

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of this 3rd day of April, 2014, (the "Effective Date") by and between **DAVIS MEDIA, LLC**, a Delaware limited liability company ("Buyer"), and **SEA-COMM, INC.**, a North Carolina corporation ("Seller") (each a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, Seller is the licensee and operator of North Carolina radio stations WUDE(FM), formerly WLTT(FM), Bolivia, Facility Id. No. 60882; WNTB(FM), Topsail Beach, NC, Facility Id. No. 73954; and WUIN(FM), Oak Island, Facility Id. No. 48626 (the "Stations"), holding valid authorizations for the operation thereof from the Federal Communications Commission (the "FCC"), and Seller owns or leases all other assets used in connection with the operation of the Stations;

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to purchase certain of the assets owned or leased by Seller and used in connection with the operation of the Stations; and

WHEREAS, the parties recognize that the licenses of the Stations may not be assigned to Buyer without the prior consent of the FCC.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

ARTICLE 1: SALE AND PURCHASE

1.1 Station Assets. Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) all assets, properties, interest and rights of Seller used exclusively in connection with the Stations (collectively, the "Station Assets"), but excluding the Excluded Assets, as defined below. The Station Assets shall include, without limitation, the following:

(a) **Licenses and Authorizations.** All licenses, authorizations, permits, antenna structure registration approvals, and other authorizations issued with respect to the Stations by the FCC (the "FCC Authorizations"), by the Federal Aviation Administration ("FAA"), and by any other federal, state or local governmental authorities in connection with the conduct of the business and operation of the Stations, including, without limitation, those set forth on Schedule 1.1 (a) attached hereto.

(b) **Tangible Personal Property.** All equipment and other tangible personal property, wherever located, used or useful primarily in connection with the business and operation of the Stations, including, without limitation, the personal property listed and described on Schedule 1.1 (b) attached hereto, and any additions and improvements thereto between the Effective Date and the Closing Date (collectively, the "Tangible Personal Property").

(c) **Real Property Leases.** An assignment of the leases for the tower sites of the Stations as described on Schedule 1.1(c) attached hereto (the "Tower Site Leases") and all of Seller's interest in the structures, fixtures, and improvements situated, mounted and located on the property subject to the Tower Site Leases.

(d) **Owned Real Property.** All land, buildings, improvements attached hereto, fixtures, towers, and other real property in which Seller holds an interest other than a leasehold interest, and which is used in operation of the Stations (the "**Owned Real Property**") including the real property listed on Schedule 1.1(d)) attached hereto.

(e) **Contracts.** The contracts and agreements listed and described on Schedule 1.1(e) (collectively, the "Assumed Contracts").

(f) **Intangible Property.** The slogans, trade names, logos, trade marks, domain names, the unrestricted right to use of content located and publicly accessible from such domain names and the "visitor" email databases for those sites, and other intangible property held for use or licensed exclusively connection with the Stations including, without limitation, those described on Schedule 1.1(f) attached hereto (collectively, the "Intangible Property").

(g) **Files and Records.** The public inspection files of the Stations, filings with the FCC relating to the Stations, and such other technical information, engineering data, books and records that relate to the Stations and the Station Assets being conveyed hereunder; and all sales and promotional literature, manuals and data, sales and purchase correspondence, lists of present and former suppliers, and lists of present and former customers that related to the Stations and the Station Assets.

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

(h) **Prepaid Items.** All deposits, reserves and prepaid expenses relating to the Station Assets and prepaid taxes relating to the Station Assets, pro-rated as of Closing.

(i) **Call Letters.** All of Seller's rights and interests to the use of the call letters of the Stations as call letters or as part of a trade name.

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

1.2 **Excluded Assets.** The following shall be excluded from the Station Assets and retained by Seller (collectively, the "Excluded Assets"):

(a) **Cash.** All cash, cash equivalents or similar investments such as certificates of deposit, treasury bills and other marketable securities on hand and/or in banks and deposits of Seller.

(b) **Accounts Receivable.** All accounts receivable of Seller arising from the operation of the Stations prior to the commencement of the Amended LMA defined below and outstanding and uncollected as of the Closing (the "Accounts Receivable").

(c) **Insurance.** Any insurance policies, promissory notes, amounts due from employees, bonds, letters of credit, or other similar items, any cash surrender value in regard thereto of Seller, and any proceeds from insurance claims made by Seller relating to property or equipment included in the Station Assets that has been repaired, replaced or restored by Seller prior to the Closing Date.

(d) **Benefit Plans.** Any pension, profit-sharing or cash or deferred (Section 401(k)) plans and trusts and assets thereof, or any other employee benefit plan or arrangement, and the assets thereof.

(e) **Tax Refunds.** Any interest in and to any refunds of federal, state or local franchise, income or other taxes of Seller.

(f) **Personal Property.** All tangible and intangible personal property described on Schedule 1.2(f) attached hereto, and all tangible and intangible personal property of Seller disposed of or consumed in between the date of this Agreement and the Closing in the ordinary course of business.

(g) **Books and Records.** The financial records, account books and general ledgers and all corporate records of Seller, including, but not limited to, tax returns and transfer books.

(h) **Employees.** The employees of the Stations or of Seller.

(i) **Contracts.** Any contracts or agreements not listed on Schedule 1.1 (c).

(j) **Real Estate.** The parcel of land described on Schedule 1.2(j) attached hereto.

(k) **Other Assets.** Any assets used primarily in connection with any other station owned or operated by Seller.

1.3 **Liabilities.** The Station Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities and encumbrances of every kind and nature ("Liens"), other than for taxes not yet due and payable, Liens that will be discharged prior to Closing, and Buyer's obligations to perform on and after the Closing Date the obligations arising under the Assumed Contracts (including, but not limited to, leases and subleases with respect to the Real Property) and other Station Assets ("Permitted Liens"). Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities relating to the Assumed Contracts and the other Station Assets arising or occurring after the Closing. Except as provided in the Amended LMA, Buyer shall not assume (i) any obligations or liabilities under Assumed Contracts or other Station Assets relating to the period prior to the Closing; (ii) any obligations or liabilities of Seller which are unrelated to the Station Assets being sold hereunder, (iii) any obligations or liabilities relating to employees of Seller, (iv) any obligations or liabilities relating to the Excluded Assets, (v) any federal, state or local franchise, income or other taxes of Seller, or (vi) any other obligations or liabilities of Seller. The foregoing provisions of this Section shall be subject to the terms of the Amended LMA with respect to the payment, discharge and performance of all liabilities that arise with respect to the operation of the Stations during the period between the effective date of the Amended LMA and the Closing.

