

**EXECUTION COPY**

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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**CATAMOUNT BROADCASTING OF FARGO LLC**

**AND**

**SPIRIT TELEVISION LLC**

Dated as of July 21, 2006

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT, dated as of July 21, 2006, is entered into by and between CATAMOUNT BROADCASTING OF FARGO LLC, a Delaware limited liability company ("Seller"); and SPIRIT TELEVISION LLC, a Delaware limited liability company ("Buyer").

### W I T N E S S E T H:

WHEREAS, Seller is the licensee of television station KXJB-TV, Valley City, North Dakota (the "Station") pursuant to licenses issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Seller and North Dakota Television, L.L.C., a Delaware limited liability company ("NDT") previously entered into that certain Asset Purchase Agreement dated April 24, 2003 (the "Initial Purchase Agreement"), pursuant to which NDT purchased from Seller certain property and assets then owned by Seller and used or held for use in the operation of the Station; and

WHEREAS, pursuant to that certain Outsourcing Agreement (such Outsourcing Agreement, as amended, the "Outsourcing Agreement"), dated as of the date of the Initial Purchase Agreement, by and between NDT and Seller, NDT and Seller have been sharing certain facilities and the costs of certain services in connection with the operation of the Station and television broadcast station KVLV-TV, Fargo, North Dakota, licensed to NDT; and

WHEREAS, pursuant to that certain Term Loan and Security Agreement, dated as of the date of the Initial Purchase Agreement, by and between Catamount and CapitalSource Finance LLC (the "Lender") (such loan agreement, as the same shall be modified, amended, restated or refinanced from time to time, the "Loan Agreement"), Catamount has borrowed the sum of One Million Dollars (\$1,000,000) from the Lender (such loan, as the same shall be modified, amended, restated or refinanced from time to time, the "Loan"); and

WHEREAS, Seller and NDT entered into that certain Option Agreement, dated as of the Initial Purchase Agreement (the "Option Agreement"; collectively with the Initial Purchase Agreement, the Outsourcing Agreement and the other agreements executed or required in connection herewith and therewith, the "Related Agreements"), pursuant to which Seller granted NDT the option and right to purchase certain of Seller's remaining assets used or held for use in the operation of the Station, including the Station's Licenses, all of Seller's rights in and to the call letters "KXJB-TV", "KXJB", "KXJB-DT" and KXJB-LP", the Programming Contracts, the Cable Agreements and the Affiliation Agreement on the terms and subject to the conditions set forth herein and therein (the "Option"); and

WHEREAS, NDT has assigned its rights under the Option Agreement to Buyer and Buyer has exercised the Option and desires to purchase from Seller the assets being sold pursuant to this Agreement;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows.

## **ARTICLE I DEFINITIONS**

**SECTION 1.1. Definitions.** When used in this Agreement, the following terms shall have the meanings specified below:

"Affiliation Agreement" shall mean the Affiliation Agreement dated September 5, 1995 between Seller, Central Minnesota Television Company and CBS Television Network (Network Programming) together with the Amendment to Affiliation Agreement dated September 23, 1998, NFL Agreement/Extension and Modification dated October 18, 2001, and Letter Agreement regarding "first call" rights to certain programming dated June 17, 2005, as the same may be amended or supplemented from time to time.

"Agreement" shall mean this Asset Purchase Agreement, together with the Schedules and the Exhibits attached hereto, as the same shall be amended and/or supplemented from time to time in accordance with the terms hereof.

"Allocation Schedule" shall have the meaning set forth in Section 2.5.

"Assignment and Assumption of Contracts" shall mean the Assignment and Assumption of Contracts, in the form of Exhibit A, by which Seller assigns all of its right, title and interest in and to the Assumed Contracts to Buyer and Buyer assumes the then remaining rights and obligations of Seller under the Assumed Contracts.

"Assignment of Intangible Property" shall mean the instrument in the form of Exhibit B, by which Seller will convey to Buyer all of its right, title and interest in and to the Intangible Property.

"Assignment of Licenses" shall mean an instrument in the form of Exhibit C by which the Seller will transfer and assign the Licenses to Buyer.

"Assumed Contracts" shall mean the Programming Contracts and Cable Agreements listed in Schedule 1.1 and the Affiliation Agreement.

"Assumed Liabilities" shall mean the obligations of Seller arising from and accruing with respect to the operation of the Station on and after the Closing Date, including, without limitation, all obligations and liabilities under the Assumed Contracts, and the obligations of Seller assumed by Buyer pursuant to Section 9.6.

"Assumption Agreement" shall mean an instrument in the form of Exhibit D by which the Assumed Liabilities are to be assumed and accepted by Buyer.



"Buyer" shall mean Spirit Television LLC, a Delaware limited liability company.

"Buyer Indemnatee" shall have the meaning set forth in Section 8.1.

"Buyer's Closing Certificate" shall mean the certificate of Buyer in the form of Exhibit E.

"Buyer's Opinion of Counsel" shall mean the opinion of counsel of Buyer in the forms of Exhibit F.

"Buyer's Performance Certificate" shall mean the certificate of Buyer in the form of Exhibit G.

"Cable Agreements" shall mean those agreements with respect to cable carriage and cable retransmission consent, all of which are listed on Schedule 1.1.

"Closing" shall mean the conference to be held at 10:00 A.M. on the Closing Date at the offices of Dickstein Shapiro LLP, 1825 Eye Street, NW, Washington, D.C., or at such other time and place as may be designated by counsel to Buyer or Buyer's lender or as the parties may mutually agree in writing, at which the transactions contemplated by this Agreement shall be consummated.

"Closing Date" shall mean the date selected by Buyer within ten (10) days following the date that the FCC Consents become Final Orders, provided, that Buyer can unilaterally waive the requirement that the FCC Consents become Final Orders and require, upon ten (10) days notice to Seller, that the Closing Date be held at any time after the FCC Consents become effective. The Closing shall be deemed effective as of 12:01 A.M., Central Time, on the Closing Date.

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

"Consent-Pending Contract" shall have the meaning ascribed thereto in Section 9.4.

"DMA" shall mean the KXJB's "Designated Market Area", as such term is defined or used by Nielsen Media Research.

"Exhibit" or "Exhibits" shall mean those exhibits referred to in this Agreement which have been bound in a separate volume and executed by or on behalf of the parties and delivered by parties hereto concurrently with the execution of this Agreement, which exhibits are hereby incorporated herein and made a part of this Agreement.

