

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made as of this 16th day of December, 2019, by and between and Northern Michigan Radio, Inc., a for-profit corporation organized in the State of Michigan (“**Seller**”), and Central Michigan University, a state institution of higher learning in the State of Michigan (“**Buyer**”).

W I T N E S S E T H:

WHEREAS, Seller is the Federal Communications Commission (“**FCC**”) licensee of FM Radio Station WFCX(FM), Leland, Michigan, FCC Facility Identification Number 49575 (“the “**Station**”); and

WHEREAS, Seller desires to sell the FCC Authorizations and certain related assets of the Station to Buyer, and Buyer desires to purchase the FCC Authorizations and certain related assets of the Station from Seller upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

1. Assets Transferred. Subject to the approval of the FCC and to the terms and conditions of this Agreement, Seller agrees to sell and Buyer agrees to purchase only the following assets (collectively the “**Assets**”), all free and clear of liens, mortgages and encumbrances of any nature whatsoever:

(a) FCC Authorizations. The authorizations issued by the FCC to Seller in connection with the business or operations of the Station, as listed in Schedule 1(a) hereto, together with any additional authorizations or licenses issued by the FCC with respect to the operation of the Station between the date hereof and the Closing Date (the “**FCC Authorizations**”);

(b) Tangible Assets. The personal property used exclusively in the operation of the Station, including the transmitter building located at the Station’s transmission site, all as listed in Schedule 1(b) hereto, together with any replacements thereof made between the date of this Agreement and the Closing Date (the “**Tangible Assets**”);

(c) Tower Lease Agreement. The lease agreement for space on the tower from which the Station broadcasts (FCC Antenna Structure Registration No. 1026471) and for ground space where the transmission facilities for the Station are located, as set forth in Schedule 1(c) hereto (the “**Lease Agreement**”); and

(d) Assumed Contracts. All contracts, leases and other agreements, written or oral, to which Seller is a party or which are binding upon Seller and which relate to or affect the Assets or the business or operations of the Station, and that Buyer has agreed in writing to assume upon its purchase of the Station, as listed in Schedule 1(d) hereto, and other contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume; and

(e) Records. All records required by the FCC to be created and retained by the Station, , software, warranties, engineering studies, and business records that relate to or affect the Assets or the operation of the Station and that are within Seller's possession and control, excluding the contents of the Station's public inspection files.

2. Excluded Assets. Without limiting the foregoing, the Assets shall not include the following excluded assets ("**Excluded Assets**"):

(a) Any assets located at the current studio facilities located at 1020 Hastings Street, or used in common by any other Seller radio station, except those specifically listed in Schedule 1(b) and Schedule 14(b); and

(b) Any employment contracts or obligations regarding any personnel working at or for the Station prior to the Closing Date; and

(c) Contracts of insurance or insurance proceeds and insurance claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date; and

(d) The Station's website and website address and any social media accounts related to the Station or any of its on-air personalities; and

(e) Any contracts for programming for the Station; and

(f) All Seller's assets and other property or leasehold interests not referenced in *Section 1(a) to (e)* above including all accounts receivable attributable to any period prior to the Closing Date and all deposits and prepaid expenses except to the extent Seller receives a credit under Section 3(c) below.

Seller shall convey and transfer to Buyer good and marketable title to the Assets free and clear of liens or encumbrances, except for liens for taxes not yet due and payable and liens, previously disclosed to Buyer, that will be released at or prior to Closing (collectively, "**Permitted Liens**").

3. Consideration. The consideration for this Agreement shall consist of a purchase price ("**Purchase Price**") for the Assets in the amount of Five Hundred Thousand Dollars (\$500,000.00) paid by Buyer to Seller as follows:

(a) Escrow Deposit. Within two (2) business days following execution of this Agreement, Buyer shall pay to a mutually agreeable escrow agent (the "Escrow Agent") an escrow deposit in the amount of Twenty-Five Thousand Dollars (\$25,000) (the "Escrow Deposit"). The Escrow Deposit shall be deposited by Buyer into an escrow account by the Escrow Agent, pursuant to an Escrow Agreement in the form set forth in Schedule 3(a) and executed simultaneously with this Agreement. No interest will be earned on the Escrow Deposit. The entire amount of the Escrow Deposit shall be applied as a credit toward Buyer's payment of the Purchase Price at Closing, unless otherwise directed by the parties. Should this Agreement be terminated prior to the Closing for any reason other than an uncured default of the Buyer, the Deposit shall be returned to Buyer as set forth in Section 20 below.

(b) At Closing. Buyer shall pay Seller the total Purchase Price, subject to any adjustments pursuant to Section 3(a) and (c) hereof.

(c) Prorations. All of Seller's pre-paid expenses shall be prorated between Buyer and Seller as of the Closing Date. For the avoidance of doubt, such prorations shall include all utility expenses, property taxes, rents and similar prepaid items (for which Buyer receives the benefit).

