issue to Buyer at standard rates ALTA extended coverage owner's and leasehold title insurance policies with respect to the owned and leased Real Property with no exceptions other than Permitted Encumbrances (the "Title Commitments"), (iii) all UCC, judgment and state and federal tax lien search reports (showing searches in the name of Seller and the call letters of the Station) necessary to assure that no Liens are filed or recorded against the Station Assets in the public records of any jurisdiction where the Station Assets are located (the "Lien Search Reports") and (iv) an ALTA survey of each parcel of owned Real Property and tower site ground leases performed by a surveyor acceptable to Buyer (the "Surveys"). The Estoppel Certificates shall be dated within forty days prior to Closing. The Title Commitments and the Lien Search Reports shall be delivered within forty-five days of the date of this Agreement and shall be updated within thirty days prior to Closing.

#### **4.6 Employee Matters.**

(a) Buyer may offer employment to any of Seller's employees of the Station (each an "Employee") who is available for work on the Closing Date. Any such offer shall be for employment at will by Buyer as new employees of Buyer (subject to any applicable probation period not prohibited by law) to occupy positions designated by Buyer and pursuant to the terms and conditions determined by Buyer in its sole discretion.

(b) Seller agrees to make available to Buyer, to the fullest extent permitted by law, all information and materials requested by Buyer from the personnel files of each employee of Seller who shall have elected to accept employment with Buyer.

(c) Buyer assumes no obligation to continue or assume any compensation arrangements or liabilities of Seller (including, but not limited to, any salary, bonuses, fringe benefits, insurance plans, or pension or retirement benefits under any compensation or retirement plan maintained by Seller) to any such Employee.

(d) Seller agrees to remain responsible for the payment of all accrued benefits in accordance with the terms of Seller's retirement plans, including any retiree medical, dental and life insurance plan. Buyer shall not at any time assume any liability under Seller's retirement plans for the payment of benefits to any active or any terminated, vested or retired participants in Seller's retirement plans.

(e) Seller shall retain the responsibility for payment of all medical, dental, health and disability claims incurred by any Employee prior to the Closing Date, and Buyer shall not assume any liability with respect to such claims; provided, however, that such responsibility to Buyer shall not create an obligation of Seller to pay or reimburse any claims that are not otherwise reimbursable under Seller's medical, dental, health and disability plans existing as of the Closing Date. Seller also agrees to retain responsibility for disability payments to employees on medical or disability leave at the Closing Date until such time as such Employee is offered employment by Buyer, in its sole discretion, or as otherwise required under applicable Law. Except as provided in the immediately preceding sentence, Buyer shall assume responsibility for payment of all medical, dental, health and disability claims incurred by Employees in its employ on or after the Closing Date, which are covered under Buyer's benefit plans and in which the Employee is a participant.

(f) Seller agrees that it shall retain, consistent with its normal employment practices, all liabilities and obligations, if any (including, without limitation, the liability and obligation for all wages, salary, vacation pay and unemployment, medical, dental, health and disability benefits), for those former employees of Seller who retired or terminated employment prior to the Closing Date or otherwise do not become employees of Buyer.

(g) Seller, with respect to the Employees, will timely give all notices required to be given under the Worker Adjustment and Retraining Notification Act of 1988 or similar statutes or regulation of any jurisdiction relating to any plant closing or mass lay off or as otherwise required by law and shall fully indemnify and hold harmless Buyer with respect to any liability that may arise with respect thereto relating to the Employees.

#### **4.7 Exclusivity.**

Neither Seller nor any McClure Stockholder shall, and Seller shall use its best efforts to ensure that its officers, directors, employees, accountants, counsel, agents, consultants or representatives do not, directly or indirectly solicit, encourage, initiate or conduct any discussions, enter into any negotiations, enter into any agreements, understandings or transactions or provide any information to any person or entity (other than Buyer and Buyer's Affiliates) with respect to or relating to Another Transaction, provide any non-public financial or other confidential or proprietary information regarding the Station or the Station Assets (including this Agreement and any other materials containing the proposed terms and any other financial information, projections or proposals regarding the Station or the Station Assets) to any person or entity (other than to Buyer and its Affiliates) who Seller or a McClure Stockholder knows, or has reason to believe, would have any interest in participating in Another Transaction. As used herein, the term "Another Transaction" means (A) the sale of the Station or the Station Assets, or (B) the sale (whether by sale of stock, merger, consolidation or otherwise) of more than 50% of the voting securities of Seller. Each McClure Stockholder and Seller represents that it is not a party to, or bound by, any agreement with respect to Another Transaction other than this Agreement and this Agreement will not violate any agreement to which Seller or any McClure Stockholder is bound or to which the Station or the Station Assets are subject. If Seller or any McClure Stockholder receives any oral or written offer or proposal to engage in any form of discussions relating to Another Transaction, then Seller or such McClure Stockholder, as the case may be, shall immediately notify Buyer of the identity of the person or entity making, and the specific terms of, any such offer or proposal.

#### **4.8 Schedules.**

Seller shall, and the McClure Stockholders shall cause Seller to, deliver the Schedules in final form to Buyer on or before the tenth Business Day following the date hereof.

### **ARTICLE V**

#### **COVENANTS OF BUYER AND SELLER**

Buyer and Seller both covenant and agree, as applicable, that from the date hereof until the completion of the Closing:

##### **5.1 Representations and Warranties.**

Each party shall give the other detailed written notice promptly upon learning of the occurrence of any event that would cause or constitute a breach (or would have caused a breach had such event occurred or been known to it prior to the date hereof) of any of its representations and warranties contained in this Agreement.

##### **5.2 Notice of Proceedings.**

Each Party promptly notify the other in writing upon: (a) becoming aware of any Order or any complaint praying for an Order restraining or enjoining the Party from consummating the



transactions contemplated hereunder; or (b) receiving any notice from any Governmental Entity of its intention (i) to institute an investigation into, or institute a Proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

### **5.3 Confidentiality.**

All non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including any information regarding Buyer, its Affiliates and the terms of the transactions contemplated hereby (including the Purchase Price)) shall be confidential and shall not be disclosed to any other person or entity, except the parties' attorneys, accountants, investment bankers, investors and lenders, and their respective attorneys for the purpose of consummating the transactions contemplated by this Agreement.