"FCC" shall mean the Federal Communications Commission.

"FCC Applications" shall mean, collectively, the FCC long form applications and any and all other necessary FCC applications filed or to be filed by Buyer and Seller with the FCC to secure the FCC's approval of the assignment of the Licenses from Seller to Buyer.

"FCC Consents" shall mean, collectively, the action(s) taken by the FCC granting its consent to the assignment of the Licenses from Seller to Buyer pursuant to the FCC Applications without any conditions materially adverse to Seller or Buyer.

"Final Orders" shall mean the FCC Consents that are no longer subject to review or reconsideration by the FCC or any court of competent jurisdiction in accordance with the deadlines set forth in the Communications Act of 1934, as amended, and the published rules of the FCC, and no such review or reconsideration is pending.

"Indemnity Deductible" shall have the meaning set forth in Section 8.4(c).

"Indemnity Guarantors" shall mean collectively, BCI Growth IV, L.P., a Delaware limited partnership, Catamount Holdings LLC, a Delaware limited liability company and parent of Seller, and Catamount Broadcasting of Chico-Redding, Inc., a Delaware corporation, the guarantors under the Indemnity Guaranty Agreement.

"Indemnity Guaranty Agreement" shall mean the Indemnity Guaranty Agreement in the form of Exhibit H by the Indemnity Guarantors in favor of Buyer.

"Initial Purchase Agreement" shall have the meaning set forth in the recitals.

"Intangible Property" shall mean all of the rights of Seller in and to the call letters "KXJB-TV" and "KXJB" as used in connection with television broadcasting and all goodwill associated therewith.

"IRS" shall mean the Internal Revenue Service.

"Knowledge of Seller" (or any like or similar terms) shall mean the actual knowledge of any of the following individuals: Ralph Becker, Daniel Duman, Lynette Samuelson and Ron Barr (or any successors thereto).

"Licenses" shall mean the licenses, permits, authorizations and construction permits issued by the FCC related to the operation of the Station and all auxiliary facilities licensed by the FCC for operation in connection with the Station, all as listed in Schedule 1.3.

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

"Loan" shall have the meaning set forth in the recitals.

"Loan Agreement" shall have the meaning set forth in the recitals.

"Losses" shall mean, collectively, losses, damages, costs, expenses, liabilities, obligations and claims of any kind, including, without limitation, reasonable attorneys' fees and expenses.

"Material Adverse Effect" shall mean a material adverse effect on the present business, operations, financial condition or results of operations of the Station, in each case taken as a whole.

"NDT" shall mean North Dakota Television, L.L.C., a Delaware limited liability company.

"Option" shall have the meaning set forth in the recitals.

"Option Agreement" shall have the meaning set forth in the recitals.

"Outsourcing Agreement" shall have the meaning set forth in the recitals.

"Permitted Encumbrances" shall mean (i) Liens imposed by any governmental authority for taxes not yet due and/or which are being contested in good faith (and for which adequate financial reserves have been made); and (ii) Liens related to or arising out of the Loan.

"Person" shall mean any natural person, general or limited partnership, corporation, firm, limited liability company or partnership, association, trust, or other legal entity.

"Program Rights" shall mean all rights presently existing or obtained prior to the Closing by Seller to broadcast television programs, including, but not limited to, series, films or shows as part of the Station's programming and for which Seller or the Station is or will be obligated to compensate the vendor of such Program Rights, including all film and program barter agreements.

"Programming Contracts" shall mean those agreements of Seller for Program Rights, all of which are listed in Schedule 1.1.

"Purchase Price" shall mean the sum of One Million Dollars (\$1,000,000.00).

"Purchased Assets" shall mean the rights, title and interests of Seller in and to: (i) the Assumed Contacts; (ii) the Intangible Property; and (iii) the Licenses.

"Related Agreements" shall have the meaning set forth in the recitals.

"Schedules" shall mean those schedules referred to in this Agreement which have been bound in a separate volume delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement, which schedules are hereby incorporated herein and made a part of this Agreement.

"Seller" shall mean Catamount Broadcasting of Fargo LLC, a Delaware limited liability company. Notwithstanding any other provision contained in this Agreement, the term "Seller" shall be deemed to include the Station where the context shall so require.

"Seller's Closing Certificate" shall mean the certificate of Seller in the form of Exhibit I.

"Seller Indemnitee" shall have the meaning set forth in Section 8.2.

"Seller's Opinion of Counsel" means the legal opinion of counsel to Seller, in the form of Exhibit J.

"Seller's Performance Certificate" shall mean the certificate of Seller in the form of Exhibit K.

"Station" shall have the meaning set forth in the recitals.

"Trade Secrets" shall mean all proprietary information of Seller relating to the Station.

"Transferred Employee" shall have the meaning set forth in Section 9.6.

**SECTION 1.2. Singular/Plural; Gender.** Where the context so requires or permits, the use of the singular form includes the plural, the use of the plural form includes the singular, and the reference to either gender includes either and both gender.

## **ARTICLE II PURCHASE AND SALE**

**SECTION 2.1. Purchase and Sale.** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase from Seller, all of the Purchased Assets for the consideration specified in Section 2.2.

**SECTION 2.2. Payments and Assumptions on Closing.** At the Closing on the Closing Date, in consideration for good and marketable title to the Purchased Assets, free of any and all Liens except for the Permitted Encumbrances, Buyer shall (a) pay to Seller the Purchase Price either, at Buyer's option, by wire transfer of immediately available federal funds or by satisfaction and cancellation of the outstanding principal indebtedness of Seller under the Loan Agreement (exclusive, however, of any principal indebtedness incurred after the date of the Option Agreement), and (b) assume the Assumed Liabilities pursuant to the Assumption Agreement and other documents referenced herein.

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

(a) Seller shall deliver, or shall have caused to be delivered, to Buyer, properly executed and dated as of the Closing Date by Seller, as applicable: (i) the Assignment of Licenses; (ii) the Assignment of Intangible Property; (iii) the Assignment and Assumption of Contracts; (iv) the Assumption Agreement; (v) Seller's Closing Certificate; (vi) Seller's Opinion of Counsel; (vii) Seller's Performance Certificate; (ix) the Indemnity Guaranty Agreement, (x) certificates of good standing or existence (or other comparable certificate) for Seller from the States of Delaware and North Dakota; and (xi) such other documents as Buyer may reasonably request to consummate the transactions contemplated hereby and effectuate the purposes of this Agreement, all to be reasonably satisfactory in form and substance to Seller.