(d) Allocation of the Purchase Price. Seller may allocate the Purchase Price as reasonably determined by Seller for Seller's own reporting purposes in connection with federal, state and local income and, to the extent permitted under applicable law, franchise taxes. Seller shall report such allocation to the Internal Revenue Service in the form required by Treasury Regulation § 1.1060-1T. Seller's allocation of purchase price is not binding upon Buyer.

4. Liabilities Assumed and Excluded.

(a) Assumed Liabilities. Upon the Closing, Buyer shall assume, pay, and perform the liabilities and obligations of Seller arising on and after the Closing Date under the Lease Agreement, Assumed Contracts and the FCC Authorizations (the "**Assumed Liabilities**").

(b) Excluded Liabilities. Except for the Assumed Liabilities, Buyer does not assume nor shall Buyer be obligated for any other liabilities, obligations or responsibilities whatsoever of Seller or arising from or related to Seller's operation of the Station through the Closing Date (the "**Excluded Liabilities**"). Without limiting the generality of the foregoing, Seller shall retain and perform all obligations and liabilities related to any employees providing services to the Station, incurred on or prior to the Closing Date, including, without limitation, any obligations that may arise as the result of the consummation of the transactions contemplated by this Agreement.

5. Pre-Closing Covenants.

(a) Seller's Pre-Closing Covenants.

(i) From the date of this Agreement to the Closing Date and except as set forth in Schedule 5 hereto, Seller will continue to operate the Station in the ordinary course of business and will not take any action that could reasonably be expected to have a material adverse effect on the Assets or the Station or Buyer's rights and interests under this Agreement.

(ii) From the date of this Agreement to the Closing Date, Seller will (A) maintain, preserve and keep the Assets and technical facilities of the Station in good repair, working order and condition, reasonable wear and tear excepted; (B) maintain appropriate insurance on the Assets, (C) pay all liabilities and obligations pertaining to the Station, the Assets and technical facilities of the Station that become due and payable in the ordinary course of business, including all taxes, assessments and government charges upon or against the Assets

or the technical facilities or operations of the Station; and (D) comply in all material respects with all statutes, rules and regulations applicable to the Assets or the operation of the Station.

(iii) Seller will not, without the prior written consent of Buyer, other than in the ordinary course of Seller's business and which consent shall not be unreasonably withheld or delayed and which shall be deemed denied if Buyer does not timely respond to Seller's request: (A) make any sale, assignment, transfer, or other conveyance of any of the Assets; (B) subject any of the Assets or any part thereof to any mortgage, pledge, security interest, or lien; or (C) enter into any agreement, license, lease or other arrangements with respect to the Station or the Assets, or amend any existing agreements, licenses or leases with respect thereto.

(iv) Seller shall not cause or permit, by any act or failure to act, any of the FCC Authorizations to expire or to be revoked, suspended, or modified, or take any action that would reasonably be expected to cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of any of the authorizations issued for the operation of the Station. Seller shall not fail to prosecute with reasonable diligence any applications to any governmental authority necessary for the continued operation of the Station.

(v) Seller shall use its commercially reasonable efforts not to (A) default under, or breach any term of, or suffer or permit to exist any condition, that would constitute a default under the Lease Agreement or the Assumed Contracts, nor (B) cause the termination, modification or amendment of the Lease Agreement and Assumed Contracts. Unless Buyer shall have given its prior written consent, Seller shall not enter into any new contract or incur any obligation that will be binding on Buyer after the Closing.

(vi) Seller shall not take any action that is inconsistent with its obligations under this Agreement that could reasonably be expected to cause any of its representations or warranties set forth herein to be untrue as of Closing in any material respect, or that could hinder or delay the consummation of the transactions contemplated by this Agreement. Seller shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

(vii) Notwithstanding any provision of this Agreement, pending the Closing, Seller shall maintain actual (*de facto*) and legal (*de jure*) control over the Station. Seller shall retain responsibility for the operation of the Station pending the Closing, including responsibility for: ultimate control of the daily operation of the Station, including its programming; creation and implementation of policy decisions; employment and supervision of Seller's employees; and payment of expenses incurred in the operation of the Station prior to the Closing.

(b) Buyer's Pre-Closing Covenants.

(i) Buyer shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

(ii) Buyer shall not take any action that is inconsistent with its obligations under this Agreement that could reasonably be expected to cause any of its representations or warranties set forth herein to be untrue as of Closing in any material respect, or that could hinder or delay the consummation of the transactions contemplated by this Agreement. Buyer shall use its commercially reasonable efforts to cause the transactions contemplated by this Agreement to be consummated in accordance with the terms hereof.

6. FCC Approval.

(a) FCC Approval Required. Consummation of the sale (the “**Closing**”) is conditioned upon the FCC having given its consent in writing to the assignment from Seller to Buyer of all FCC Authorizations (the “**FCC Approval**”) and, at Buyer’s election, said consent having become a “Final Order.” For purposes of this Agreement, (“**Final Order**”) means an action by the FCC that has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which no requests are pending for administrative or judicial review, reconsideration, appeal, or stay, and the time for filing any such requests and the time for the FCC to set aside the action on its own motion have expired.