## **ARTICLE VI**

### **CONDITIONS TO THE OBLIGATIONS OF SELLER**

The obligations of Seller under this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

#### **6.1 Representations, Warranties and Covenants.**

Each of the representations and warranties of Buyer contained in this Agreement shall have been true and correct as of the date when made and shall be deemed to be made again on and as of the Closing Date and shall then be true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement. Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Buyer shall have furnished Seller with a certificate, dated the Closing Date and duly executed by an officer of Buyer authorized on behalf of Buyer to give such a certificate, to the effect that the conditions set forth in this Section 6.1 have been satisfied.

#### **6.2 Proceedings.**

Neither Seller nor Buyer shall be subject to any restraining order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby. In the event such a restraining order or injunction is in effect, this Agreement may not be abandoned by Seller pursuant to this Section 6.2 prior to the Final Closing Date, but the Closing shall be delayed during such period. This Agreement may be abandoned after the Final Closing Date if such restraining order or injunction remains in effect.

#### **6.3 FCC Consent.**

The FCC Consent shall have been granted by the FCC by initial order.

**6.4 Hart-Scott-Rodino.**

If applicable, the waiting period under the HSR Act shall have expired or been terminated.

**6.5 Deliveries.**

Buyer shall have complied with each and every one of its obligations set forth in Section 8.2.

**ARTICLE VII**

**CONDITIONS TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer under this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

**7.1 Representations, Warranties and Covenants.**

Each of the representations and warranties of Seller contained in this Agreement shall have been true and correct as of the date when made and shall be deemed to be made again on and as of the Closing Date and shall then be true and correct in all material respects except for (i) such representations and warranties which are qualified by their terms by a reference to materiality, which representations and warranties as so qualified shall be true in all respects, and (ii) except to the extent changes are permitted or contemplated pursuant to this Agreement. Seller shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date. Seller shall have furnished Buyer with a certificate, dated the Closing Date and duly executed by an officer of Seller authorized on behalf of Seller to give such a certificate, to the effect that the conditions set forth in this Section 7.1 have been satisfied.

**7.2 Proceedings.**

Neither Seller nor Buyer shall be subject to any restraining order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby. In the event such a restraining order or injunction is in effect, this Agreement may not be abandoned by Buyer pursuant to this Section 7.2 prior to the Final Closing Date, but the Closing shall be delayed during such period. This Agreement may be abandoned after such date if such restraining order or injunction remains in effect.

**7.3 FCC Consent.**

The FCC Consent shall have been granted by the FCC by initial order (and, at Buyer's option, such FCC Consent shall have become Final), without any conditions materially adverse to Buyer.

**7.4 Hart-Scott-Rodino.**

If applicable, the waiting period under the HSR Act shall have expired or been terminated.

**7.5 Deliveries.**

Seller and the McClure Stockholders shall have complied with each and every one of its obligations set forth in Section 8.1.

**7.6 Absence of Material Adverse Change.**

Since the Balance Sheet Date there shall have been no Material Adverse Change suffered by Seller or the Station.

**7.7 Release of Liens.**

Buyer shall have received duly executed releases (including, without limitation, UCC-3 Termination Statements) of all Liens (except for Permitted Encumbrances) on the Station Assets in form and substance reasonably satisfactory to Buyer.

**7.8 Due Diligence.**

Buyer shall be satisfied, in its sole discretion, with the results of its business, legal, environmental and accounting due diligence investigation and review of the Station, the Station Assets and the Schedules. This condition shall expire on the last day of the Due Diligence Period if Seller has not received written notice of Buyer's termination of this Agreement on or before the end of the Due Diligence Period.

**7.9 McClure Stations.**

Buyer shall have entered into an asset purchase agreement with McClure Broadcasting, Inc., WGBA, Inc., and their respective stockholders, in form and substance reasonably satisfactory to Buyer, for the purchase of the McClure Assets and all of Buyer's conditions to the consummations of the transactions contemplated thereby shall have been satisfied in form and substance reasonably satisfactory to Buyer.

**ARTICLE VIII**

**ITEMS TO BE DELIVERED AT THE CLOSING**

**8.1 Deliveries by Seller and the McClure Stockholders.**

At the Closing, Seller and the McClure Stockholders shall deliver to Buyer duly executed by Seller, a McClure Stockholder or such other signatory as may be required by the nature of the document:

(a) bills of sale, certificates of title, endorsements, assignments, general warranty deeds and other good and sufficient instruments of sale, conveyance, transfer and assignment, in form and substance reasonably satisfactory to Buyer, sufficient to sell, convey, transfer and assign the Station Assets to Buyer free and clear of Liens (other than Permitted Encumbrances) and to quiet Buyer's title thereto;

(b) the Required Consents and any other consents obtained by Seller under Section 4.4;

(c) certified copies of resolutions authorizing the execution, delivery and performance by Seller of this Agreement, which shall be in full force and effect;

(d) the certificate referred to in Section 7.1;

(e) an opinion of Seller's counsel (including its FCC counsel) in the form and substance reasonably satisfactory to Buyer;

(f) the Estoppel Certificates, Title Commitments, the Lien Search Reports and the Surveys;

(g) a Noncompetition Agreement duly executed by Seller and each McClure Stockholder;

(h) the Post-Closing Escrow Agreement duly executed by Seller;

(i) a general warranty deed for each parcel of Real Property; and

(j) UCC-3 Termination Statements with respect to any Liens which have been placed on the Station Assets.

## **8.2 Deliveries by Buyer.**

At the Closing, Buyer shall deliver to Seller:

(a) the Purchase Price, which shall be paid in the manner specified in Section 1.4;

(b) an instrument or instruments of assumption of the Assumed Obligations in form and substance reasonably satisfactory to Seller;

(c) certified copies of resolutions authorizing the execution, delivery and performance by Buyer of this Agreement, which shall be in full force and effect at the time of the Closing;

(d) a Noncompetition Agreement duly executed by Buyer;

(e) the Post-Closing Escrow Agreement duly executed by Buyer; and

(f) the certificate referred to in Section 6.1.

## ARTICLE IX

### SURVIVAL; INDEMNIFICATION

#### 9.1 Survival.

All representations, warranties, covenants and agreements contained in this Agreement, or in any certificate, agreement, or other document or instrument, delivered pursuant hereto, shall survive (and not be affected in any respect by) the Closing, any investigation conducted by any party hereto and any information which any party may receive.