(b) In addition to the payments described in Section 2.2, Buyer shall deliver, or shall have caused to be delivered, to Seller, properly executed and dated as of the Closing Date, as applicable: (i) the Assignment of Licenses; (ii) the Assignment of Intangible Property; (iii) the Assignment and Assumption of Contracts along with any and all necessary third party consents; (iv) the Assumption Agreement; (v) Buyer's Closing Certificate; (vi) Buyer's Opinion of Counsel; (vii) Buyer's Performance Certificate; (ix) certificates of good standing (or other comparable certificates) for Buyer from the States of Delaware and North Dakota; and (x) such other documents as Seller may reasonably request to consummate the transactions contemplated hereby and effectuate the purposes of this Agreement, all to be reasonably satisfactory in form and substance to Buyer.

**SECTION 2.4. Taxes.** All federal, state and local transfer, sales and use taxes applicable to, imposed upon or arising out of the sale and transfer to Buyer of the Purchased Assets as contemplated by this Agreement shall be shared equally by Buyer on the one hand and Seller on the other hand.

**SECTION 2.5. Allocation of Purchase Price.** Within sixty (60) days after Closing, Buyer shall prepare, with Seller's cooperation, a schedule (the "Allocation Schedule") allocating the Purchase Price (including for purposes of this Section, any other consideration paid by Buyer and the Assumed Liabilities), among the Purchased Assets purchased pursuant to this Agreement. Seller shall have thirty (30) days to submit any objections or amendments to the proposed schedule, which will be deemed accepted if Buyer receives no objections or amendments within that 30-day period. If the parties cannot reach agreement on the Allocation Schedule within thirty (30) days after Buyer's receipt of Seller's objections and/or amendments, the parties shall refer the matter to a mutually-agreeable certified public accountant ("CPA") experienced in financial matters relating to television station who shall resolve any dispute within thirty (30) days after selection. The decision of the CPA shall be final and binding in the absence of fraud. The fees and expenses of the CPA shall be divided equally between Seller and Buyer. Seller and Buyer each agree to file IRS Form 8594 and all federal, state and local tax returns in accordance with the Allocation Schedule.

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

Subject to Section 11.16, Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date of this Agreement and will be true and correct as of the Closing Date, except for statements that refer to a particular date, which Seller represents will be true and correct as of such date.

**SECTION 3.1. Organization.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to conduct business in the State of North Dakota. Seller has the limited liability company power to own, lease, and operate its properties and to carry on its business, as such business is now conducted.

**SECTION 3.2. Authorization; Enforceability.** The execution, delivery and performance of this Agreement and all of the other agreements, documents and instruments required under this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby and thereby (including the sale, transfer, assignment and delivery of the Purchased Assets by Seller to Buyer hereunder) are within the limited liability company power of Seller and have been duly authorized by all necessary action on behalf of Seller. This Agreement is, and the other agreements, documents and instruments required by this Agreement will be, when executed and delivered by Seller, the valid and binding obligations of Seller, enforceable against Seller in accordance with their 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).

**SECTION 3.3. Absence of Conflicting Agreements, Etc.** Except as set forth in Schedule 3.3, none of the execution, delivery or performance of this Agreement by Seller, nor the consummation of the transactions contemplated hereby by Seller, does or would, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under the certificate of formation or limited liability company agreement or other governing instruments of Seller, any agreement or contract to which Seller is a party or by which it is bound, or to the Knowledge of Seller, any federal, state or local law, statute, ordinance, rule or regulation applicable to Seller, or any court or administrative order or process, to which Seller is subject or by which it is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority that has not been obtained, declared or filed, except for or in respect of the FCC Consents; or

(c) require the consent of any Person under any Assumed Contract or any material agreement, arrangement or commitment of any nature to which Seller is a party.

**SECTION 3.4. Purchased Assets; Liens and Encumbrances.** Seller owns or holds good and marketable title in and to all of the Purchased Assets free and clear of any and all Liens, except for Permitted Encumbrances.

**SECTION 3.5. Contracts.**

(a) The Assumed Contracts constitute all of the agreements to which Seller is a party relating to properties, undertakings, obligations or commitments to or for third Persons in the operations and conduct of the Station other than: (i) Seller's limited liability company agreement or other agreements related to the formation or equity of Seller, and (ii) the Loan Agreement and the agreements, instruments and documents related thereto.

(b) Seller has performed each covenant and agreement of the Assumed Contracts that are required to be performed by it at or before the date hereof and no event of default on the part of Seller and, to the Knowledge of Seller, on the part of any other party thereto exists under the Assumed Contracts.

(c) The Assumed Contracts are in full force and effect in all material respects and constitute legal and binding obligations of Seller and, to the Knowledge of Seller, each other party thereto in accordance with their 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).

**SECTION 3.6. Taxes.** (a) All income tax returns required to be filed by or on behalf of Seller have been filed with the appropriate governmental agencies in all jurisdictions in which such returns and reports are required to be filed on or prior to the date hereof. All taxes shown thereon and due and owing have been fully paid. To the Knowledge of Seller, no claim has ever been made by any authority in a jurisdiction where Seller does not file tax returns or reports that Seller is or may be subject to taxation by such jurisdiction. Seller has not requested, and is not the beneficiary of, any extension of time within which to file any tax returns or reports.

(b) Except as set forth in Schedule 3.6, no issues, claims or disputes have been asserted, claimed or raised, in writing, by the Internal Revenue Service or any other taxing authority in connection with an audit or examination of any of the returns and reports referred to in Section 3.6(a). None of Seller's income tax returns or reports has been audited. None of Seller's income tax returns or reports is currently subject to audit. Seller has not waived any statute of limitations with respect to income taxes or agreed to any extension of time with respect to an income tax assessment or deficiency.

**SECTION 3.7. Governmental Authorizations.** The Licenses described in Schedule 1.3 constitute all of the licenses, permits and other authorizations issued by the FCC or any other governmental body to Seller with respect to the operation of the Station. The Licenses are in full force and effect. Except as set forth on Schedule 3.7 or those actions applicable to the television

industry as a whole, no action or proceeding (including any petition to deny, investigation, complaint or informal objection) is pending, or to the Knowledge of Seller, threatened before the FCC or any other governmental body (including but not limited to federal, state and local courts) with respect to the Licenses. The Licenses are not subject to any conditions except those set forth on the Licenses themselves or those conditions generally applicable to television station of the same class and service. Subject to the Outsourcing Agreement, Seller has timely filed and otherwise taken any and all actions required or reasonably necessary to preserve the Station's DTV construction permit and all rights incident thereto under the Communications Act of 1934, as amended, and the FCC's rules and policies.