1.4 **Purchase Price.** In consideration of Seller's performance of this Agreement, the purchase price to be paid for the Station Assets will be One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Purchase Price").

1.5 **Payment of Purchase Price.** The Purchase Price shall be paid to Seller as follows:

(a) On November 15, 2011, Buyer paid Seller, by wire of immediately available funds, Five Hundred Thousand Dollars (\$500,000.00) (the "Deposit"). The Deposit is nonrefundable except in the event of Seller's default as provided in Section 11.4(a).

(b) At the Closing, Buyer will pay to Seller by cashier's check or wire transfer of immediately available funds to a bank designated by Seller the sum of One Million Dollars (\$1,000,000.00), plus or minus any adjustments made at the Closing pursuant to Section 1.6 of this Agreement.

1.6 **Prorations.** Except as provided herein or in the Amended LMA, the parties agree to prorate all expenses arising out of the operation of the Stations which are incurred, accrued, or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include, but not be limited to, power and utilities charges, FCC regulatory fees (based on the most recent publicly

available information about the cost of such regulatory fees for the Stations), real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date. The Purchase Price shall also be increased by any amounts due to Seller and then-outstanding under the Amended LMA.

1.7 **Allocation of Purchase Price.** Buyer and Seller shall negotiate in good faith an allocation of the Purchase Price to the Station Assets acquired hereunder in a manner which complies with Section 1060 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), prior to Closing. In the absence of such agreement, the values of the assets comprising the Station Assets shall be determined by an appraisal prepared by BIA Financial Network or an affiliate thereof, whose fees shall be paid one-half by Seller and one-half by Buyer. Filings with the Internal Revenue Service shall made by Seller and Buyer consistent with such agreement or appraisals, as the case may be.

ARTICLE 2: FCC CONSENT; CLOSING

2.1 **FCC Consent: Assignment Application.** Buyer and Seller shall execute, file, and vigorously prosecute an application to the FCC (the "Assignment Application") requesting the FCC's consent (the "FCC Consent") to the assignment from Seller to Buyer of all FCC Authorizations pertaining to the Stations. The Assignment Application shall be filed not later than three (3) business days after the date of the execution of this Agreement. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transaction contemplated in this Agreement in full. Buyer shall reimburse Seller for one-half of the FCC filing fee paid in connection with the FCC application. Each party shall be responsible for all of its other costs with respect to the preparation, filing and prosecution of the Assignment Application. Buyer and Seller shall promptly notify each other of, and provide copies of, all documents filed with or received from the FCC or any other governmental agency with respect to this Agreement, the FCC Application or the transaction contemplated hereby. If Buyer or Seller becomes aware of any fact which would prevent or delay the FCC Consent or the Final Order (as defined below), it shall promptly notify the other Party.

2.2 **Closing Date: Closing Place.** The closing (the "Closing") of the transaction contemplated in this Agreement shall occur on a date (the "Closing Date") that is no more than ten (10) days following the date (y) on which the FCC Consent shall have become a Final Order (as defined below) unless such requirement shall have been waived by Buyer in its sole discretion, and (z) the other conditions to the Closing set forth in Articles 7 and 8 hereof shall have either been waived or satisfied; and Seller and Buyer agree to cooperate to the extent necessary to obtain the FCC's extension of the effectiveness of the FCC Consent as may be required. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an FCC assignment application, and such consent shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which action no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired. The Closing shall be held at the offices of Buyer's counsel or by exchange of documents via email, or as Seller and Buyer may agree.

2.3 **LMA.** On November 15, 2011, Buyer and Seller entered into a Local Programming and Marketing Agreement (the "LMA"). Subject to the terms and conditions of the LMA, Buyer has been providing programming for, and has been entitled to receive the revenues from the sale of advertising time on the Stations. Simultaneously with the execution of this Agreement, Buyer and Seller executed Amendment No. 1 to the Local Programming and Marketing Agreement (together with the LMA, the "Amended LMA") attached hereto as Exhibit A.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER

Except as otherwise contemplated under the terms and conditions of the Amended LMA, Seller makes the following representations and warranties to Buyer:

3.1 **Organization and Authorization.** Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Seller has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby on Seller's part, have been duly and validly authorized by Seller, and no other proceedings on the part of Seller are necessary to authorize the execution and delivery of, or the performance of Seller's obligations under, this Agreement, or to consummate the transaction contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller. This Agreement constitutes the legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

3.2 **No Defaults.** The execution, delivery, and performance of this Agreement by Seller will not (i) constitute a violation of, or conflict with, Seller's articles of incorporation, bylaws, or other similar organizational documents, (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to the business of the Stations and to which Seller or any of the Assets may be subject, (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Seller or any of the Station Assets, (iv) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the Station Assets, other than permitted liens or the Liens arising in favor of Buyer from this Agreement, or (v) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent, except as otherwise noted in Schedule 3.10 hereto.

3.3 **Tangible Personal Property.** Schedule 1.1 (b) hereto contains a list of all Tangible Personal Property owned by Seller that is material and required for the lawful operation of the Stations in the manner and to the full extent the Stations are presently operated. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Each material item of Tangible Personal Property (i) is in good condition and repair, ordinary wear and tear excepted, (ii) has been maintained in a manner substantially consistent with generally accepted standards of good engineering practice, and (iii) is operating in full compliance, in all material respects, with the FCC Authorizations and rules and regulations of the FCC and FAA. For purposes of this Section, material Tangible Personal Property shall be such property valued at Five Hundred Dollars (\$500.00) or more.