#### 9.2 Indemnification.

(a) From and after Closing, Seller and the McClure Stockholders hereby agree to jointly and severally indemnify and hold harmless Buyer, the directors, officers and employees of Buyer and all persons which directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with Buyer, and their respective successors and assigns (collectively, the "Buyer Indemnitees") from, against and in respect of, and to reimburse the Buyer Indemnitees for, the amount of any and all Deficiencies (as defined in Section 9.3(a)).

(b) From and after Closing, Buyer hereby agrees to indemnify and hold harmless Seller and the McClure Stockholders, and their directors, officers and employees of Seller and all persons which directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with Seller, and their respective successors and assigns (collectively, the "Seller Indemnitees") from, against and in respect of, and to reimburse the Seller Indemnitees for, the amount of any and all Deficiencies (as defined in Section 9.3(b)).

#### 9.3 Deficiencies.

(a) As used in this Article 9, the term "Deficiencies" when asserted by Buyer Indemnitees or arising out of a third party claim against Buyer Indemnitees shall mean any and all losses, payments, damages, liabilities and claims sustained or paid by the Buyer Indemnitees and arising out of, based upon or resulting from: (i) any misrepresentation, breach of warranty, or any failure to comply with any covenant, obligation or agreement on the part of Seller or any McClure Stockholder contained in or made pursuant to this Agreement; (ii) any failure by Seller or any of its stockholders to pay or perform any of the Retained Liabilities; (iii) any severance pay or other payment (including, without limitation, bonuses or accrued vacation or benefits) paid with respect to any employee of Seller or the Station for any time period prior to the Closing; (iv) without limiting the foregoing, any litigation, Proceeding or claim by any third party relating to the business, the Station Assets, or operation of the Station prior to Closing; or (v) any Liability imposed upon Buyer by operation of Law (whether due to Buyer's status as an owner or operator of the any Station or any of the Station Assets or its alleged status as a successor to Seller or otherwise), if and to the extent such Liability would be eliminated or reduced if all Retained Liabilities (whether liquidated, contingent, inchoate, disputed or otherwise) were fully satisfied and discharged immediately prior to the Closing; provided,

however, in the case of clauses (ii), (iv) and (v) above, Buyer shall not be indemnified for Deficiencies arising from or relating to violations of Environmental and Safety Requirements unless such Deficiency is the result of any misrepresentation or breach of warranty made pursuant to this Agreement. Such Deficiencies include without limitation any and all acts, Proceedings, demands, assessments and judgments, and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all Legal Expenses (as defined in Section 9.6 below)).

(b) As used in this Article 9, the term "Deficiencies" when asserted by Seller Indemnitees or arising out of a third party claim against Seller Indemnitees shall mean any and all losses, payments, damages, liabilities and claims sustained or paid by the Seller Indemnitees and arising out of, based upon or resulting from: (i) any misrepresentation, breach of warranty, or any failure to comply with any covenant, obligation or agreement on the part of Buyer contained in or made pursuant to this Agreement; (ii) any failure by Buyer to pay or perform any of the Assumed Obligations; or (iii) any Proceeding or claim by any third party relating to the business or operation of the Station after Closing. Such Deficiencies include without limitation any and all acts, Proceedings, demands, assessments and judgments, and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all Legal Expenses (as defined in Section 9.6 below)).

#### **9.4 Procedures.**

(a) If any third party shall notify any Party to this Agreement (the "Indemnified Party") with respect to any matter which may give rise to a claim for indemnification against any other Party to this Agreement (the "Indemnifying Party") under this Article 9, then the Indemnified Party shall notify each Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced by the delay. Within 30 days after receipt of notice of a particular matter, the Indemnifying Party may assume the defense of such matter if the Indemnifying Party admits in writing responsibility and affirms its obligations for providing indemnification (including payment of any amounts to the Indemnified Party in connection therewith) with respect to such matter; provided, however, that (i) the Indemnifying Party shall retain counsel reasonably acceptable to the Indemnified Party and (ii) the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld), enter into any settlement of a claim, consent to the entry of any judgment with respect to a claim or cease to defend such claim, if pursuant to or as a result of such settlement, consent or cessation, injunctive or other equitable relief shall be imposed against the Indemnified Party or if such settlement does not expressly unconditionally release the Indemnified Party from all liabilities and obligations with respect to such claim, with prejudice; provided, further, however, that notwithstanding the foregoing, the Indemnifying Party shall not have the right to assume the defense of any such matter if (i) the claim seeks only an injunction or other equitable relief, (ii) the Indemnified Party shall have been advised by counsel that there are one or more legal or equitable defenses available to them which are different from or in addition to those available to the Indemnifying Party, (iii) such matter involves, or could have a material effect on, any material matter beyond the scope of the indemnification obligation of the Indemnifying Party or (iv) in the reasonable judgment of the Indemnified Party, the

Indemnifying Party either shall not have assumed the defense of any such matter in a timely fashion or shall not be prosecuting or defending any such matter in a reasonable manner (including failure to use or expend appropriate amounts or resources with respect thereto). The Indemnified Party may participate in the defense of such matter with co-counsel of its choice to the extent that the Indemnified Party believes in its sole discretion that such matter shall affect its ongoing business; provided, however, that the fees and expenses of the Indemnified Party's counsel shall be at the expense of the Indemnified Party unless (A) the Indemnifying Party has agreed in writing to pay such fees and expenses, or (B) (x) any of the provisions set forth in sub-clauses (i) through (iv) of the immediately preceding sentence are true and (y) the Indemnified Party determines, in its sole discretion, that both the Indemnified Party and the Indemnifying Person shall participate in the defense of such claim, in which case such co-counsel shall be at the expense of the Indemnifying Party; provided, however, that the Indemnifying Party will not be required to pay the fees and expenses of more than one separate principal counsel (and any appropriate local counsel) for all Indemnified Parties. If, within such 30-day period, the Indemnifying Party does not assume the defense of such matter, the Indemnified Party may defend against the matter in any manner that it reasonably may deem appropriate and may consent to the entry of any judgment with respect to the matter or enter into any settlement with respect to such matter without the consent of the Indemnifying Party.