**SECTION 3.8. Compliance with FCC Requirements.** The Station is in material compliance with the terms and conditions of the Licenses as well as the Communications Act of 1934, as amended, and the policies, rules and regulations of the FCC and the Federal Aviation Administration.

**SECTION 3.9. Brokers.** Except as set forth in Schedule 3.9, neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity.

**SECTION 3.10. Employees.** Schedule 3.10 is a true and complete list of all employees of Seller showing each of their names, titles and current annual base salary rates. Except as set forth in Schedule 3.10, all of Seller's employees are employed at will and Seller is not bound by any written employment agreement.

**SECTION 3.11. Intangible Property.** Except as set forth on Schedule 3.11:

- (a) There are no claims, demands or proceedings instituted, pending or, to the Knowledge of Seller, threatened by any third Person by or before the FCC or any court of competent jurisdiction pertaining to or challenging Seller's right to use any of the Intangible Property; and
- (b) Seller is not infringing, misappropriating or otherwise violating any trademark, trade name, patent or copyright owned by any third Person.

**SECTION 3.12. Absence of Certain Events.** Except as reflected in Schedule 3.12, since the date of the Option Agreement, there has not been:

- (a) any material adverse amendment or early termination of any material agreement to which Seller is or was a party, including the Assumed Contracts;
- (b) any extraordinary losses (whether or not covered by insurance) or waiver by Seller of any extraordinary rights of value relating to the Station; or
- (c) any sale, assignment, lease or other transfer or disposition of any of the Purchased Assets.



**SECTION 3.13. No Litigation or Labor Disputes; Compliance with Laws.** Except as set forth in Schedule 3.13:

(a) Except for FCC rulemaking procedures generally affecting the television broadcasting industry, there is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or other proceeding before or by any commission, agency or other governmental body (including, without limitation, the FCC or federal, state and local courts) pending or, to the Knowledge of Seller, threatened against Seller or involving any of the Purchased Assets; and

(b) Subject to the Outsourcing Agreement, Seller has complied in all material respects with all applicable law with respect to operation of the Station and the preservation of the Licenses, including but not limited to the Communications Act of 1934, as amended, and the rules and policies of the FCC.

**SECTION 3.14. Material Disclosures.** To the Knowledge of Seller, the representations and warranties contained in this Article III do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements and information contained in this Article III not misleading; provided, that nothing in this Section 3.14 in any way modifies or qualifies any representation or warranty of Seller in this Agreement.

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

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement and will be true and correct as of the Closing Date, except for statements that refer to a particular date, which Buyer represents will be true and correct as of such date.

**SECTION 4.1. Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to conduct business in the State of North Dakota. Buyer has the power necessary to own, lease, and operate its respective properties and to carry on its business as such business is now conducted.

**SECTION 4.2. Authorization; Enforceability.** The execution, delivery and performance of this Agreement and all of the other agreements, documents and instruments required under this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby and thereby (including the sale, transfer, assignment and delivery of the Purchased Assets by Seller to Buyer hereunder) are within the power of Buyer and have been duly authorized by all necessary action on behalf of Buyer. This Agreement and the other agreements, documents and instruments required by this Agreement will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their 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).

**SECTION 4.3. Absence of Conflicting Agreements.** None of the execution, delivery or performance of this Agreement and all of the other agreements, documents and instruments required under this Agreement or such other agreements by Buyer nor the consummation of transactions contemplated by this Agreement or by such other agreements, does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of, or constitute a default under, the certificate of formation or limited liability company agreement of Buyer, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer is bound or, to the Knowledge of Buyer, any federal, state or local law, statute, ordinance, rule or regulations, or any court or administrative order or process to which Buyer is a party or by which Buyer is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority that has not been obtained, declared or filed, except for or in respect of the FCC Consents; or

(c) except as set forth in Schedule 4.3, require the consent of any Person under any material agreement, arrangement or commitment of any nature to which Buyer is a party.

**SECTION 4.4. Brokers.** Except as set forth in Schedule 4.4, neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of or representing Buyer as broker, finder, investment banker, financial advisor or in any similar capacity.

**SECTION 4.5. Due Diligence.** Buyer has conducted its own independent investigation of Seller and the Purchased Assets, has been provided the opportunity to obtain information and documents concerning Seller and the Purchased Assets and has had the opportunity to ask questions of, and receive answers from, the officers of Seller pertaining to Seller, the Station and the Purchased Assets; provided, that such independent investigation and other information provided by Seller does not in any way modify or affect Seller's representations and warranties under this Agreement.

**SECTION 4.6. Absence of Litigation.** There is no decree, judgment, order, litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, to the Knowledge of Buyer, threatened to which Buyer is a party and which could materially and adversely affect Buyer's ability to purchase the Purchased Assets under this Agreement or to perform its obligations under the Option Agreement or any other document or instrument referred to herein.

**SECTION 4.7. FCC Qualification.** Buyer is legally, financially and otherwise qualified under the Communications Act and the published rules, regulations and policies of the FCC to be a Licensee of the Station.

## **ARTICLE V CONDITIONS PRECEDENT OF BUYER**

Subject to Section 11.16, the obligation of Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing.

**SECTION 5.1. Compliance with Agreements.** All of the covenants and obligations that Seller is required to perform or comply with under this Agreement and the Related Agreements prior to or at the Closing shall have been duly performed and complied with in all material respects.

**SECTION 5.2. Representations and Warranties.** Each of the representations and warranties made by Seller in this Agreement or in any certificate, document or instrument delivered in connection herewith (i) that are qualified by materiality shall be true and correct and (ii) that are not qualified by materiality shall be true and correct in all material respects, in each case at and as of the Closing Date, except for representations or warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct, or true and correct in all material respects, as the case may be, as of such date or time).

**SECTION 5.3. Deliveries at Closing.** Seller shall have delivered, or caused to be delivered, to Buyer the documents, each properly executed and dated as of the Closing Date, required pursuant to Section 2.3(a), including but not limited to necessary third party consents to the assignment of the Assumed Contracts.