3.4 **FCC Authorizations and Other Licenses.** Schedule 1.1(a) hereto contains a true and complete list of the FCC Authorizations and all other licenses, permits, or other authorizations from governmental or regulatory authorities that are required for the lawful conduct of the business and operations of the Stations in the manner and to the full extent that the Stations are presently operated. The FCC Authorizations and other licenses are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations and the other licenses, permits, and authorizations listed on Schedule 1.1 (a), none of which is subject to any restrictions or conditions that would limit in any material respect the operations of the Stations, other than (i) as may be set forth on the faces of such FCC Authorizations and other licenses, or (ii) as may be applicable to substantial segments of the radio broadcasting industry. Seller is operating the Stations in material compliance with the FCC Authorizations, the Communications Act of 1934, as amended, and all regulations and published policies of the FCC (the "Communications Laws"). To Seller's knowledge, the Stations are not transmitting or

receiving any objectionable interference to or from any other Stations. Except as provided in Schedule 3.4, there are not now pending, or, to Seller's knowledge, threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew any of such FCC Authorizations, and Seller has not received any notice of, and has no knowledge of, any pending, issued, or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Stations or Seller. All material reports and filings required to be filed with the FCC by Seller with respect to the operation of the Stations have been timely filed, and all such reports and filings are accurate and complete in all material respects. Seller maintains a public inspection file for the Stations and such file complies with the Communications Laws in all material respects.

3.5 Real Property.

(a) Schedule 1.1(c) and 1.1 (d) accurately list and describe all of the real property (whether leased or owned) used by the Stations in connection with their operation (the "Real Property"). The Real Property listed on Schedules 1.1(c) and 1.1(d) comprises all real property interests necessary to conduct the business and operations of the Stations as now conducted. Seller has valid and enforceable leases for all Leased Real Property. Seller has good and marketable title, insurable at standard rates to all of the fee estates, including the improvements thereon, and at Closing will transfer the Owned Real Property to Buyer free of all encumbrances other than Permitted Liens. Seller shall make available to Buyer true and complete copies of all policies of title insurance (together with copies of all documents) currently existing in favor of Seller with respect to the Owned Real Property, all deeds, surveys, environmental reports, or site assessments of the Real Property. To Seller's knowledge, and except with respect to the Assumed Contracts, there are no parties in possession of the Owned Real Property other than Seller, whether as lessees, tenants at will, trespassers or otherwise.

(b) To Seller's knowledge, the Real Property, as well as the present use thereof, conforms in all material respects with all restrictive covenants and all applicable zoning, and building codes, laws, rules and regulations. All utilities that are necessary for Seller's present operation of the Stations, including without limitation, electric power and telephone services have been connected to the Real Property and are sufficient for the operation of Seller's business currently conducted therein. All improvements to the Real Property are in good condition and repair, and are available for immediate use in the conduct of the business and operations of the Stations and to Seller's knowledge, there are no structural, electrical, mechanical, plumbing, air conditioning, heating or other defects in the buildings located on the Real Property; and to Seller's knowledge, the roofs of the buildings located on the Real Property are free from structural defects and leaks and are in good condition. There are presently in existence electrical lines on the Real Property, which have been completed, installed and paid for and which are sufficient to service adequately the current operations of the Stations.

(c) No condemnation of any of the Real Property has occurred; there is no existing written notice covering future condemnation that has been provided to Seller; and, to Seller's knowledge, Seller has no reason to believe any of the Real Property will be condemned. The Real Property has adequate access to and from completed, dedicated and accepted public roads, and there is no pending, or to Seller's knowledge threatened, governmental proceeding which could impair or curtail such access. All utilities required for the operation of the Stations on the Real Property enter through adjoining public streets or through valid easements. The towers of the Stations are obstruction marked and lighted and are properly registered with the FCC by the tower owner to the extent required by, and in accordance with, the rules and regulations of the FAA and the FCC. The operations of the Stations do not exceed permissible levels of exposure to non-ionizing electromagnetic radiofrequency ("RF") radiation specified in the FCC's rules and regulations concerning RF radiation. To Seller's knowledge, all of the towers, guy anchors, guy wires, cables, driveways, parking lots, ground systems, transmitting equipment, buildings

and other improvements relating to the operations of the Stations are located entirely on and wholly within the lot limits and metes and bounds of the Owned Real Property, or respective easements, and the property subject to the Tower Site Leases and do not encroach on any adjoining premises.

3.6 **Title Documents.** The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Assets to Buyer, will transfer good and marketable title to the Station Assets, free and clear of all Liens other than Permitted Liens.

3.7 **Employees.** Buyer shall have no obligation to offer employment to any employee of Seller or the Stations. Buyer shall have no liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended, and accepted by such employee, and subject to the terms and conditions thereof.

3.8 **Brokers.** Other than Media Services Group, whose broker fees will be paid by Seller, there is no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding, or action on the part of Seller.

3.9 **Litigation; Compliance with Law.** Except as otherwise set forth herein, Seller is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of the Stations or the Station Assets or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and to Seller's knowledge no such proceeding is pending. There is no material litigation pending by or against, or, to Seller's knowledge, threatened against, Seller which relates to the Stations or which could materially and adversely affect any of the Station Assets. Seller, with respect to the Stations, has complied in all material respects with all applicable laws, regulations, orders, or decrees. The present uses by Seller of the Station Assets do not violate any such laws, regulations, orders, or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

3.10 **Approvals and Consents.** Except as described on Schedule 3.10 attached hereto, the execution, delivery and performance by Seller of this Agreement and the consummation of the transaction contemplated hereby will not require any consent, permit, license or approval of any person, entity or government or regulatory authority other than the FCC Consent.

3.11 **Insurance.** All of the material Station Assets that are insurable are insured against loss, injury, or damage to the full extent of their replacement value.

3.12 **Taxes.** Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid. To Seller's knowledge, no event has occurred which could impose upon Buyer any liability for any taxes, penalties, or interest due or to become due from Seller from any taxing authority.

3.13 **Accuracy of Representations and Statements.** No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Seller in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer in the circumstance under which such representation, warranty, or statement was made.