(b) If an Indemnified Party's notice of indemnification does not relate to a claim or the commencement of an action or Proceeding by a third party, the defense of which has been assumed by the Indemnifying Party, the Indemnifying Party shall have 30 days after receipt of such notice to object to the subject matter and the amount of the claim for indemnification set forth in such notice by delivering written notice thereof to the Indemnified Party. If the Indemnifying Party does not so object within such 30-day period, it shall be conclusively deemed to have agreed to the matters set forth in such notice of indemnification and shall pay the amount of any Deficiency pursuant to Section 9.5 below. If the Indemnifying Party sends notice to the Indemnified Party objecting to the matters set forth in such notice of indemnification, the parties shall use their best efforts to settle such claim for indemnification. If the parties are unable to settle such dispute, then the Indemnified Party shall seek resolution of the dispute by initiating litigation in any jurisdiction in which litigation arising under this Agreement may be commenced by the parties hereto.

(c) The parties recognize and acknowledge that a breach by Seller or any McClure Stockholder of this Section 9.4 will cause irreparable and material loss and damage to Buyer as to which Buyer will not have an adequate remedy at law or in damages. Accordingly, each party acknowledges and agrees that the issuance of an injunction or other equitable remedy is an appropriate remedy for any such breach.

## **9.5 Payment.**

(a) The Indemnifying Party hereby agrees to pay the amount of established Deficiencies within five (5) days after the establishment thereof. The amount of established Deficiencies shall be paid in cash. At the option of the Indemnitees, the Indemnitees may offset any Deficiency or any portion thereof payable by the Indemnifying Party to the Indemnitees against any obligation the Indemnitees, or any of them, may have to the Indemnifying Party.

(b) At Closing, pursuant to Section 1.4(c), the Escrow Amount shall be deposited in the Escrow Fund to cover Seller's and any McClure Stockholder's obligations to indemnify the Buyer Indemnitees under this Article 9. The Parties acknowledge and agree that existence of the Escrow Funds shall not, in any event, reduce the amount that the Buyer Indemnitees can claim pursuant to this Article 9. Following the expiration of the fifteenth month (the "Post-Closing Escrow Termination") following the Closing, Buyer and Seller shall give the Post Closing Escrow Agent written instructions to release the funds remaining in the Escrow Fund to Seller; provided, however, that in the event that any Buyer Indemnitee has asserted a claim for indemnification under this Article 9 and such claim has not been settled prior to the Post-Closing Escrow Termination, then an amount reasonably determined by Buyer and Seller to be sufficient to cover any such asserted claim (and any expenses in connection therewith) shall remain in the Escrow Fund until such asserted claim is settled.

(c) Any obligation of Seller or any McClure Stockholder to indemnify any Buyer Indemnitee shall be satisfied (i) first, in cash, by recourse to the funds deposited and remaining in the Escrow Fund until the funds contained in the Escrow Fund are depleted, and Buyer and Seller shall execute joint written instructions to the Post Closing Escrow Agent directing the Post Closing Escrow Agent to make payment to such Buyer Indemnitee, provided that in the event Seller or any McClure Stockholder is conclusively deemed to have agreed to the matters set forth in a notice of indemnification pursuant to Section 9.4(b), written instructions executed solely by Buyer shall be sufficient to direct the Post Closing Escrow Agent to make payment to the Buyer Indemnitee and (ii) thereafter, from Seller and/or the McClure Stockholders, by payment in cash to such Buyer Indemnitee, provided that in lieu of payment pursuant to this Section 9.5(c), the Buyer Indemnitee shall also have the right of set-off pursuant to Section 9.5(a).

#### **9.6 Legal Expenses.**

As used in this Article 9, the term "Legal Expenses" shall mean any and all fees (whether of attorneys, accountants or other professionals), costs and expenses of any kind reasonably incurred by any person identified herein and its counsel, including without limitation, any such reasonable fees, costs and expenses incurred in investigating, preparing for, defending against, or providing evidence, producing documents or taking other action with respect to any threatened or asserted claim.

#### **9.7 Limitations.**

In the absence of fraud or knowing misrepresentation or breach of warranty, Seller and the McClure Stockholders, collectively, shall not be obligated to indemnify the Buyer Indemnitees against any Deficiencies to the extent that such Deficiencies exceed the Purchase Price.

#### **9.8 Sole and Exclusive Remedies.**

The remedies provided in this Article IX constitute the sole and exclusive remedies for recoveries against another Party to this Agreement with respect to the representations, warranties, covenants and agreements set forth in this Agreement. The foregoing shall not limit



the right of any party to this Agreement to enforce the performance of this Agreement or of any agreement or other document executed and delivered pursuant to this Agreement.

## ARTICLE X

### MISCELLANEOUS

#### **10.1 Termination.**

This Agreement may be terminated at any time prior to Closing: (a) by the mutual consent of Seller and Buyer; (b) by any party hereto if the FCC has denied the approvals contemplated by this Agreement in an order which has become Final; (c) by Buyer as provided in Section 10.6 (Broadcast Transmission Interruption); (d) by Buyer as provided in Section 10.7 (Risk of Loss); (e) by Buyer or Seller if the Closing has not taken place by the Final Closing Date; (f) by Buyer if Buyer reasonably determines in good faith that any conditions set forth in Article VII will be unable to be satisfied prior to the Final Closing Date; (g) by Buyer if Seller or any McClure Stockholder has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) calendar days after it receives notice from Buyer of such breach (except no cure period shall be provided for a breach which by its nature cannot be cured); (h) by Buyer as provided by Section 1.10 during the Due Diligence Period; (i) by Seller, if Seller reasonably determines in good faith that any conditions set forth in Article VI will be unable to be satisfied prior to the Final Closing Date; or (j) by Seller if Buyer has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) calendar days after it receives notice from Seller of such breach (except no cure period shall be provided for a breach which by its nature cannot be cured); provided however, that neither Party shall be entitled to terminate this Agreement pursuant to Section 10.1(e), 10.1(f), 10.1(g), 10.1(i) or 10.1(j) if such party's intentional or willful breach of this Agreement has prevented the satisfaction of a condition.

#### **10.2 Specific Performance; Remedies.**

In the event of a breach or threatened breach by Seller or any McClure Stockholder of any representation, warranty, covenant or agreement under this Agreement, at Buyer's election, in addition to any other remedy available to it, Buyer shall be entitled to an injunction restraining any such breach or threatened breach and, subject to obtaining any requisite approval of the FCC, to enforcement of this Agreement by an Order of specific performance requiring Seller or such McClure Stockholder, as applicable, to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required. The remedies provided in this Agreement shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other party hereto.