**SECTION 5.4. Absence of Proceedings.** No claim, suit, action or other proceeding shall be pending or threatened in writing before or by any court, governmental agency, arbitrator or other entity against any of the parties to this Agreement that could, if adversely resolved, make it unlawful to consummate the Closing or the transactions contemplated by this Agreement or result in material damages to Buyer.

**SECTION 5.5. No Injunction.** No injunction, restraining order or decree of any nature of any court or governmental or regulatory authority shall exist against any of the parties hereto, or any of the principals, officers, directors, managers, partners, stockholders or members of any of them, that restrains, prevents or materially and adversely changes the transactions contemplated hereby.

**SECTION 5.6. FCC Consents.** The FCC Consents shall have been issued, and shall, at Closing, be Final Orders.

**SECTION 5.7. Affiliation Agreement.** The Affiliation Agreement shall be in full force and effect, there shall have been no amendments or changes to the Affiliation Agreement

from and after the date of this Agreement (other than those applicable generally to CBS affiliates), no party to the Affiliation Agreement shall be in material default thereof, and Seller shall not have received any notice, whether oral or written, from CBS that the Affiliation Agreement could be terminated prior to its current expiration date or modified in a manner adverse to Seller.

If any of the conditions set forth in this Article V have not been satisfied prior to or at the Closing, Buyer may nevertheless elect (but shall not be required) to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE VI CONDITIONS PRECEDENT OF SELLER**

The obligation of Seller to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction of each of the following conditions prior to or at the Closing.

**SECTION 6.1. Compliance with Agreement.** All of the covenants and obligations that Buyer is required to perform or comply with under this Agreement prior to or at the Closing shall have been duly performed and complied with in all material respects.

**SECTION 6.2. Representations and Warranties.** Each of the representations and warranties of Buyer contained in this Agreement or in any certificate, document or instrument delivered in connection herewith (i) that are qualified by materiality shall be true and correct and (B) that are not qualified by materiality shall be true and correct in all material respects, in each case at and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct, or true and correct in all material respects, as the case may be, as of such date or time).

**SECTION 6.3. Deliveries at Closing.** Buyer shall have delivered, or caused to be delivered, to Seller the documents, each properly executed and dated as of the Closing Date, required pursuant to Section 2.3(b). Buyer shall also have made the payments described in Section 2.2 and otherwise complied in all respects with its other obligations under Article II.

**SECTION 6.4. Absence of Proceedings.** No claim, suit, action or other proceeding shall be pending or threatened in writing before or by any court, governmental agency, arbitrator or other entity against any of the parties to this Agreement that could, if adversely resolved, make it unlawful to consummate the Closing or the transactions contemplated by this Agreement or result in material damages Seller.

**SECTION 6.5. No Injunction.** No injunction, restraining order or decree of any nature of any court or governmental or regulatory authority shall exist against any of the parties hereto, or any of the principals, officers, directors, managers, partners, stockholders or members of any of them, that restrains, prevents or materially and adversely changes the transactions contemplated hereby.

**SECTION 6.6. Cancellation of Indebtedness.** All of Seller's obligations and liabilities under the Loan Agreement for the principal amount of the Loan (\$1,000,000), along with any and all amounts for which Seller is entitled to reimbursement under the Outsourcing Agreement, shall have been satisfied and cancelled as a result of Buyer's payment of the Purchase Price.

**SECTION 6.7. FCC Consents.** The FCC Consents shall have been issued and shall have become a Final Order.

If any of the conditions set forth in this Article VI have not been satisfied prior to or at the Closing, Seller may nevertheless elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE VII SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 7.1. Survival of Representations and Warranties.** All of the representations and warranties of the parties hereto contained in the Agreement shall survive the Closing and continue in full force and effect for a period of sixteen (16) months thereafter; provided, however, that the representations and warranties contained in Section 3.6 (related to taxes) shall survive the Closing and continue in full force and effect for the applicable statute of limitations with respect thereto. Any claims with respect to the foregoing sentence under Section 8.1 or Section 8.2 must be asserted in writing with reasonable particularity by the party making such claims within the applicable survival period.

**SECTION 7.2. Survival of Covenants and Agreements.** The respective covenants and agreements of the parties contained in this Agreement to be performed following the Closing shall survive the Closing until performed or waived by the appropriate party hereto. Any claims as to a breach of a covenant or agreement under Article VIII must be asserted in writing with reasonable particularity by the party making such claim.

## **ARTICLE VIII INDEMNIFICATION**

**SECTION 8.1. Indemnification of Buyer.** Subject to the terms, conditions and limitations set forth in Article VII and this Article VIII, Seller shall indemnify and hold harmless Buyer, its successors and assigns (individually, a "Buyer Indemnitee" and collectively, "Buyer Indemnites") from and against any and all Losses that any Buyer Indemnitee may at any time suffer or incur, or become subject to, as a result of or in connection with:

(a) any breach of the representations and warranties made by Seller in this Agreement or any certificate delivered by Seller;

(b) any failure by Seller to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking, or obligation to be performed, fulfilled, or complied with by Seller under this Agreement;

(c) any fees, expenses, costs or other liabilities or obligations of any Person listed on Schedule 3.9; or

(d) any suit, action or other proceeding brought by any governmental authority or other Person arising out of, or in any way related to, any of the matters referred to in this Section 8.1.

**SECTION 8.2. Indemnification of Seller.** Subject to the terms, conditions and limitations set forth in Article VII and this Article VIII, Buyer shall indemnify and hold harmless Seller and its successors and assigns (individually a "Seller Indemnatee," and collectively the "Seller Indemnitees") from, against and in respect of any and all Losses, which Seller Indemnitees may at any time suffer or incur, or become subject to, as a result of or in connection with:

(a) any breach of the representations and warranties made by Buyer in this Agreement or any certificate delivered by Buyer;

(b) any failure by Buyer to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking, or obligation to be performed, fulfilled, or complied with by Buyer under this Agreement;

(c) any failure by Buyer to carry out, perform or otherwise fulfill any of the Assumed Liabilities;

(d) any fees, expenses, costs or other liabilities or obligations of any Person listed on Schedule 4.4; or

(e) any suit, action or other proceeding brought by any governmental authority or other Person arising out of, or in any way related to, any of the matters referred to in this Sections 8.2.