(b) Filing of FCC Application. The parties shall cooperate in good faith and jointly prepare and file the application for FCC Approval (FCC Form 314) (the “**FCC Application**”) not later than ten (10) business days after execution of this Agreement.

(c) Prosecution of FCC Application. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Approval as soon as possible; *provided, however*, neither Buyer nor Seller shall be required to pay consideration to any third party to obtain the FCC Approval. Buyer and Seller each shall oppose any petition to deny or other objections filed with respect to the FCC Application to the extent such petition or objection relates to such party. Each party agrees to comply with any condition imposed on it by the FCC Approval, except that no party shall be required to comply with a condition if compliance with the condition would have a material adverse effect upon it. Buyer and Seller shall oppose any requests for reconsideration or judicial review of the FCC Approval. If the Closing shall not have occurred for any reason within the original effective period of the FCC Approval, and neither party shall have terminated this Agreement, the parties shall jointly request an extension of the effective period of the FCC Approval.

(d) Closing Date and Method. The Closing shall take place on a date (the “**Closing Date**”) mutually agreeable to Buyer and Seller, that is (i) not earlier than the tenth (10th) business day after the FCC Approval is granted, and (ii) not later than ten (10) days following the date upon which the FCC Approval has become a Final Order, subject to satisfaction or waiver of all other conditions precedent to the holding of the Closing. The Closing will take place by the exchange of documents by email or facsimile or by such other method as Buyer and Seller may select by mutual agreement. Buyer and Seller shall make reasonable best efforts to effectuate the Closing before the due date of the Station’s broadcast license renewal application.

7. Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows:

(a) Organization and Standing. Seller is a corporation legally formed and constituted and in good standing under the laws of the State of Michigan. Seller possesses all power and authority necessary to own and operate the Assets and Station and execute, deliver and perform this Agreement.

(b) Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary actions on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

(c) Current and Valid FCC Authorizations. Schedule 1(a) contains an accurate and complete list in all material respects of the FCC Authorizations as of the date hereof. Seller validly holds all authorizations that are required under the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, "**Communications Laws**") for the ownership or operation of the Station as currently conducted. Other than the FCC Authorizations, applicable local business permits, and any applicable real property restrictions, Seller is not required to hold any license, permit or other authorization from any governmental authority for the lawful conduct of the operation of the Station. No action or proceeding is pending or, to the knowledge of the Seller, threatened, before the FCC or other governmental or judicial body, for the cancellation, suspension or material and adverse modification of FCC Authorizations. To Seller's knowledge, there is no reason to believe that the FCC Authorizations will not be renewed in the ordinary course.

(d) Operation of the Station. Seller (i) is operating the Station in all material respects in compliance with the Communications Laws, and otherwise in compliance with all applicable local, state and Federal laws, (ii) has filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets or the Station; (iii) has maintained its public inspection file in material compliance with FCC requirements, and (iv) has not stored, disposed of nor used, nor has any knowledge that any other party has disposed of or used, any hazardous substance in a manner that is likely to result in liability for Buyer under any applicable law or regulation. All material reports and other filings required by the FCC with respect to the FCC Authorizations, Seller, the Assets or the operation of the Station have been timely filed with the FCC, and all such reports and other filings are substantially complete and correct as filed.

(e) Absence of Conflicting Agreements. There are no outstanding agreements or understandings for the sale of the Station to any party other than Buyer. Subject to obtaining FCC Approval, the execution, delivery, and performance by Seller of this Agreement and the Closing documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with the organizational documents of the Seller; (ii) will not materially conflict with, result in a breach of, or constitute a default under, any law, judgment,

order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to Seller; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Seller is a party or by which Seller may be bound.

(f) Title to and Condition of Assets. Seller has good and marketable title to the Assets. Schedule 1(b) contains an accurate list of the material Tangible Assets used exclusively by the Station as of the date hereof. The Tangible Assets listed on Schedule 1(b) constitute all of the material assets and properties required for and used exclusively for the operation of the Station's transmission facilities as currently operated by Seller. The Assets are in good condition and repair, ordinary wear and tear excepted, and do not have any structural or other material defects. The Assets are, or at Closing, will be free of all liens, encumbrances or hypothecations, other than Permitted Liens. On the Closing Date, each item comprising the Assets shall be in the same operating condition in all material respects as on the date of execution of this Agreement, ordinary wear and tear excepted.

(g) Lease Agreement. The property leased pursuant to the Lease Agreement (the "**Property**") and Seller's activities and operations on the property are in material compliance with all applicable environmental laws and regulations and zoning, building and other laws and regulations of all governmental authorities having jurisdiction thereof. The buildings and fixtures used in the operation of the Station on the Property are suitable for their intended use as currently used by Seller. To Seller's knowledge, all utilities necessary for Seller's use of the Property are installed and in working order and are subject to valid easements. Seller has received no notice that any condemnation proceedings have been instituted or threatened against the Property.