### **10.3 Expenses.**

Except as provided in Section 1.4(b), each party hereto shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation, accounting and legal fees incurred in connection herewith; provided, however, that: (i) Seller and Buyer shall each pay one-half of the FCC filing fees required to be paid in connection with the FCC Application; and (ii) Seller shall be exclusively responsible for, and Buyer shall not have any liability or responsibility for any sales or transfer taxes (including without limitation any real estate transfer taxes), arising from the transfer of the Station Assets to Buyer.

### **10.4 Further Assurances.**

(a) Subject to the terms and conditions herein provided, the Parties shall do or cause to be done all such acts and things as may be necessary, proper or advisable, consistent with all applicable Laws, to consummate and make effective the transactions contemplated hereby as soon as reasonably practicable. Each of the Parties agrees that it will from time to time on or after the Closing promptly do, execute, acknowledge and deliver and will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, certificates, bills of sale, assignments, transfers, conveyances, powers of attorney, assurances and other documents as may be reasonably requested by any of the other Parties for better assigning, transferring, granting, conveying, assuring and conferring right, title and interest to Buyer of the Station Assets and for the better assumption by Buyer of the Assumed Obligations. Without limiting the generality of the foregoing, the Parties agree to cooperate with each other and to provide each other with all information and documentation reasonably necessary to permit the preparation and filing of all federal, state, local, and other Tax returns and Tax elections with respect to the Business. Seller and Buyer agree that for the purposes of FICA tax withholding and any comparable state or local tax withholding, Buyer shall treat all wages paid by Seller in 2002 to each current employee of Seller who is employed by Buyer immediately after the Closing as paid by Buyer pursuant to Section 3121 of the Code and any comparable provisions of applicable state and local laws, and Seller agrees to provide Buyer with all related documentation, including, without limitation, a sufficient quantity of completed W-4 forms for each such employee, and a statement to the Internal Revenue Service and any comparable state or local Governmental Entities outlining all of the foregoing.

(b) The Parties shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

### **10.5 Public Announcements.**

Prior to Closing, neither party shall, without the approval of the other party hereto, make any press release or other public announcement concerning the transactions contemplated by this

Agreement, except (i) to announce it has been entered into, and (ii) as and to the extent that such party shall be so obligated by law, in which case such party shall give advance notice to the other party and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued. Notwithstanding the foregoing, the parties acknowledge that the rules and regulations of the FCC require that public notice of the transactions contemplated by this Agreement be made after the FCC Application has been filed with the FCC. The form and substance of such public notice, to the extent not dictated by the Communications Act or the rules and regulations of the FCC, shall be mutually agreed upon by Seller and Buyer.

#### **10.6 Broadcast Transmission Interruption.**

If before Closing the regular broadcast transmission of the Station in the normal and usual manner is interrupted for a period of two consecutive hours or more, Seller shall give the prompt written notice thereof to Buyer. Buyer shall then have the right, by giving written notice to Seller, to postpone (and if necessary re-postpone) the Closing to a date that is fifteen (15) days after the end of any such interruption. If regular broadcast transmission in the normal and usual manner is interrupted for a continuous period of eighteen (18) hours or more at any time prior to Closing, then (a) Seller immediately shall give written notice thereof to Buyer and (b) Buyer shall have the right, by giving written notice to Seller, to (i) terminate this Agreement pursuant to Section 10.1(c) without any requirement of providing any additional notice, or (ii) postpone the Closing as provided above.

#### **10.7 Risk of Loss.**

The risk of loss, damage or destruction to any of the Station Assets shall be borne by Seller at all times up the Closing, and it shall be the responsibility of Seller to repair or cause to be repaired and to restore the property to its condition prior to any such loss, damage, or destruction. In the event of any such loss, damage, or destruction, the proceeds of any claim for any loss, payable under any insurance policy with respect thereto, shall be used to repair, replace, or restore any such property to its former condition, subject to the conditions stated below. In the event of any loss or damage to any of the Station Assets, Seller shall notify Buyer thereof in writing immediately. Such notice shall specify with particularity the loss or damage incurred, the cause thereof (if known or reasonably ascertainable), and the insurance coverage. In the event that the property is not completely repaired, replaced or restored on or before the scheduled Closing Date, Buyer at its option: (a) may elect to postpone Closing until such time as the property has been completely repaired, replaced or restored (and, if necessary, Seller shall join Buyer in requesting from the FCC any extensions of time in which to consummate the Closing that may be required in order to complete such repairs); or (b) may elect to consummate the Closing and accept the property in its then condition, in which event Seller shall pay to Buyer all proceeds of insurance and assign to Buyer the right to any unpaid proceeds; or (c) terminate this Agreement.

**ARTICLE XI**  
**GENERAL PROVISIONS**

**11.1 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors and assigns. Seller may not assign any of its rights or delegate any of its duties hereunder without the prior written consent of Buyer, and any such attempted assignment or delegation without such consent shall be void. Buyer may assign its rights and obligations hereunder in whole or in part without Seller's consent.

**11.2 Amendments; Waivers.**

The terms, covenants, representations, warranties and conditions of this Agreement may be changed, amended, modified, waived, or terminated only by a written instrument executed by the party waiving compliance. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later date to enforce the same. No waiver by any party of any condition or the breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

**11.3 Notices.**

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by telex or facsimile transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by telex, graphic scanning or other facsimile communications equipment, delivered by such equipment, and addressed as follows:

if to Seller:

Radio Lumpkin, Inc.  
1353 13th Avenue  
Columbus, GA 31901  
Attention: Charles A. McClure, Jr.  
Telephone: (706) 327-1217  
Facsimile: (706) 596-4600

if to the McClure Stockholders:

To the addresses set forth on Annex II attached hereto.

with a copy to:  
(which shall not

Fortson, Bentley & Griffin, PA  
440 College Avenue North

constitute notice)

Suite 220  
Athens, Georgia 30601  
Attention: Walter Hayes, Esq.  
Telephone: (706) 548-1151  
Facsimile: (706) 548-4151

if to Buyer:

ABG Georgia, LLC  
c/o Archway Broadcasting Group, LLC  
1221 Avenue of the Americas  
40th Floor  
Attention: Managing Member  
Telephone: (212) 899-3455  
Facsimile: (212) 899-3783

with a copy to:  
(which shall not  
constitute notice)

O'Melveny & Myers LLP  
30 Rockefeller Plaza  
New York, New York 10112  
Telephone: (212) 408-2418  
Telecopy: (212) 408-2420  
Attention: Phillip Isom, Esq.