**SECTION 8.3. Indemnification Procedures.** If any action, suit, proceeding, claim, liability, demand or assessment shall be asserted against any Seller Indemnatee or Buyer Indemnatee (for purposes of this section, each an "Indemnatee") in respect of which such Indemnatee proposes to demand indemnification, such Indemnatee shall notify the indemnifying party (either Buyer or Seller and, for purposes of this section, the "Indemnitor") thereof within a reasonable period of time after assertion thereof, and such notice shall include copies of all suit, service and claim documents, all other relevant documents in the possession of the Indemnatee, and an explanation of the Indemnatee's contentions and defenses with as much specificity and particularity as the circumstances permit; provided, that the failure of the Indemnatee to give such notice shall not relieve the Indemnitor of its obligations under this Article VIII, except to the extent that the Indemnitor shall have been prejudiced thereby. Subject to rights of or duties to any insurer or other third Person having liability therefor, the Indemnitor shall have the right within thirty (30) days after receipt of such notice to assume the control of the defense, compromise or settlement of any such action, suit, proceeding, claim, liability, demand, or assessment, including, at its own expense, employment of counsel; provided further, however, that if the Indemnitor shall have exercised its right to assume such control, the Indemnatee may, in its sole discretion and expense, employ counsel to represent it (in addition to counsel

employed by the Indemnitor) in any such matter, and in such event counsel selected by the Indemnitor shall be required to reasonably cooperate with such counsel of the Indemnatee in such defense, compromise or settlement for the purpose of informing and sharing information with such Indemnatee. So long as the Indemnitor is defending in good faith any such claim or demand asserted by a third Person against the Indemnatee, the Indemnatee shall not settle or compromise such claim or demand. If the Indemnitor has assumed the defense of any such claim or demand, then it shall have the power and authority to settle or consent to the entry of judgment without the consent of the Indemnatee if the judgment or settlement results only in the payment by the Indemnitor of the full amount of money damages and includes a release of the Indemnatee from any and all liability thereunder; provided, that the Indemnitor shall have made arrangements for the payment of such damages in a manner reasonably satisfactory to the Indemnatee. In all other events, the Indemnitor shall not consent to the entry of judgment or enter into any settlement without the prior written consent of the Indemnatee, which consent shall not be unreasonably withheld. The Indemnatee shall make available to the Indemnitor or its agents all records and other materials in the Indemnatee's possession reasonably required by them for their use in contesting any third party claim or demand.

#### **SECTION 8.4. Certain Limitations of Liability; Determination of Losses.**

(a) Anything to the contrary herein notwithstanding, no recovery under the indemnification provisions of this Agreement shall include any special, indirect, incidental or consequential damages whatsoever.

(b) No Loss shall be asserted by any party with respect to any matter to the extent such Loss is covered by insurance. The parties hereto shall make appropriate adjustments for tax consequences and insurance coverage (including increases in insurance policy premiums) in determining Losses for the purposes of this Article VIII. All indemnification payments under this Article VIII shall be deemed adjustments to the purchase price payable pursuant to Section 2.2.

(c) Any provision of this Agreement to the contrary notwithstanding, neither party shall have any obligation to indemnify the other party for any Losses suffered or incurred in respect of a breach of such party's representations and warranties unless and until such Losses exceed an aggregate deductible of Ten Thousand Dollars (\$10,000.00) (the "Indemnity Deductible") (after which the indemnification obligation shall extend only to such Losses in excess of the Indemnity Deductible). Buyer and Seller hereby acknowledge and agree that such Indemnity Deductible shall not be applicable to any claim or claims for indemnification with respect to any failure by Seller to perform its obligations, covenants and agreements hereunder.

(d) Any provision of this Agreement to the contrary notwithstanding, the aggregate amount of Buyer Indemnitees' Losses required to be indemnified or paid by Seller shall not exceed the sum of One Hundred Thousand Dollars (\$100,000) (after which point Seller shall have no liability or obligation to indemnify the Buyer Indemnitees with respect to any further claims for indemnification); provided, that the foregoing limitation shall not apply to any claim or claims for indemnification with respect to any failure by Seller to perform its obligations, covenants and agreements hereunder.

The calculation of the amount of Loss subject to indemnification under this Article VIII shall be made without regard to any materiality or Material Adverse Effect qualification or exception set forth in any representation, warranty, covenant or agreement on the part of any party hereto.

**SECTION 8.5. Remedies.** Except in the case of intentional misrepresentation or fraud, the indemnification provisions of this Article VIII are the sole and exclusive remedy of Buyer and Seller for a post-Closing breach or nonperformance of any representations, warranties or covenants contained in this Agreement.

## **ARTICLE IX CERTAIN AGREEMENTS**

**SECTION 9.1. Press Releases and Public Announcements.** From the date of this Agreement until the earlier of (i) the termination of this Agreement or (ii) the consummation of the Closing, Seller and Buyer shall consult and cooperate with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby and shall not issue any such press release or make any such public statement without the prior written consent of the other party hereto, which shall not be unreasonably withheld or delayed, except with respect to the obligations under Section 9.4 and except as and to the extent that such party shall be obligated by law or regulation, in which case the other party shall be so advised and the parties shall use their reasonable efforts to cause a mutually agreeable press release or public announcement to be issued. Notwithstanding the foregoing, Seller shall timely and properly publish and broadcast, or cause to be timely and properly published and broadcast, the public notices concerning the filing of the FCC Applications in accordance with the requirements of Section 73.3580 of the FCC's rules; and the parties shall file with the FCC copies of this Agreement and any and all other required documentation in connection with FCC applications described in this Section.

**SECTION 9.2. FCC Consents.** It is specifically understood and agreed by Buyer and Seller that the Closing shall be in all respects subject to, and conditioned upon, the receipt of prior FCC Consents for the assignment of the Station's Licenses to Buyer from Seller. Buyer and Seller shall prepare and file with the FCC as soon as practicable but in no event later than five (5) business days after the date of this Agreement the FCC Applications. After the aforesaid FCC Applications have been filed with the FCC, Buyer and Seller shall prosecute such applications with all reasonable diligence and take all steps reasonably necessary to obtain the requisite FCC Consents. No party hereto shall take any action that such party knows or should know would adversely affect obtaining the FCC Consents, or adversely affect the FCC Consents becoming Final Orders. Buyer shall pay all FCC filing or transfer fees relating to the transactions contemplated hereby irrespective of whether the transactions contemplated by this Agreement are consummated and irrespective of whether such fees are assessed before or after the Closing.