3.14 **Performance of Assumed Contracts.** To Seller's knowledge, Seller has fully and timely performed all of its obligations pursuant to each of the Assumed Contracts and is not in default or breach of any such agreements. Seller has not received notice from any party to any Assumed Contract that such party contends that it is in default or breach under any Assumed Contract. Each of the Assumed Contracts is in full force and effect and, to the knowledge of Seller, there has not been, and is not, any default or breach under any Assumed Contract by the other party to any Assumed Contract. There have been no modifications, extensions, or amendments of any of the Assumed Contracts, whether oral or written, except as may be contemplated by this Agreement. Seller has not been notified by any other party to any Assumed Contract that such party has a present intent to terminate or not to renew any Assumed Contract. None of the Assumed Contracts included in the Station Assets has as the other party an entity controlled by any of Seller's owners.

3.15 **Sufficiency of Assets.** The Station Assets are sufficient for the operations of the Stations as presently operated by Seller.

3.16 **Environmental.** Notwithstanding any provision herein, Seller expressly disclaims and makes no representations or warranties with respect to any environmental, health or safety law, regulation or policy.

3.17 **Labor Matters.** Seller is not a party to any contract with any labor organization with respect to employees of the Stations, nor has Seller agreed to recognize any union or other collective bargaining unit with respect to employees of the Stations, nor has any union or other collective bargaining unit been certified as representing any of the Stations' employees. Seller has no knowledge of any organizational effort currently being made or threatened by or on behalf of any labor union with respect to employees of the Stations. During the last five years, the Stations have not experienced any strikes, work stoppages, grievance proceedings, claims of unfair labor practices filed, or other significant labor difficulties. Seller has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor including those relating to collective bargaining and other unfair labor practices, wages, hours, discrimination, and the withholding and payment of social security and similar taxes and is not liable for any arrears or penalties relating thereto which would have a material adverse effect upon the operations of the Stations or which could result in liability to Buyer.

3.18 **Seller's Knowledge.** "Seller's knowledge" means the actual knowledge after due inquiry, of Eric Jorgensen and the general manager and chief engineer of each Station (or person holding a similar position at each Station).

ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller:

4.1 **Organization and Standing.** Buyer is a limited liability company organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer has the requisite power and authority to own, lease, and operate the Stations and to carry on their business as now being conducted.

4.2 **Authorization.** Buyer has the power and authority to execute and deliver this Agreement, and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly and validly authorized by Buyer, and no other proceedings on the part of Buyer are necessary to authorize the execution and delivery of, or the performance of Buyer's obligations under this Agreement, or to consummate the transaction contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer. This Agreement constitutes the legal, valid, and binding agreement of Buyer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

4.3 **No Defaults.** The execution, delivery, and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of the articles of organization or operating agreement of Buyer, or (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to Buyer or its business, except for such defaults (or rights of termination, cancellation, or acceleration) or conflicts as to which requisite waivers or consents have been obtained and delivered to Seller, (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Buyer, or (iv) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent.

4.4 **Buyer's Qualification.** Upon satisfaction of the conditions precedent to Closing set forth in Articles 7 and 8 below, Buyer will be legally, financially, and technically qualified to acquire, and to become the FCC licensee of, the Stations and to perform its obligations under this Agreement. There is no fact or condition known to Buyer that would, under the Communications Laws, disqualify Buyer as assignee of the FCC Authorizations, as owner and operator of the Stations or as programmer of the Stations under the Amended LMA, or constitute grounds for the filing of a petition to deny or objection related to the qualifications of Buyer or that would reasonably be expected to result in a delay or denial of the FCC Consent. To buyer's knowledge, no waiver of any FCC rule, regulation or policy will be required, with respect to Buyer, to obtain the FCC Consent.

4.5 **Litigation.** Buyer is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of Buyer or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or, to the knowledge of Buyer, or threatened against Buyer, that would prevent or materially impede the consummation by Buyer of the transaction contemplated by this Agreement.

4.6 **Brokers.** Other than Media Services Group, whose broker fees will be paid by Seller, there is no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding, or action on the part of Buyer.

4.7 **Accuracy of Representations and Statements.** No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Buyer in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller in the circumstance under which such representation, warranty, or statement was made.

ARTICLE 5: COVENANTS OF SELLER

The following terms of this Article 5 shall apply from the Effective Date until the completion of the Closing (except as otherwise specified); provided, however, that each of such covenants or agreements are subject to the terms of the Amended LMA.

5.1 **Station Documents.** The records, files and other documents kept in connection with the Stations shall be maintained by Seller in the usual and ordinary manner consistent with standard broadcast industry practice. Seller shall maintain the FCC Authorizations in accordance with their terms and in compliance in all material respects with all applicable laws, rules and regulations and all applicable FCC regulations and published policies. Seller shall maintain the FCC Authorizations in full force and effect and shall take all actions necessary to so maintain them, including but not limited to the timely filing and

prosecution of any necessary modification or renewal applications of the FCC Authorizations or other submissions to the FCC.

5.2 **Maintenance of Equipment.** Seller shall maintain the Tangible Personal Property included in the Station Assets in good operating condition (reasonable wear and tear in ordinary usage excepted) and in accordance with standards of good engineering practice and will replace any of such property which shall be worn out, lost, stolen, or destroyed with like property of substantially equivalent kind and value.

5.3 **FCC Compliance.** Seller shall continue to operate and maintain the Stations in accordance in all material respects with the terms of the FCC Authorizations and in material compliance with all applicable laws and FCC regulations and published policies. Seller will deliver to Buyer, promptly after filing, copies of any material reports, applications, or responses to the FCC, or any material communications from the FCC, or if from any other party directed to the FCC, promptly after receipt by Seller, related to the Stations that are filed or received by Seller between the date of this Agreement and the Closing Date. Except with respect to the Funston Road tower as provided in Schedule 3.5(d), Seller will not file any application to the FCC requesting authority to modify the facilities of any of the Stations without Buyer's prior written consent and Seller shall take all actions necessary to keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect.