Any party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

#### **11.4 Captions.**

The captions of Articles and Sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

#### **11.5 Governing Law.**

This Agreement will be governed by and construed in accordance with the domestic laws of the State of Georgia, without giving effect to any choice of law or conflicting provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Georgia to be applied. In furtherance of the foregoing, the internal laws of the State of Georgia will control the interpretation and construction of this Agreement, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

#### **11.6 Right of Set Off.**

In the event of a breach by Seller or any McClure Stockholder of the provisions of any Document, Buyer is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all amounts at any time held by Buyer or in the Escrow Fund on behalf of such Party and any and all indebtedness at any time owing by Buyer to

such Party against any and all of the obligations of such Party now or hereafter existing under the Documents.

**11.7 Entire Agreement.**

This Agreement and the other Documents constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of trade inconsistent with any of the terms hereof. This Agreement has been prepared by all of the parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any party hereto

**11.8 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement and the other Documents may be executed and delivered by facsimile.

**11.9 Knowledge of Each McClure Stockholder Attributable to Seller.**

Whenever any statement herein or in any schedule, exhibit, certificate or other document delivered to any Party pursuant to this Agreement is made "to the best knowledge of Seller", "to the knowledge of Seller" or containing words of similar intent or effect, the knowledge of Seller will be deemed to include, without limitation, the knowledge of each of the McClure Stockholders. Seller shall be required (and the McClure Stockholders shall be required to cause Seller) to examine all relevant documents and to make due inquiries of each of its directors and officers and each of its other employees, lawyers, accountants and agents who would likely have knowledge of the relevant facts or circumstances.

**11.10 Severability.**

It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**11.11 Submission to Jurisdiction.**

Intentionally Deleted.

#### **11.12 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

#### **11.13 Incorporation of Exhibits and Schedules.**

The Exhibits, Schedules and other attachments identified in this Agreement are incorporated herein by reference and made a part hereof.

#### **11.14 Independence of Covenants and Representations and Warranties.**

All covenants hereunder shall be given independent effect so that if a certain action or condition constitutes a default under a certain covenant, the fact that such action or condition is permitted by another covenant shall not affect the occurrence of such default, unless expressly permitted under an exception to such initial covenant. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of or a breach of a representation and warranty hereunder.

#### **11.15 Rules of Construction.**

The following rules of construction shall apply to this Agreement:

(a) the use in this Agreement of the term "including" shall mean "including, without limitation;"

(b) the words "herein," "hereof," "hereunder" and other words of similar import shall refer to this Agreement as a whole, including the schedules and exhibits to this Agreement, as the same may from time to time be amended, amended and restated, supplemented or

otherwise modified from time to time, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement;

(c) all references to sections, paragraphs, schedules and exhibits shall mean the sections and paragraphs of this Agreement and the schedules and exhibits attached to this Agreement, except where otherwise stated;

(d) where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates;

(e) the language used in this Agreement has been chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party;

(f) terms which relate to accounting matters shall be interpreted in accordance with U.S. generally accepted accounting principles in effect from time to time, except as otherwise specifically provided herein; and

(g) all references herein to dollars, funds or payments shall mean United States dollars or funds or payments in United States dollars.

Unless expressly provided otherwise, the measure of a period of one month or year for purposes of this Agreement shall be that date of the following month or year corresponding to the starting date, provided, however, that if no corresponding date exists, the measure shall be that date of the following month or year corresponding to the next day following the starting date. For example, one month following February 18 is March 18, and one month following March 31 is May 1.

[SIGNATURE PAGE FOLLOWS]



**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

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

**BUYER:**

ABG GEORGIA, LLC

By: 

Name: LAUREN M. TYLER

Title: Managing Member

**SELLER:**

RADIO LUMPKIN, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STOCKHOLDERS:**

\_\_\_\_\_  
Charles A. McClure, Jr.

\_\_\_\_\_  
Joseph W. McClure

\_\_\_\_\_  
Margaret McClure Moore

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

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

**BUYER:**

ABG GEORGIA, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

RADIO LUMPKIN, INC.

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

Name: C. A. McClure, Jr.

Title: President

**STOCKHOLDERS:**

\_\_\_\_\_  
Charles A. McClure, Jr.

\_\_\_\_\_  
Joseph W. McClure

\_\_\_\_\_  
Margaret McClure Moore

## Schedules

1.1(a)	FCC Authorizations
1.1(b)	Tangible Personal Property
1.1(c)	Real Property
1.1(d)	Station Contracts
1.1(e)	Intangible Property
2.3	Consents
2.4	Financial Statements
2.8	Locations
2.10	Real Property
2.14	Employees
2.16	Insurance Policies
2.17	Environmental
2.20	Litigation
2.22	Insider Interests
2.23	Bank Accounts

## ANNEX I

### DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context clearly requires otherwise:

"Affiliate" means, with respect to any Person, any of (a) a director, officer or stockholder of such Person, (b) a spouse, parent, sibling or descendant of such Person (or a spouse, parent, sibling or descendant of any director or officer of such Person) and (c) any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. The term "control" includes, without limitation, the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Business Day" means any day that is not a Saturday, Sunday or a day on which banking institutions in New York, New York are not required to be open.

"Closing Payment" means the amount equal to: (i) \$2,500,000 plus or minus (ii) the Closing Date Adjustments pursuant to Section 1.6, minus (iii) the Deposit.

"Documents" means this Agreement, Noncompetition Agreements, the Local Marketing Agreement, any bill of sale, the Seller Ancillary Documents, the Buyer Ancillary Documents and the other documents required to be executed by a Party in connection with the transactions contemplated hereby.

"Environmental and Safety Requirements" means all Laws, Orders, contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, as previously or currently in effect.

"ERISA Affiliate" means, with respect to any Person, any other Person that is a member of a "controlled group of corporations" with, or is under "common control" with, or is a member of the same "affiliated service group" with such Person as defined in Section 414(b), 414(c), or 414(m) or 414(o) of the Code.

"GAAP" means United States generally accepted accounting principles.

"Governmental Entity" means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, Federal, state or local.