**SECTION 9.3. Control Prior to Closing.** Between the date hereof and the Closing Date, Seller shall maintain control over the Station and the Station's facilities, including control over the programming, marketing, employees and policies of the Station and subject to the terms of the Outsourcing Agreement.



**SECTION 9.4. Notices and Consents.** From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Article X, Seller shall give any notices required to be given to third Persons (with copies thereof promptly delivered to Buyer and its counsel), and Seller shall use its commercially reasonable efforts to obtain and deliver to Buyer on or prior to the Closing Date all consents and approvals from third Persons whose consent or approval is required in connection with Buyer's acquisition of the Purchased Assets under this Agreement; provided, however, that Seller shall not be required to pay any fees or provide or deliver any other consideration to any Person in order to obtain any such consent or approval. The parties shall cooperate with each other in securing all third party consents or approvals. Buyer's cooperation shall include, without limitation, signing and delivering consent and assumption forms provided by third parties to the Assumed Contracts. In the event that Seller is unable to obtain a necessary consent from a third party to a Programming Contract or Cable Agreement by the Closing Date ("Consent-Pending Contract"), Seller shall so advise Buyer, and Buyer shall continue to receive the benefits of and perform on and after the Closing Date such Consent-Pending Contracts. Subject to the terms of this Section 9.4 (and only so long as Buyer is receiving the benefit of the Consent-Pending Contract), Buyer will be responsible for and will timely perform the financial obligations under such Consent-Pending Contracts to the extent arising on and after the Closing Date. Buyer and Seller shall cooperate with one another to provide to Buyer the benefits of such Consent-Pending Contracts until the receipt, if any, of the necessary third-party consents, and Buyer shall perform the obligations of the Seller under such Consent-Pending Contracts.

**SECTION 9.5. Further Assurances.** Upon the reasonable request of any party hereto, the other party or parties hereto shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and take such further action as the requesting party may reasonably request in order to fully effectuate the purposes, terms and conditions of this Agreement.

**SECTION 9.6. Station Employees.** Buyer shall, at least ten (10) business days prior to the Closing, consider making offers to hire all employees of Seller as of the Closing Date but shall be under no obligation to do so. Buyer understands, acknowledges and agrees that upon hire by Buyer, such employees (the "Transferred Employees") shall no longer be entitled to participate in Seller's employee benefit plans, and Buyer shall cover those Eligible Employees whom they hire under Buyer's employee benefit plans (subject to all applicable limitations and restrictions in respect of such employee benefit plans) and Buyer shall not be deemed to have assumed Seller's employee benefit plans or any obligations thereunder. Seller agrees that for a period commencing on and from the date hereof and ending twelve (12) months following the Closing, Seller shall not (x) hire any Transferred Employee who accepts employment with Buyer after the Closing Date in accordance with this Section or (y) solicit or induce any Transferred Employee who accepts employment with Buyer after the Closing Date in accordance with this Section to return to the employ of Seller or otherwise attempt to obtain the services of any such person.

## **ARTICLE X TERMINATION**

**SECTION 10.1. Termination.** This Agreement may, by written notice given prior to the Closing, be terminated at any time:

- (a) by mutual written consent of Seller and Buyer;
- (b) by Buyer, if Seller shall materially breach or default in performance of any of its representations, warranties, covenants or obligations hereunder, and such breach or default in performance has resulted in or is reasonably likely (based on the written opinion of Buyer's counsel) to result in the revocation or non-renewal of the main station license for KXJB, which breach or default is not cured or waived within thirty (30) days after Seller's receipt of written notice thereof from Buyer;
- (c) by Seller, if Buyer shall materially breach or default in performance of any of its representations, warranties, covenants or obligations hereunder, and such breach or default in performance has resulted in or is reasonably (in the written opinion of counsel to Seller) to result in the revocation or non-renewal of the main station FCC license for television station KXJB unless such breach can be and is cured by Buyer within thirty (30) days after Buyer's receipt of written notice thereof from Seller; or
- (d) by Buyer, if any of the conditions set forth in Article VI of this Agreement shall not have been fulfilled within twelve (12) months following the date of this Agreement in any material respect or if satisfaction of such a condition is or becomes impossible and Buyer has not waived such condition on or prior to Closing (unless the failure to satisfy such condition results primarily from Buyer's breach of any representation, warranty, obligation or agreement under this Agreement or the Related Agreements, but in no event shall such failure affect Buyer's right to assign its rights and obligations under this Agreement).

**SECTION 10.2. Liability After Termination.** Termination of this Agreement for any reason, except pursuant to Section 10.1(a), shall not relieve any party for liability for breach of any provision of this Agreement occurring prior to termination.

## **ARTICLE XI MISCELLANEOUS**

**SECTION 11.1. Entire Agreement; Amendment; and Waivers.** This Agreement and the agreements required to be delivered pursuant hereto or referred to herein constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein or therein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

**SECTION 11.2. Expenses.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the parties hereto shall pay its own costs and expenses (including fees and expenses of its respective counsel, accountants, agents and other experts) incurred in connection with the negotiation and preparation of this Agreement and consummation of the transactions contemplated hereby; provided, that if any party institutes any action before a court of competent jurisdiction to enforce its rights under this Agreement, the prevailing party issues shall be reimbursed by the other party for all reasonable expenses incurred thereby, including reasonable attorneys' fees.

**SECTION 11.3. Benefit; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and their respective proper successors and permitted assigns. Seller may not assign its rights and obligations under this Agreement, either in whole or in part, without the prior written consent of Buyer. Buyer may assign its rights and obligations under this Agreement without Seller's consent to any other party who is controlled by or under common control with Buyer or who is qualified to be a holder of the Licenses for the Station and who otherwise agrees in writing to be bound by the terms of this Agreement. Notwithstanding the foregoing, either party shall be permitted to collaterally assign its rights (including granting a security interest herein) under this Agreement to its senior lender(s) without the consent of any other party. No assignment permitted or consented to under this Agreement shall act as a novation and the assigning party shall not be released from, and shall remain fully liable for, all of its obligations and liabilities under this Agreement. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted successors and assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their successors and permitted assigns any right, remedy or claim, legal or equitable under or by reason of this Agreement.