(h) Claims and Litigation. There is no judgment outstanding or any claim or litigation or proceeding pending or, to Seller's knowledge, threatened regarding the title or interest of Seller to or in any of the Assets or the Station's operations, or which could prevent or adversely affect the ownership, use, or operation of the Station by Buyer. Except as indicated on Schedule 1(a), there is (i) no complaint or other proceeding pending, outstanding, or to Seller's actual knowledge threatened, before the FCC as a result of which an investigation, notice of apparent liability or order of forfeiture may be issued from the FCC relating to the Station, (ii) no FCC notice of apparent liability or order of forfeiture pending, outstanding, or to Seller's actual knowledge threatened, against Seller or the Station, and (iii) no investigation pending, outstanding, or to Seller's knowledge threatened, with respect to any violation or alleged violation of any Communications Law by Seller.

(i) Assumed Contracts. All Assumed Contracts (including the Lease Agreement) are valid, binding, and enforceable by Seller in accordance with their terms. Neither Seller nor, to Seller's knowledge, any other party to such Assumed Contracts is in material breach or default on any of the Assumed Contracts, there is no claim of breach or default by Seller, Seller has received no notice of breach or default from any other party thereto, and Seller has no knowledge of any act or omission which has occurred or which has been threatened which could result in any party to such Assumed Contracts being in breach or default thereof.

(j) Disclosure. No representation or warranty made by Seller in this Agreement, or any statement or certificate furnished by, or to be furnished by, Seller to Buyer pursuant hereto, or in connection with the transaction contemplated hereby, contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

8. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

(a) Organization and Standing. Buyer is a state institution of higher education in the State of Michigan. Buyer possesses all authority necessary to execute, deliver and perform this Agreement and own and operate the Station.

(b) Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

(c) Absence of Conflicting Agreements. Subject to obtaining FCC Approval, the execution, delivery, and performance by Buyer of this Agreement and the Closing documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with the organizational documents of the Buyer; (ii) will not materially conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality applicable to Buyer; (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a party or by which Buyer may be bound.

(d) Buyer's Qualifications. Buyer is legally, financially and otherwise qualified to be the licensee of and acquire, own and operate the Station under the Communications Laws. Buyer knows of no fact that would, under existing law and the existing Communications Laws, disqualify Buyer as assignee of the FCC Authorizations or as the owner and operator of the Station. Buyer has, either on hand or from committed funds, financial resources sufficient to consummate the transactions contemplated by this Agreement and to operate the Station after the Closing Date. Buyer's financial obligations hereunder are not subject to or conditioned upon it obtaining financing or a financial commitment of any nature.

(e) Disclosure. No representation or warranty made by Buyer in this Agreement, or any statement or certificate furnished by, or to be furnished by, Buyer to Seller pursuant hereto, or in connection with the transactions contemplated hereby contains, or will contain, any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statement contained therein not misleading.

9. Risk of Loss. Risk of loss, damage, or destruction to the Assets to be sold and conveyed hereunder shall be upon the Seller until the Closing Date. After Closing, the risk of loss shall be solely upon Buyer. In the event that any such loss, damage or destruction occurring prior to Closing shall be sufficiently substantial so that any representation or warranty of Seller shall not be true and correct in all material respects at Closing (after giving consideration to any repairs, restoration or replacement to occur prior to Closing), Seller shall promptly notify Buyer in writing of the circumstances. Buyer, at any time within ten (10) days after receipt of such notice, may elect by written notice to Seller either to (i) proceed toward consummation of the transactions contemplated by this Agreement in accordance with the terms hereof, and subject to the occurrence of Closing, complete the restoration and replacement of the Assets after Closing, in which event Seller shall deliver to Buyer all insurance proceeds received in connection with such damage, destruction or other event, or (ii) if the cost of such restoration or replacement is greater than Twenty Five Thousand Dollars (\$25,000.00), terminate this Agreement.

10. Access to Information. Seller shall provide Buyer and its designated representatives access to the Assets and Station's facilities, including the Station's transmitter site, upon reasonable advance notice during normal business hours prior to Closing and at times that will not interfere with the operation of the Station. After execution of this Agreement and until Closing, Seller shall affirmatively and promptly disclose to Buyer any material matters affecting the Assets or operation of the Station of which Seller may become aware, including claims made and contract obligations to be entered into by Seller.

11. Brokers, Costs and Expenses. Buyer and Seller shall bear their respective costs and expenses for attorneys, accountants, brokers and advisors retained by or representing them in connection with their respective negotiation and execution of this Agreement and the performance of their respective obligations hereunder. Except for fees owed by Seller and due to Seller's broker, Patrick Communications, Buyer and Seller each represents that there are no other fees (including, but not limited to, brokerage fees) due to any broker as the result of this Agreement. Seller acknowledges that Buyer, at Buyer's sole cost and expense, may obtain lien, tax and judgment searches with respect to Seller and the Assets. The application filing fee applicable to the FCC Application (if any) shall be shared equally by Seller and Buyer.