"Law" means any constitution, law, statute, treaty, rule, directive, requirement or regulation or Order of any Governmental Entity.

"Liability" means any liability or obligation, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

"Material Adverse Change" means, with respect to any Person, any material adverse change in the business, operations, assets (including levels of working capital and components thereof), condition (financial or otherwise), operating results, liabilities, or customer, supplier or employee relations of such Person or any material casualty loss or damage to the assets of such Person, whether or not covered by insurance.

"Material Adverse Effect" means, with respect to any Person, a material adverse effect on the business, operations, assets (including levels of working capital and components thereof), condition (financial or otherwise), operating results, liabilities, or customer, supplier or employee relations of such Person.

"Multi-Employer Plan" has the meaning set forth in Section 3(37) of ERISA.

"Multiple Employer Plan" has the meaning set forth in Section 413 of the Code.

"Noncompetition Agreements" means the two-year noncompetition agreements, in the form and substance reasonably satisfactory to the Parties, to be entered into between Buyer and Seller and each McClure Stockholder.

"Orders" means judgments, writs, decrees, compliance agreements, injunctions or orders of and Governmental Entity or arbitrator.

"Parties" means Buyer, Seller and the McClure Stockholders.

"Person" shall be construed broadly and shall include an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

"Proceeding" means any action, suit, proceeding, complaint, claim, litigation, charge, hearing, inquiry or investigation before or by a Governmental Entity or arbitrator.

"Tax" as used in this Agreement, means any of the Taxes, and "Taxes" means, with respect to any Person, (a) all income taxes (including any tax on or based upon net income, gross income, income as specially defined, earnings, profits or selected items of income, earnings or profits) and all gross receipts, sales, use, ad valorem, transfer, franchise, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property or windfall profits taxes, alternative or add-on minimum taxes, customs duties and other taxes, fees, assessments or charges of any kind whatsoever, together with all interest and penalties, additions to tax and other additional amounts imposed by any taxing authority (domestic or foreign) on such Person (if any) and (b) any liability for the payment of any amount of the type described in

the immediately preceding clause (a) as a result of being a "transferee" (within the meaning of Section 6901 of the Code or any other applicable Law) of another entity or a member of an affiliated or combined group.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**ANNEX II**  
**STOCKHOLDERS**

Schedule 1.1(a)

FCC Authorizations

**WKN**

(a) FM Broadcast Station license, License File # BLH-921119KB, Call Sign WKN, which covers Permit # 891214MI;

(b) Radio Broadcast Station license from the Federal Communications Commission, File # 9212480123, Call Sign KC27699;

(c) Radio Broadcast Station license from the Federal Communications Commission, File # 9212480122, Call Sign KPM433;

(d) FM Broadcast Station from the Federal Communications Commission, License File # BLH-960112KA, Call Sign WKN, which covers Permit # 941103IA.

(e) Radio Station Authorization from the Federal Communications Commission, File # 0000918640, Call Sign KPM433;

(f) Radio Station Authorization from the Federal Communications Commission, File # 0000918641, Call Sign KC27699.



Schedule 1.1(b)

Tangible Personal Property

**REDACTED**

Schedules 1.1(c)

Real Property

**OWNED REAL PROPERTY: NONE**

**REAL PROPERTY LEASES:** Oral Lease Agreements with C.A. McClure, Sr. on each of the following properties:

**1. 1353 13<sup>TH</sup> AVENUE, COLUMBUS, GEORGIA (WRLG, WCGQ, WRLD and WKN Office Building)**

All that tract and parcel of land situate, lying and being in Columbus, Muscogee County, Georgia, being shown upon plats recorded in Plat Book 6, Folio 221, Plat Book 9, Folio 165 and Plat Book 42, Folio 25, all in the Office of the Clerk of the Superior Court of Muscogee County, Georgia, and being located within the following metes and bounds:

BEGINNING at an iron pin located at the southwesterly corner of the intersection of 13<sup>th</sup> Avenue and 14<sup>th</sup> Street, and from said point of beginning running thence south 82 degrees 35 minutes west, along the southerly line of 14<sup>th</sup> Street, a distance of 118.53 feet to an iron pin; running thence south 02 degrees 00 minutes east a distance of 116.41 feet to the southerly line of the tract shown upon the aforesaid plat recorded in Plat Book 42, Folio 25; running thence north 88 degrees 00 minutes east, along the southerly line of the tract shown upon said last mentioned plat, a distance of 118.86 feet, more or less, to an iron pin located on the westerly line of 13<sup>th</sup> Avenue; and running thence north 02 degrees 00 minutes west, along the westerly line of 13<sup>th</sup> Avenue, a distance of 125.59 feet to the point of beginning. Located thereon is building numbered 1353 – 13<sup>th</sup> Avenue, according to the present numbering of structures in Columbus, Georgia.

**2. HIGHWAY 165, OSWICHEE, ALABAMA (WKN Transmitter Site)**

5.442 acres, more or less, located in the Southeast Quarter of the Southeast Quarter of Section 27, Township 15 North, Range 30 East, Russell County, Alabama, being more particularly described as follows:

Commence at the Point of Commencement being a concrete Right-of-Way monument located on the East margin of Alabama Highway 165 where same intersects with the North margin of County Road 38 and from said Point of Commencement run thence North 12 degrees 47 minutes 20 seconds East a Distance of 929.39 feet to the iron pin at the Point of Beginning; from said Point of Beginning run thence North 54 degrees 59 minutes 16 seconds West a distance of 269.15 feet to an iron pin; thence North 15 degrees 12 minutes 32 seconds East a distance of 212 feet to an iron pin; thence North 14 degrees 47 minutes 28 seconds West a distance of 238 feet to an iron pin; thence North 44 degrees 47 minutes 28 seconds West a distance of 212 feet to an iron pin; thence North 45 degrees 12 minutes 32 seconds East a distance of 62.87 feet to an iron pin; thence South 74 degrees 47 minutes 28 seconds East a distance of 614.81 feet to an iron pin; thence South 23 degrees 48 minutes 24 seconds West a distance of 424.17 feet

Schedule 1.1(c) continued .....

to an iron pin; thence South 19 degrees 40 minutes 39 seconds West a distance of 202.24 feet to an iron pin; thence south 28 degrees 12 minutes 30 seconds West a distance of 50 feet to the iron pin at the Point of Beginning according to a survey prepared by Ricky L. Taylor, Land Surveyor, Ala. Reg. No. 19754, dated June 20, 1995.