5.4 **Operation of Stations in Ordinary Course.** In all other respects, except as disclosed in writing to and approved by Buyer, and subject to the terms of the Amended LMA, Seller shall operate the Stations solely in the ordinary course of business and in accordance with past practice, and shall pay its obligations with respect to the Stations in the ordinary course as such obligations become due.

5.5 **Insurance.** Seller shall maintain in full force and effect through the Closing Date adequate property damage, liability, and other insurance with respect to the Station Assets.

5.6 **Disposition of Assets.** Prior to the Closing Date, Seller shall not, without the prior written consent of Buyer, sell, lease, or transfer, or agree to sell, lease, or transfer, any of the Station Assets without replacement thereof with an asset of equivalent kind, condition, and value that satisfies industry standards for such assets, nor create any new Lien on the Station Assets other than Permitted Liens and Liens arising pursuant to, and in accordance with the terms of, this Agreement.

5.7 **Compliance with Law.** Seller shall comply in all material respects with all federal, state, and local laws, rules and regulations in connection with the operation of the Stations.

5.8 **Access to Facilities, Files and Records.** At the request of Buyer, Seller shall from time to time give or cause to be given to Buyer full access during normal business hours to the Station Assets, and all accounts, books, insurance policies, licenses, agreements, contracts and equipment with respect to the Stations.

5.9 **Representations and Warranties.** Seller shall give detailed written notice to Buyer promptly upon learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of the representations or warranties contained in this Agreement. Seller shall use commercially reasonable efforts to cure any such event.

5.10 **Consummation of Agreement.** Seller shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transaction contemplated by this Agreement to be fully carried out.

5.11 **Confidentiality.** Any and all information, disclosures, knowledge or facts regarding the Buyer or its business or properties to which the Seller or its agents are exposed as a result of the negotiation, preparation or performance of this Agreement shall be held in strict confidence and shall not be divulged, disclosed or communicated to any other person, firm, corporation or entity, except Seller's respective employees, attorneys, accountants, investment bankers, investors and lenders on a need-to-know basis for the purpose of consummating the transaction contemplated by this Agreement.

ARTICLE 6: COVENANTS OF BUYER

Buyer covenants and agrees that from the date hereof until the completion of the Closing:

6.1 **Representations and Warranties.** Buyer shall give detailed written notice to Seller 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 Buyer prior to the date hereof, of any of the representations and warranties of Buyer contained in this Agreement. Buyer shall use commercially reasonable efforts to cure any such event.

6.2 **Consummation of Agreement.** Buyer shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transaction contemplated by this Agreement to be fully carried out. Without limiting the foregoing, Buyer shall take no action (or inaction) which could reasonably result in disqualifying Buyer as assignee of the FCC Authorizations.

6.3 **Confidentiality.** Any and all information, disclosures, knowledge or facts regarding the Seller, the Stations or their business or properties to which the Buyer or its agents are exposed as a result of the negotiation, preparation or performance of this Agreement shall be held in strict confidence and shall not be divulged, disclosed or communicated to any other person, firm, corporation or entity, except for Buyer's respective employees, attorneys, accountants, investment bankers, investors and lenders, and their respective attorneys, on a need- to-know basis for the purpose of consummating the transaction contemplated by this Agreement.

ARTICLE 7: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

7.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Buyer contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) 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.

7.2 **Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 **FCC Authorizations.** The FCC Consent has been issued by the FCC and shall have become a Final Order.

7.4 **Deliveries.** Buyer has complied with each and every one of its obligations set forth in Section 9.2.

7.5 **Amended LMA.** Buyer shall be in full compliance with the Amended LMA, including all payment and reimbursement obligations thereunder.

7.6 **Music Licenses.** All outstanding liabilities, claims, or other obligations with respect to music licenses for the Stations (and the other stations covered by the Amended LMA), including ASCAP, BMI, and SESAC licenses, shall be resolved to Seller's satisfaction; and in connection therewith, all fees, costs, expenses, and other obligations shall be paid in full by Buyer, and Seller shall be fully released from any liabilities related thereto.

ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date. Upon the Closing, each such condition shall be deemed to have been satisfied.

8.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Seller contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct, except to the extent changes are permitted or contemplated pursuant to this Agreement.

(b) 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.

8.2 **Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) restraining or prohibiting the consummation of the transaction contemplated hereby.

8.3 **FCC Authorizations.** The FCC Consent has been issued by the FCC and shall have become a Final Order.

8.4 **Deliveries.** Seller has complied with each and every one of the obligations set forth in Section 9.1.

8.5 **Required Consents.** Seller shall have obtained and delivered to Buyer all of the Required Consents, if any, described on Schedule 3.10.

8.6 **Liens.** No Liens are or have been filed or recorded against the Station Assets in the public records of any jurisdiction in which the Station Assets are located.

8.7 **Lien Search.** Buyer shall have received (and delivered to Seller), at Buyer's expense, a report dated no earlier than fifteen (15) days prior to Closing, prepared by a firm reasonably acceptable to Buyer, showing the results of searches in the recording offices of all applicable jurisdictions in which any of the Station Assets are situated and in the office of the Secretary of State or other appropriate governmental entity of such jurisdiction demonstrating that the Station Assets are free of Liens other than

the Permitted Liens and liens to be removed at Closing; provided, that Buyer shall be required to request such report at least twenty (20) days prior to Closing for this condition to be effective.

8.8 **Title Insurance.** Buyer shall have received (and delivered to Seller), at Buyer's expense, a commitment for an ALTA extended owner's coverage title insurance policy for the Owned Real Property, free and clear of all liens except for Permitted Liens and the title company's standard printed exceptions; provided, that Buyer shall be required to apply for such commitment at least twenty (20) days prior to Closing for this condition to be effective.

ARTICLE 9: ITEMS TO BE DELIVERED AT CLOSING

9.1 **Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by Seller or such other signatory as may be required by the nature of the document:

(a) a bill of sale sufficient to sell, convey, transfer and assign the personal property included in the Station Assets (other than the FCC Authorizations and the Assumed Contracts) to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller (the "Bill of Sale");

(b) an Assignment and Assumption Agreement sufficient to sell, convey, transfer and assign the Assumed Contracts to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller (the "Assignment and Assumption Agreement");

(c) an FCC Authorizations Assignment and Assumption Agreement sufficient to assign the FCC Authorizations (but not the Stations' call letters) to Buyer, in a form reasonably acceptable to Buyer and Seller (the "FCC Authorizations Assignment and Assumption Agreement").