12. Conditions Precedent to Buyer's Obligation to Close. The obligations of Buyer to purchase the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer, on or prior to the Closing Date, of each of the following conditions:

(a) The FCC Approval shall have been granted without conditions materially adverse to Buyer, Seller shall have complied with any conditions imposed on it by the FCC Approval that Seller is obligated to satisfy under the terms of this Agreement, and, if Buyer so elects, the FCC Approval shall have become a Final Order.

(b) All representations and warranties of Seller contained in this Agreement shall be true and complete at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date except for (i) any inaccuracies that in the aggregate could not reasonably be expected to have a material adverse effect on the Assets or the operation

of the Station, or (ii) any representation or warranty that is expressly stated only as of a specified earlier date, in which case such representation or warranty shall be true as of such earlier date.

(c) Seller shall have performed and complied with in all material respects all agreements, obligations, and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.

(d) Seller shall hold valid, current, and unexpired FCC Authorizations for the Station.

(e) Seller shall have obtained any required third party consents, including the consent to assign the Lease Agreement, along with an amendment required to conform the Lease Agreement to state laws and policies applicable to Buyer as a state entity.

(f) The Assets shall be free and clear of all liens and encumbrances as of Closing, other than Permitted Liens.

(g) Buyer shall have received from Seller the documents and other items to be delivered by Seller pursuant to *Section 15* of this Agreement.

(h) No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Buyer from consummating the transactions contemplated by this Agreement, and there shall be no pending or threatened litigation regarding this Agreement, the transactions contemplated hereby, or the Assets.

(i) There shall have been no materially adverse changes in the Assets or the Station's conditions, function, and service.

13. Conditions Precedent to Seller's Obligation to Close. The obligations of Seller to sell the Assets and to otherwise consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller, on or prior to the Closing Date, of each of the following conditions:

(a) The FCC Approval shall have been granted without any conditions materially adverse to Seller, and Buyer shall have complied with any conditions imposed on it by the FCC Approval that Buyer is obligated to satisfy under the terms of this Agreement.

(b) All representations and warranties of Buyer contained in this Agreement shall be true and complete at and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date except for (i) any inaccuracies that in the aggregate could not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transaction contemplated by this Agreement, or (ii) any representation or warranty that is expressly stated only as of a specified earlier date, in which case such representation or warranty shall be true as of such earlier date.

(c) Buyer shall have performed and complied with, in all material respects, all agreements, obligations, and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

(d) Seller shall have received from Buyer the documents and other items to be delivered by Buyer pursuant to *Section 14* of this Agreement.

(e) No injunction, restraining order or decree of any nature of any court or governmental authority of competent jurisdiction shall be in effect that restrains or prohibits Seller from consummating the transactions contemplated by this Agreement.

14. Buyer's Performance at Closing. At the Closing, Buyer will deliver or will have delivered to Seller:

(a) The Purchase Price and such instruments as Seller may reasonably require in order to consummate the transactions provided for in this Agreement including, without limitation, joint escrow instructions to the Escrow Agent to release the Escrow Deposit to Seller;

(b) A certificate dated as of the Closing Date, executed on behalf of Buyer by an officer of Buyer, attesting to its fulfillment of the conditions set forth in *Section 12(a), (b) and (c)*; and

(c) An agreement, executed by Buyer, for use of a portion of the Station's current studio facilities at 1020 Hastings Street in Traverse City, Michigan for equipment necessary to deliver programming to the Station for a temporary period of time not longer than one year, such agreement in the form attached hereto as Exhibit 14(c) (the "**Facilities Use Agreement**").

15. Seller's Performance at Closing. At the Closing, Seller shall deliver or have delivered to Buyer:

(a) Originals, if available, and otherwise, good quality copies, of the FCC Authorizations for the Station listed on Schedule 1(a), together with such assignments of the same as Buyer may reasonably require;

(b) Such assignments and further instruments of conveyance as Buyer may reasonably require to effectuate the assignment from Seller to Buyer of the Station and Assets being conveyed and assigned herein including, without limitation, a bill of sale and joint escrow instructions to the Escrow Agent to release the Deposit to Seller;

(c) A certificate dated as of the Closing Date, executed on behalf of Seller by an officer of Seller, attesting to its fulfillment of the conditions set forth in *Section 13(a), (c) and (d)*; and

(d) The Facilities Use Agreement, executed by Seller.

16. Survival of Warranties. All representations and warranties made by the parties in this Agreement shall survive the Closing and remain operative in full force and effect for a

period of one (1) year (and shall not be deemed merged into any document or instrument executed or delivered at the Closing) after the Closing. All covenants and obligations of the parties in this Agreement that are not fully performed as of the Closing shall survive the Closing until fully performed.

17. Indemnification.

(a) Indemnification by Seller. Seller shall indemnify and hold harmless Buyer and any of Buyer's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all liabilities, obligations, claims, and demands (including reasonable expenses of investigation and attorneys' fees) (hereinafter collectively "**Claims**") arising out of or related to (i) Seller's operation of the Station or ownership of the Assets prior to Closing (including, but not limited to, Claims related to compliance with FCC rules and regulations); (ii) any failure by Seller to perform any covenant or obligation of Seller in this Agreement; (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein; and (iv) any Excluded Assets set forth in *Section 2* or any Excluded Liabilities set forth in *Section 4(b)*.