Subject to Lease with Columbus Television, Inc.

Schedule 1.1(d)(i)

Station Contracts

**REDACTED**

Schedule 1.1(e)

Intangible Property

**REDACTED**

### Schedule 2.3

#### No Conflicts

1. All of the items listed on Schedule 1.1(a), which are hereby incorporated by reference.
2. See Schedule 1.1(d)(i), items 1\*, 2\*, 3\*, 9\* (with a \$250.00 fee), 10\*, 11\*, 12\*, 13\*, 14\*, 15\*, 16\*, 17\* and 18\* which are hereby incorporated by reference.

Schedule 2.4

**REDACTED**

**Schedule 2.8**

**REDACTED**



Schedule 2.14

**REDACTED**

Schedule 2.16

**REDACTED**

Schedule 2.17

Environmental

NONE

**Schedule 2.20**

**REDACTED**

Schedule 2.22

**REDACTED**

Schedule 2.23

**REDACTED**

**AMENDMENT TO THE ASSET  
PURCHASE AGREEMENT (this "Amendment")  
dated as of December 2, 2002 among RADIO  
LUMPKIN, INC. (the "Seller"), ABG  
GEORGIA, LLC (the "Buyer"), and CHARLES  
A. MCCLURE, JR., JOSEPH W. MCCLURE  
and MARGARET MCCLURE MOORE  
(collectively, the "Stockholders").**

WHEREAS, the Seller, the Buyer and the Stockholders (collectively, the "Parties") are parties to the Asset Purchase Agreement, dated as of September 26, 2002 (the "Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement; and

WHEREAS, the Parties have determined that it is in each of their respective best interests to further amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Section 1. Adjustments.**

Section 1.6(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

"(a) The operation of the Stations and the income and normal operating expenses attributable thereto during the Term (as defined in the Local Marketing Agreement (as defined in Section 1.15)) shall be determined as set forth in Section 7 of the Local Marketing Agreement; provided, however, that notwithstanding the foregoing, pursuant to Section 1.1(k), Buyer shall acquire all of Seller's right, title, interest and claims in and to the Accounts Receivable which are outstanding at the time of the Closing. Notwithstanding the foregoing provisions of this Section 1.6(a), all special assessments and similar charges or liens imposed against the Real Property and Tangible Personal Property in respect of any period of time through the date immediately preceding the Closing Date (the "Assessment Date"), whether payable in installments or otherwise, shall be the responsibility of Seller, and amounts payable with respect to such special assessments, charges or liens in respect of any period of time after the Assessment Date shall be the responsibility of Buyer, and such charges shall be adjusted accordingly. To the extent that any of the foregoing prorations and adjustments cannot be determined as of the Closing Date, Buyer and Seller shall conduct a final accounting and make any further payments, as required on a date mutually agreed upon, within ninety (90) days after the Closing."

## **Section 2. Local Marketing Agreement.**

The following shall be inserted as a new Section 1.15 of the Agreement:

"By no later than December 2, 2002, Seller and Buyer shall enter into a Local Programming and Marketing Agreement (the "Local Marketing Agreement") in form and substance satisfactory to Buyer and Seller."

## **Section 3. Due Diligence Period.**

Section 1.10 of the Agreement is hereby amended by deleting the words "delivery of the Schedules in the final form" contained in the second sentence thereof and replacing such words with "date of this Agreement".

## **Section 4. Contracts.**

(a) The Agreement is hereby amended by deleting each reference to "Schedule 1.1(d)" therein and replacing each such reference with "Schedule 1.1(d)(i)".

(b) Section 1.1(d) of the Agreement is hereby amended by inserting the following sentence at the end thereof:

"The Station Contracts and the contracts and agreements set forth in Schedule 1.1(d)(ii) constitute all of the contracts and agreements used in connection with the business or operations of the Stations."

## **Section 5. No Other Amendments.**

Except as expressly provided in this Amendment, each of the terms and provisions of the Agreement shall remain in full force and effect in accordance with their terms. The amendments set forth herein are limited precisely as written and shall not be deemed to be an amendment or waiver to any other term or condition of the Agreement or any of the documents referred to therein. Whenever the Agreement is referred to herein in any other agreements, documents and instruments, such reference shall be to the Agreement as amended hereby.

## **Section 6. Representations and Warranties of the Parties.**

Each Party hereby represents and warrants: (i) the execution, delivery and performance of this Amendment is within its power, has been duly authorized by all necessary action and, where applicable, is not in contravention of any of its organizational documents; (ii) this Amendment has been duly executed and delivered by such Party; and (iii) this Amendment constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.



**Section 7. Further Assurances.**

Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and documents and to take all such actions, in each case as may be necessary or proper to carry out the provisions and purposes of this Amendment.

**Section 8. Notices.**

All notices or other communications pursuant to this Amendment shall be in writing and shall be deemed to be sufficient if delivered to those individuals and in the manner specified in Section 11.3 of the Agreement.

**Section 9. Counterparts And Facsimile Execution; Effectiveness.**

This Amendment may be executed in two or more counterparts, all of which shall be considered one and the same and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature hereupon delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery of this Amendment by such party.

**Section 10. Governing Law.**

All questions concerning the construction, interpretation and validity of this Amendment shall be governed by and construed and enforced in accordance with the domestic laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether in the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Georgia. In furtherance of the foregoing, the internal law of the State of Georgia will control the interpretation and construction of this Amendment, even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily or necessarily apply.

\* \* \* \*

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

ABG GEORGIA, LLC

By:   
Name:  
Title:

RADIO LUMPKIN, INC.

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

\_\_\_\_\_  
Charles A. McClure, Jr.

\_\_\_\_\_  
Joseph W. McClure

\_\_\_\_\_  
Margaret McClure Moore

FROM \*QUETZAL/JPMORGAN PARTNERS

(WED) 11.27' 02 12:26/ST. 12:24/NO. 4860267688 P 7

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

**ABG GEORGIA, LLC**

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

**RADIO LUMPKIN, INC.**

By: Charles A. McClure, Jr.  
Name: Charles A. McClure, Jr.  
Title: President

Charles A. McClure, Jr.  
Charles A. McClure, Jr.

Joseph W. McClure  
Joseph W. McClure

Margaret McClure Moore  
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