(d) an assignment of the Tower Site Leases in a form reasonably acceptable to Buyer and Seller (the "Tower Site Leases Assignment and Assumption Agreement");

(e) estoppels certificates for each of the Real Property leases;

(f) the Required Consents described on Schedule 3.10;

(g) Certified copies of appropriate resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of this Agreement, and the consummation of the transaction contemplated hereby.

9.2 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller, duly executed by Buyer or such other signatory as may be required by the nature of the document:

(a) the payment of the Purchase Price in accordance with Section 1.4;

(b) the Assignment and Assumption Agreement;

(c) the Assignment and Assumption of Tower Site Leases;

(d) the FCC Authorizations Assignment and Assumption Agreement;

(e) the Tower Site Leases Assignment and Assumption Agreement;

(f) Certified copies of resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transaction contemplated hereby; and

ARTICLE 10: SURVIVAL AND INDEMNITY

The rights and obligations of Buyer and Seller under this Agreement shall be subject to the following terms and conditions:

10.1 **Survival of Representations and Warranties.** The representations and warranties of Buyer and Seller contained in this Agreement shall survive the Closing for one (1) year from the Closing Date. Neither Seller nor Buyer shall have any liability whatsoever with respect to any representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the 1-year survival period for such representation or warranty.

10.2 **General Agreement to Indemnify.**

(a) Seller on the one hand, and Buyer on the other hand, shall indemnify, defend and hold harmless each other and any employee, representative, agent, director, officer, affiliate or permitted assign of each other (each, an "Indemnified Party") from and against any and all claims, actions, suits, proceedings, liabilities, obligations, losses and damages, amounts paid in settlement, diminution of value, interest, costs and expenses (including reasonable attorneys' fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Losses") asserted against, incurred or suffered by any Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of the Indemnifying Party made in this Agreement to have been true and correct when made or as of the Closing Date as though such representation or warranty were made at and as of the Closing Date; or (ii) the breach by the Indemnifying Party of any covenant or agreement of such party contained in this Agreement or any collateral agreement to the extent not waived by the other party hereto.

(b) Seller further agrees to indemnify and hold harmless Buyer and any other Indemnified Party of Buyer from and against any Losses asserted against, incurred or suffered by Buyer or any other Indemnified Party of Buyer arising out of, resulting from, or relating to the operation of the Stations and ownership of the Station Assets prior to the Closing.

(c) Buyer further agrees to indemnify and hold harmless Seller and any other Indemnified Party of Seller from and against any Losses asserted against, incurred or suffered by Seller or any other Indemnified Party of Seller arising out of, resulting from, or relating to the operations of the Stations and the Station Assets after the Closing.

10.3 **General Procedures for Indemnification.**

(a) The Indemnified Party seeking indemnification under this Agreement shall promptly notify in writing the party or parties against whom indemnification is sought (the "Indemnifying Party") of the assertion and basis of any claim, or the commencement and basis of any action, suit or proceeding by any third party in respect of which indemnity may be sought hereunder (a "Third Party Claim") and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense and control the settlement of such Third Party Claim that involves (and continues to involve) solely money damages. Failure by the Indemnifying Party to so notify the Indemnified Party shall be deemed a waiver by the Indemnifying Party of its right to assume the defense of such claim.

(b) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(c) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement,

(d) The Indemnifying Party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to, or enter into, any compromise or settlement of, or consent to the entry of any judgment arising from, any such Third Party Claim (which compromise, settlement, or judgment: (i) commits the Indemnified Party to take, or to forbear to take, any action; or (ii) does not provide for a complete release by such Third Party of the Indemnified Party) without the Indemnified Party's prior written consent. If the conditions set forth herein are met but the Indemnified Party refused to settle any Third Party Claim, the Indemnifying Party may tender the settlement amount and be relieved of further liability.

(e) The Indemnifying Party shall not be entitled to require that any action be brought against any other person before action is brought against it hereunder by the Indemnified Party, but shall be subrogated to any right of action to the extent that it has paid or successfully defended against any Third Party Claim.

10.4 **Limitations.** Neither Party shall be required to indemnify the other Party under this Article 10 unless (i) written notice of a claim under this Article 10 was received by a Party within one (1) year following the Closing and (ii) the aggregate amount of claims against the Party from the other Party as claimant exceeds Ten Thousand Dollars (\$10,000.00), after which the claimant shall be entitled to recover only such portion of the Losses that exceed such amount. The maximum amount of claims for which either party shall be liable shall be Two Hundred and Fifty Thousand (\$250,000.00). In calculating the amount of Losses to Buyer or Seller under Section 10.2 above, such Losses shall be reduced by any recovery from any third party (including insurance proceeds) as a result of the facts or circumstances giving rise to the Losses, no amount shall be included in such Losses except for the party's actual out-of-pocket costs and expenses and shall in no event include consequential or punitive damages, and no proration amounts shall be included in such Losses. The limitations set forth in this Section 10.4 shall not apply to Third Party Claims against a Party entitled to indemnification under Sections 10.2(b) or (c).

10.5 **Exclusive Remedy.** The right to indemnification, defense, hold harmless, payment or reimbursement provided in this Article 10 will be the exclusive remedy of any Party with respect to Losses after the Closing with respect to the transaction contemplated by this Agreement.