(b) Indemnification by Buyer. To the extent permitted by the laws and Constitution of the State of Michigan, Buyer shall indemnify and hold harmless Seller and any of Seller's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all Claims arising or related to (i) Buyer's operation of the Station or ownership of the Assets after the Closing (including, but not limited to, Claims related to compliance with FCC rules and regulations), (ii) any failure by Buyer to perform any covenant or obligation of Buyer in this Agreement, including the breach or non-performance by Buyer of the Assumed Liabilities, (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

18. No Assignment. This Agreement may not be assigned by either party without the other party's prior written consent.

19. Specific Performance. The parties recognize the uniqueness of the Station and the Assets, authorizations, and attributes that are associated with its operation, and for that reason agree that Buyer shall have the right to specific performance of this Agreement upon default of Seller. Buyer shall therefore be entitled, in addition to any other remedies that may be available, including money damages, to obtain a decree of specific performance requiring the parties to comply with their respective obligations under this Agreement to effect the Closing hereunder, subject to obtaining any necessary FCC Approval. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

20. Termination.

(a) Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(i) Buyer's Breach. If Buyer is in material breach of its obligations hereunder and Buyer fails to cure such breach within thirty (30) days following receipt of written

notice of such default from Seller; provided, however, that in the case of a breach by Buyer of Section 3(a) hereto or the failure of Buyer to deliver the Purchase Price at the Closing, the cure period shall be shortened to ten (10) business days.

(ii) Conditions. If, on the date that would otherwise be the Closing Date, any condition precedent to the obligations of Seller set forth in this Agreement has not been satisfied or waived in writing by Seller.

(iii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing.

(b) Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Station abandoned, if Buyer is not then in material default, upon written notice to Seller, upon the occurrence of any of the following:

(i) Seller's Breach. If Seller is in material breach of its obligations hereunder and Seller fails to cure such breach within thirty (30) days following receipt of written notice of such default from Buyer.

(ii) Conditions. If, on the date that would otherwise be the Closing Date, any condition precedent to the obligations of Buyer set forth in this Agreement has not been satisfied or waived in writing by Buyer.

(iii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order that would prevent or make unlawful the Closing.

(c) Termination by Either Party. This Agreement may be terminated by either party, if the terminating party is not then in material default, upon written notice, if: (i) the Closing shall not have occurred within twelve (12) months after public notice of the FCC's acceptance for filing of the FCC Application; or (ii) if the FCC by Final Order: (A) dismisses the FCC Application; (B) denies the FCC Application; or (C) designates the FCC Application for an evidentiary hearing; provided that the right to terminate this Agreement under this Section 20(c) shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for either: (x) the Closing to fail to occur within the time period set forth herein; or (y) the FCC to dismiss, deny or designate for hearing the FCC Application as provided herein.

(d) Effect of Termination.

(i) Upon termination: (i) if neither party hereto is in material breach of any provision of this Agreement, the parties hereto shall not have any further liability to each other, except that Seller and Buyer shall instruct the Escrow Agent to release the entire amount of the Escrow Deposit to Buyer by wire transfer of immediately available funds no later than five (5) business days following Buyer's written notice requesting such payment; or (ii) if either party shall be in material breach of any provision of this Agreement, the other party shall have all rights and remedies available at law or equity, including for Buyer the right of specific

performance provided in *Section 19*. Any and all provisions of this Agreement notwithstanding, neither Seller nor Buyer shall be liable to the other for punitive or consequential damages.

(ii) Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach or default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. If this Agreement is terminated due to the breach or default of Buyer, Seller's sole remedy shall be retention of the entire amount of the Escrow Deposit, to be released to Seller within five business days of the date this Agreement is terminated (the "**Liquidated Damages**"). The parties agree that the amount of the Liquidated Damages shall constitute liquidated damages and shall be in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement.

(iii) The rights and obligations of the parties described in this *Section 20* and *Sections 21 through 28* shall survive any termination for a period of one (1) year from the effective date of the termination.

21. Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, may be delivered by personal delivery, sent by commercial delivery service or certified mail, return receipt requested, or sent by email (with, if available under email options, a "delivery receipt" and a "read receipt" being requested), (ii) deemed to have been given on the date of actual receipt, which may be presumptively evidenced by the date set forth in the records of any commercial delivery service or on the return receipt, or on the date of the sender's receipt of a "read receipt" from recipient or sender's confirmation by phone of recipient's receipt, and (iii) addressed to the recipient at the address specified below, or with respect to any party, to any other address that such party may from time to time designate in a writing delivered in accordance with this *Section 21*.