**SECTION 11.4. Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be addressed to the other party in accordance with the information set forth below and sent by facsimile machine to the number shown below with written confirmation of receipt or by a nationally recognized commercial overnight delivery service, charges prepaid, unless and until either of such parties notifies the other in accordance with this Section of a change of address or change of telecopy number:

If to Buyer:	Spirit Media LLC
	Attention: Michael A. Wach
	7 Davis Road
	Port Washington, New York 11050
	Telephone No.: (516) 883-0583
	Telecopy No.: (516) 883-2668

With a copy to: Dickstein Shapiro LLP  
1825 Eye Street NW  
Washington, DC 20006  
Attention: Lewis J. Paper, Esq.  
Telephone No.: (202) 420-2200  
Facsimile No.: (202) 420-2201

If to Seller: Catamount Broadcasting of Fargo LLC  
71 East Avenue  
Norwalk, Connecticut 06851  
Attention: Ralph E. Becker  
Telephone No.: (203) 852-7164  
Facsimile No.: (203) 852-7163

With a copy to: Fletcher Heald & Hildreth  
11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street  
Arlington, Virginia 22209  
Attention: Joseph Di Scipio, Esq.  
Telephone No.: (703) 812-0432  
Facsimile No.: (703) 812-0486

**SECTION 11.5. Counterparts; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**SECTION 11.6. Income Tax Position.** Neither Buyer nor Seller shall take a position for income tax purposes that is inconsistent with this Agreement.

**SECTION 11.7. Severability.** If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid, or unenforceable, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby.

**SECTION 11.8. No Reliance.** Except as to permitted assigns and successors, no third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement. Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**SECTION 11.9. Governing Law.** Except as otherwise expressly provided herein, this Agreement shall be governed by, and construed in accordance with, the law of the State of

Delaware without reference to any choice or conflict of law principle, provision or rule, including all matters of construction, validity and performance.

**SECTION 11.10. Consent to Jurisdiction and Service of Process.** ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY TO THIS AGREEMENT ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PURCHASE AGREEMENT OR ANY OTHER RELATED DOCUMENT, OR ANY OBLIGATIONS OR LIABILITIES HEREUNDER OR THEREUNDER, SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, PROVIDED THAT IF THE JUDICIAL PROCEEDING SHALL NOT SATISFY APPLICABLE FEDERAL JURISDICTION REQUIREMENTS, SUCH DISPUTE SHALL BE BROUGHT IN THE NEW YORK SUPREME COURT OR OTHER COMPETENT NEW YORK STATE COURT IN MANHATTAN. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY IRREVOCABLY:

(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(II) WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*;

(III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY RECOGNIZED OVERNIGHT DELIVERY SERVICE (CHARGES PREPAID) OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 11.4 ABOVE;

(IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(V) AGREES THAT THE PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW BUT SHALL NOT HAVE ANY RIGHT TO BRING PROCEEDINGS AGAINST THE OTHER PARTY IN THE COURTS OF ANY OTHER JURISDICTION; AND

(VI) AGREES THAT THE PROVISIONS OF THIS SECTION 11.10 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

**SECTION 11.11. Waiver of Jury Trial.** EACH OF THE PARTIES TO THIS AGREEMENT HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE RELATED AGREEMENTS OR ANY DEALINGS

**BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE RELATIONSHIPS THAT ARE BEING ESTABLISHED PURSUANT TO THE RELATED AGREEMENTS.** 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 transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 11.11 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER RELATED AGREEMENTS.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**SECTION 11.12. Construction.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being acknowledged and agreed that the agents of each party have participated in the preparation hereof. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context required otherwise. The words "herein," "hereby," "hereunder" and other similar words shall refer to this Agreement. The word "including" shall mean including, without limitation. The use of the words "or," "either" and "any" shall not be exclusive.

**SECTION 11.13. Saturdays, Sundays and Legal Holidays.** If the time period by which any acts or payments required hereunder must be performed or paid expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

**SECTION 11.14. Exhibits and Schedules.** All of the Exhibits and Schedules identified in this Agreement are incorporated by reference into this Agreement and made a part hereof, shall be updated to the extent required prior to or on the Closing Date and shall be deemed modified and supplemented to include any actions or omissions on the part of Buyer and any effects thereof pursuant to any action or inaction of the Buyer in respect of the Station under the Related Agreements.

**SECTION 11.15. Waiver.** Any of the conditions to Closing set forth in this Agreement may be waived at any time prior to or at the Closing hereunder by the party entitled to the benefit thereof: provided, that no waiver shall be effective unless in a writing executed by the party

charged thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision or breach of this Agreement, whether or not similar, unless otherwise incorporated in the same or different document executed by the party to be charged thereby. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance.

**SECTION 11.16. Effect of Buyer's Actions.** Anything to the contrary in this Agreement or the Related Agreements notwithstanding, none of the following shall be deemed (i) a breach or default in performance of any of Seller's representations, warranties, covenants or agreements contained in this Agreement, and (ii) a failure of any of the conditions set forth in Article V to be satisfied: any fact, event, circumstance or occurrence that occurs solely as a result of Buyer's breach of any covenant or agreement under any of the Related Agreements.


**SECTION 11.17. Pre-Closing Remedies.** The parties recognize and acknowledge that the Purchased Assets constitute unique assets and that Seller's breach of any of its obligations hereunder, including but not limited to its obligation to close upon satisfaction of all conditions set forth in Article VI, would cause irreparable damage to Buyer which could not be quantified and which could not in any event be remedied by payment of monetary damages. Accordingly, in addition to any other right it may have under this Agreement, Buyer shall have the right to secure a decree of specific performance or other injunctive relief to prevent or remedy Seller's breach of its representations, warranties, covenants or obligations under this Agreement without posting a bond or other security. If Buyer does seek such a decree or other injunctive relief, Seller shall waive the defense that Buyer has an adequate remedy at law.

*[ THE NEXT PAGE IS THE SIGNATURE PAGE ]*

IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized officers or managers to have duly executed, as applicable, this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

SPIRIT TELEVISION LLC

By:   
Name: WILLIAM WELCH  
Title: President

**SELLER:**

CATAMOUNT BROADCASTING OF FARGO LLC

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

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]



IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized officers or managers to have duly executed, as applicable, this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

SPIRIT TELEVISION LLC

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

**SELLER:**

CATAMOUNT BROADCASTING OF FARGO LLC

By: Ralph E. Belken  
Name: RALPH E. BELKEN  
Title: PRESIDENT & CEO

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]