ARTICLE 11: TERMINATION

11.1 **Termination.** This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by written notice of Seller to Buyer if Buyer: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Buyer on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Buyer's representations or warranties; or (iii) defaults in any material respect in the performance of any of Buyer's covenants or agreements under this

Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(c) by written notice of Buyer to Seller if Seller: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Seller on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Seller's representations or warranties; or (iii) defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(d) by Buyer as provided in Section 12.7 (Risk of Loss);

(e) automatically upon the termination of the Amended LMA pursuant to Section 12 thereof;

(f) by written notice of Seller to Buyer, or Buyer to Seller: (i) if the Closing has not been consummated within six (6) months of the filing of the Assignment Application, provided, however, that the right to terminate this Agreement under this clause (f)(i) shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; (ii) if, for any reason, the FCC denies or dismisses the Assignment Application and the time for reconsideration or court review under the Communications Laws with respect to such denial or dismissal has expired and there is not then pending with respect thereto a timely filed petition for reconsideration or request for review; or (iii) if, for any reason, the Assignment Application is designated for an evidentiary hearing.

11.2 Cure Period. The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however, that if the breach or default cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date. Except as set forth below, the termination of this Agreement shall not relieve any Party of any liability for breach or default under this Agreement prior to the date of termination.

11.3 Liability; Right to Terminate. A termination of this Agreement shall not relieve any Party hereto of any liability for which it otherwise would be subject. Notwithstanding anything in this Agreement to the contrary, no Party that is in material breach of this Agreement shall be entitled to terminate this Agreement except with the written consent of the other Party.

11.4 Payment of Deposit.

(a) **Seller's Default.** Upon a termination of this Agreement by Buyer pursuant to Section 11.1(c) due to a breach by Seller of any of its material obligations under this Agreement, Buyer shall be entitled to the return of the Deposit. Instead of terminating this Agreement upon a default by Seller, Buyer may seek specific performance as provided in Section 11(c) below.

(b) **Other Termination.** Upon a termination of this Agreement for any reason other than as a result of a breach by Seller of its material obligations under this Agreement, Seller shall be entitled to retain the Deposit, and thereafter neither Party shall have any further obligation to the other under this Agreement.

(c) **Specific Performance.** Seller acknowledges that the Station Assets are unique assets not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be

adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

ARTICLE 12: MISCELLANEOUS

12.1 **Governing Law.** The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of North Carolina (exclusive of those relating to conflicts of laws). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the courts of the State of North Carolina. The Parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

12.2 **Expenses.** Each Party hereto shall bear all of its expenses incurred in connection with the transaction contemplated by this Agreement, including without limitation, accounting, engineering and legal fees incurred in connection herewith; provided, however, that Seller and Buyer shall share equally all filing fees, including but not limited to FCC filing fees required to be paid in connection with the Assignment Application.

12.3 **Bulk Transfer.** The Parties hereby waive compliance with the Bulk Transfer provisions of the Uniform Commercial Code and all similar laws. Each Party transferring assets hereunder shall indemnify and hold harmless the Party receiving such assets from and against any and all liabilities which may be asserted against the receiving Party as a result of noncompliance with any such Bulk Transfer provisions.

12.4 **Entire Agreement; Amendment; No Waiver.** This Agreement, including the schedules and exhibits hereto, and the Amended LMA contain the entire agreement and understanding by and between the Parties, and no other representations, promises, agreements, or understanding, written or oral, not contained herein shall be of any force or effect, including the Letter of Intent by and between Buyer and Seller dated as of September 14, 2011, and the Asset Purchase Agreement by and between Buyer and Seller, dated as of November 15, 2011, the terms of which are superseded and replaced by this Agreement. This Agreement may only be amended in a writing signed by the Parties. No oral agreement shall have any effect. No failure or delay in exercising any right hereunder shall be deemed or construed to be a waiver of such right, either prospectively or in the particular instance. 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.

12.5 **Confidentiality.** Buyer and each Seller shall keep confidential all information obtained by it with respect to the other Parties in connection with this Agreement, except where such information is known through other lawful sources or where its disclosure is required in accordance with applicable law, including requirements of the FCC pursuant to the Assignment Application. If the transaction contemplated hereby is not consummated for any reason, Buyer and Sellers shall return to each other, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transaction contemplated hereby,

12.6 Public Announcements.

(a) Prior to the Closing Date, no Party shall, without the approval of the other Party hereto, make any press release or other public announcement concerning the transaction contemplated by this Agreement, except (i) to announce that the transaction 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.

(b) Notwithstanding the foregoing, the Parties acknowledge that the rules and regulations of the FCC require that local public notice of the transaction contemplated by this Agreement be made after the Assignment Application has been filed with the FCC and that a copy of this Agreement be included as a material part of the Assignment Application, which will be made available for public inspection at the Stations and in the FCC's records. The form and substance of the required public notice, to the extent not dictated by the rules and regulations of the FCC, shall be mutually agreed upon by Seller and Buyer.

12.7 Risk of Loss. Except for any loss or damage to any of the Station Assets as a result of acts or omissions of Buyer under the Amended LMA, the risk of loss to any of the Station Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Station Assets; provided, however, that in the event that any Station Asset(s) with a fair market value of Two Hundred Fifty Thousand Dollars (\$250,000.00) or more shall have been damaged or lost as of the date otherwise scheduled for the Closing, then Buyer may, at its option, upon prior written notice to Seller, either (i) postpone the Closing for a period of up to sixty (60) days while Seller shall repair or replace such Station Asset(s) (or such longer period as reasonably necessary provided that Seller is making good faith efforts to make the repair or replacement); or (ii) elect to close the transaction contemplated herein with the Station Asset(s) in their damaged or lost condition, in which case Seller shall assign to Buyer all proceeds of insurance on such damaged or lost Station Asset(s), and Buyer shall have the responsibility to repair or replace the damaged or lost Station Asset or Station Assets; or (iii) if the damaged or lost Station Asset(s) have a fair market value of Two Million Dollars (\$2,000,000) or more, the Buyer may terminate this Agreement without penalty upon written notice to Seller. Should the Stations (i) not operate for a period of ten (10) consecutive days or more, or (ii) not operate with their full, FCC-licensed facilities for a period of thirty (30) consecutive days, Buyer may elect to terminate this Agreement without penalty upon giving written notice thereof to Seller.