If to Seller:

Northern Michigan Radio, Inc.
1020 Hastings Street
Traverse City, MI 49686
Attn: W. Langer Gokey
Email: langergokey@gmail.com
Phone: 701-240-6150

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

Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, VA 22209
Phone: 703-812-0426
Email: crump@fhhlaw.com

If to Buyer:

Central Michigan University
Public Broadcasting
1999 East Campus Drive
Mount Pleasant, MI 48859
Attn: James Rademaker
Phone: (989) 774-3246
Email: radem2je@cmich.edu

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

Margaret L. Miller, Esq.
Derek Teslik, Esq.
Gray Miller Persh, LLP
2233 Wisconsin Avenue, NW, Suite 226
Washington, D.C. 20007
Phone: (202) 776-2914
Email: mmiller@graymillerpersh.com

22. Further Assurances. Each of the parties hereto shall execute and deliver to the other party hereto such other instruments as may be reasonably required in connection with the performance of this Agreement.

23. Governing Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of Michigan, without regard to conflict of law provisions. The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

24. Entire Agreement. This Agreement and the schedules hereto supersedes all prior agreements and understandings between the parties with respect to the sale and purchase of the Assets to be sold and purchased hereunder and may not be changed or terminated orally, and no attempted change, termination, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties. All schedules attached to this Agreement shall be deemed part of this Agreement and are incorporated herein, where applicable, as if fully set forth herein. This Agreement cannot be amended, supplemented, or modified except by an agreement in writing that makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.

25. Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant,

agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section.

26. Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and this Agreement shall be construed in a manner that, as nearly as possible, reflects the original intent of the parties.

27. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement. Delivery of counterpart signature pages may be effected by email of scanned copies of executed signature pages; *provided, however*, that the parties shall promptly arrange to exchange executed original signature pages by personal or commercial overnight delivery.

28. Disclaimer. Seller hereby disclaims any and all warranties, express or implied, including without limitation any and all implied warranties as to merchantability, infringement and/or fitness for a particular purpose, except for the express representations set forth in Section 7 hereof, and Buyer acknowledges that it has not relied upon or been induced to enter into this Agreement or to consummate the transactions contemplated hereby by any representation, warranty or statement other than the express representations set forth in said Section 7.

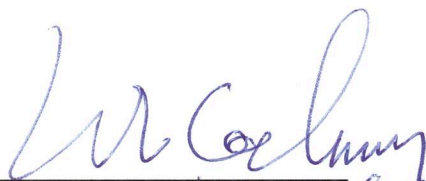
29. No Consequential Damages. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE HELD LIABLE IN RESPECT OF THIS AGREEMENT FOR INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY COSTS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS REPUTATION, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

[Remainder of Page Intentionally Blank]

[Signature Page for WFCX Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLER: NORTHERN MICHIGAN RADIO, INC.

By: 
Name: William Langer Cooley
Title: President

BUYER: CENTRAL MICHIGAN UNIVERSITY

By: _____
Name:
Title:

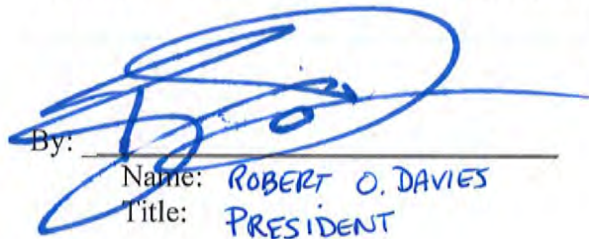
[Signature Page for WFCX Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLER: NORTHERN MICHIGAN RADIO, INC.

By: _____
Name:
Title:

BUYER: CENTRAL MICHIGAN UNIVERSITY


By: _____
Name: ROBERT O. DAVIES
Title: PRESIDENT

Schedule 1(a)
FCC Authorizations

1. WFCX(FM) Broadcast Station License in File Number BLH-19970421KA, last renewed in FCC File No. BRH-20120530ADQ on September 25, 2012, for a term expiring on October 1, 2020.
2. Aural Studio Transmitter Link license WPOT211 granted April 8, 2011 for a term expiring on October 1, 2020.

Schedule 1(c)
Lease Agreement

Attached.

Section 1(d)
Assumed Contracts

None.

Schedule 5
Disclosure Schedule

Seller may elect temporarily to suspend operations of Station on or after January 1, 2020, but it shall maintain all Station equipment in good working order. In such an event, Seller shall notify the FCC and/or seek Special Temporary Authority to remain silent within the time periods specified by FCC rules and shall return the Station to operation for a period of a week before the scheduled Closing Date, or for such other lesser period as Buyer, in its sole discretion, may request. Seller also will return Station to regular operation as soon as practicable if it receives an indication from FCC staff that grant of the FCC Application would be withheld or delayed due to Station's silence..

Exhibit 14(c)
Form of Facilities Use Agreement

Attached.

FACILITIES USE AGREEMENT

This Facilities Use Agreement (the "Use Agreement") is made as of this ____ day of _____, 2020, by and between Northern Michigan Radio, Inc., a for-profit corporation organized in the State of Michigan, ("NMR") and Central Michigan University, a state institution of higher education ("CMU") (each a "Party," and collectively, the "Parties"). The Parties, intending to be legally bound, agree as follows:

1. **Asset Purchase Agreement.** NMR and CMU have entered into an Asset Purchase Agreement (the "APA") for the sale of, and assignment of the license for, radio station WFCX(FM), Leland, Michigan, FCC Facility ID Number 49575 (the "Station") and certain other assets from NMR to CMU.