12.8 [Intentionally Omitted]

12.9 Successors and Assigns. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective representatives, successors and assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the written consent of the other, whose consent shall not be unreasonably withheld, except that Buyer may assign its rights and delegate its duties under this Agreement to an entity that controls, is controlled by, or is under common control with Buyer any time prior to the Closing Date, provided that the Closing Date is not delayed or postponed as a result of such assignment. In the event of such an assignment by Buyer, the provisions of this Agreement shall inure to the benefit of and be binding upon Buyer's assigns and Buyer shall enter into a written agreement with Seller accepting joint and several liability for all obligations under this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

12.10 Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by e-mail 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 e-mail or facsimile communications equipment, when delivered as confirmed by a "read receipt" or other delivery confirmation, addressed as set forth below:

If to Seller, then to:

Eric Jorgensen
Sea-Comm, Inc.
1176 Cocoanut Road
Boca Raton, Florida 33432
Fax: (601) 450-8586
E-Mail: eric.jorgensen@me.com

and to (which shall not constitute notice):

Coe W. Ramsey, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
P.O. Box 1800 (zip 27602)
150 Fayetteville Street
Suite 1600, Wells Fargo Capitol Center
Raleigh, NC 27601
Fax: (919) 839-0304
E-Mail: cramsey@brookspierce.com

If to Buyer, then to:

Thomas G. Davis
Davis Media, LLC
500 New Point Road, Suite 2201
Williamsburg, VA 23188
Fax: (757) 565-7094
E-Mail: thomasgdavis@gmail.com

and to (which shall not constitute notice):

Erwin G. Krasnow, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW.
Washington, DC 20007
Fax: (202) 965-1729
E-Mail: ekrasnow@gsblaw.com

Any Party may change 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.

12.11 **No Shop.** Seller will not, after the date hereof: (a) solicit, initiate or encourage the submission of any proposal or offer from any person relating to the purchase of the Station Assets, the Stations or the Licenses, or (b) institute, pursue, or engage in any discussions, negotiations, or agreements with any person concerning the foregoing, or (c) furnish any information with respect to any effort or attempt by any other person to do any of the foregoing. Seller will immediately notify Buyer of any offer received from third parties regarding any of the above.

12.12 **Time Is of the Essence.** Time is of the essence in the performance of this Agreement.

12.13 **Further Assurances.** From time to time prior to, on and after the Closing Date, each Party hereto will execute all such instruments and take all such actions as any other party shall reasonably request, without payment of further consideration, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated by this Agreement, including without limitation the execution and delivery of any and all confirmatory and other instruments in addition to those to be delivered on the Closing Date, and any and all actions which may reasonably be necessary to complete the transaction contemplated hereby. The Parties shall cooperate fully with each other and with their respective counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

12.14 **Schedule Updates.** From time to time after the execution of this Agreement and prior to the Closing Seller shall promptly supplement or amend the Schedules delivered in connection herewith with respect to any matter which exists or occurs after the date of this Agreement and which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules or which is necessary to correct any information therein; provided, however, that the provisions of this Section are informational only and Buyer shall not be bound to the terms of any changed Schedules unless they are incorporated into this Agreement by a written amendment signed by Buyer. Buyer shall reasonably cooperate with respect to any changed Schedules.

12.15 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein, or its application to any particular circumstance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, such provision or such application shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without invalidating the remainder of such provision or any other provisions hereof, or its application in any other circumstance, unless such a construction would be unreasonable, and without invalidating such provision or its application in any other jurisdiction.

12.16 **Facsimile; Counterparts.** This Agreement may be executed by facsimile or email transmission and in counterparts, each of which shall constitute an original but together will constitute a single document.

12.17 **Effect of Amended LMA.** Notwithstanding any other provision of this Agreement to the contrary, Seller shall not be deemed liable, and shall have no obligation to Buyer for indemnification or otherwise, for the purported breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement to the extent such breach resulted primarily from (i) the actions or inactions of Buyer in its capacity as Programmer under the Amended LMA, including, but not limited to failure to report matters to Seller following observation or knowledge thereof by Buyer, its agents, personnel or representative, to the extent such matters could have been mitigated had such matters been reported to Seller; or (ii) any failure by Buyer to take any action expressly required to be taken by Buyer under this Agreement or the Amended LMA.

12.18 **Studio Facilities.** As provided in Schedule 1.2(j), Seller's studio building and facilities located at 122 Cinema Drive, Wilmington, NC, New Hanover County, are among the Excluded Real Estate (the "Cinema Studio"). Buyer is presently using the Cinema Studio pursuant to the Amended LMA. Buyer hereby agrees to cooperate in all commercially reasonable respects with Seller in Seller's efforts to sell the Cinema Studio to a third party, and Buyer hereby agrees to timely vacate the Cinema Studio upon Seller's request subject to the Parties' mutual agreement to use commercially reasonable efforts to accommodate each other's needs in connection with Buyer vacating the Cinema Studio. Further, to the extent Buyer has not relocated the Stations to a new studio facility as of Closing, Buyer may continue to use the Cinema Studio for the Stations after Closing subject to the prompt reimbursement or payment of all ordinary and necessary costs in connection with the Cinema Studio (including, without


limitation, insurances and taxes, and any other related costs that otherwise would be required to paid by Buyer under the Amended LMA); provided that Buyer's use of the Cinema Studio after Closing shall continue to be subject to Buyer's agreement to timely vacate in accordance with this Section.

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SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

SELLER: SEA-COMM, INC.

By: 
N. Eric Jorgensen
President

BUYER: DAVIS MEDIA, LLC

By: _____
Tomas G. Davis
President

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

SELLER: **SEA-COMM, INC.**

By: _____
N. Eric Jorgensen
President

BUYER: **DAVIS MEDIA, LLC**

By: T.G.D.
Tomas G. Davis
President

Exhibits

Exhibit A Amendment No. 1 to Local Programming and Marketing Agreement

Schedules

- 1.1 (a) FCC and Other Governmental Authorizations
- 1.1 (b) Tangible Personal Property
- 1.1 (c) Real Property Leases
- 1.1 (d) Owned Real Property
- 1.1 (e) Assumed Contracts
- 1.1 (f) Intangible Property
- 1.2 (f) Excluded Personal Property
- 1.2 (j) Excluded Real Estate
- 3.4 FCC Matters
- 3.10 Required Consents