2. **Term and Termination.** This Use Agreement shall be effective as of the date hereof ("Effective Date"). The term of this Use Agreement ("Term") shall be one (1) year from the Effective Date unless extended, in writing, by the parties. CMU may terminate this Use Agreement by providing written notice of termination to NMR. CMU shall terminate this Use Agreement promptly upon establishing an appropriate replacement signal delivery method for the Station.

3. **Consideration.** This Use Agreement is made in consideration for the mutual promises and covenants contained in the APA.

4. **License of Premises.** Subject to the terms and conditions set forth in this Use Agreement and the provisions of Exhibit A hereto, for the Term of this Use Agreement CMU shall have the right to use (a) the location on the NMR studio building at 1020 Hastings Street in Traverse City, Michigan (the "Studio") where the Station's existing aural studio transmitter link with FCC call sign WPOT211 (the "STL") and related equipment is located (the "STL Premises"), as further described in Exhibit B; and (b) such closet space or similar space sufficient to install equipment ("Signal Delivery Equipment") to deliver CMU's programming to the STL ("Closet Premises" and, together with the STL Premises, the "Premises").

5. **Utilities.** NMR will provide CMU with network access and electricity in the Closet Premises for the Signal Delivery Equipment.

6. **Insurance.**

a. At all times subject to this Use Agreement, CMU shall maintain adequate self-insurance, to protect both CMU and NMR against all liabilities, claims, losses, demands, suits, damages and expenses of any kind arising out of or resulting from this Use Agreement, including all CMU operations on NMR's property.

b. At all times subject to this Agreement, NMR shall maintain adequate insurance in any and all forms necessary to protect both NMR and CMU against all liabilities, claims, losses, demands, suits, damages and expenses of any kind (including, but not limited to, costs and attorneys' fees) arising out of or resulting from this Use Agreement.

7. **Condition of Premises.** Upon the expiration of the Term or termination of this Use Agreement in accordance with any of its provisions, CMU shall return the Premises to NMR in the same condition as when received, less reasonable wear and tear. CMU shall remove its equipment from the Premises promptly upon expiration of the Term or termination of this Use Agreement.

8. **Counterpart Signatures.** This Use Agreement may be signed in counterparts, each of which will be deemed a duplicate original. This Use Agreement may be executed and exchanged by electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

9. **Notice.** Any notice required under this Use Agreement must be given in writing, and will be deemed given when delivered personally, or sent by certified U.S. mail or recognized overnight courier, postage prepaid, addressed as follows (or to such other address designated in writing upon due notice to the other Party):

To NMR:

Northern Michigan Radio, Inc.
1020 Hastings Street
Traverse City, MI 49686
Attn: W. Langer Gokey
Email: langergokey@gmail.com
Phone: 701-240-6150

To CMU:

Central Michigan University
Public Broadcasting
1999 East Campus Drive
Mount Pleasant, MI 48859
Attn: James Rademaker
Phone: (989) 774-3246
Email: radem2je@cmich.edu

10. **Entire Agreement.** This Use Agreement and its attachments embody the entire understanding between the Parties with respect to the subject matter of this Use Agreement.

11. **Assignment.** This Use Agreement shall be binding on successors and assigns. NMR shall assign this Use Agreement to any purchaser of the Studio. Each Party shall notify the other of an assignment of this Use Agreement.

12. **Relationship of Parties.** Neither Party will be deemed to be the agent, partner, or representative of the other Party to this Use Agreement and neither Party is authorized to bind

the other to any contract, agreement, or understanding. The relationship between the Parties shall not be that of partners or joint venturers, but independent contracting parties.

13. **Construction.** This Use Agreement shall be construed in accordance with the laws of the State of Michigan.

Signature Page to Use Agreement

IN WITNESS WHEREOF, the Parties have executed this Use Agreement as of the last date below.

CENTRAL MICHIGAN UNIVERSITY

By: _____

Name: _____

Title: _____

Date: _____

NORTHERN MICHIGAN RADIO, INC.

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

i. NMR covenants that it shall maintain the Premises in good and safe condition, suitable for the uses described in this Use Agreement, and that CMU shall and may peacefully and quietly hold and enjoy the rights provided for in this Use Agreement for the term hereof and subject to the provisions contained herein.

ii. NMR covenants that CMU's use of the Premises shall not be disturbed by NMR or by any source of disturbance subject to NMR's control, or subject to electrical interference on the STL Premises by NMR or by any source of interference subject to NMR's control, and that any such disturbance to CMU's use of or access to its equipment, shall be promptly eliminated by NMR.

iii. CMU and NMR shall promptly notify one another of any accident in or damage to the Premises.

iv. CMU shall ensure its use of the Premises is at all times consistent with all applicable laws, regulations and NMR policies that are communicated, in writing, to CMU.

v. NMR shall not be responsible for providing, servicing or maintaining any equipment necessary for CMU's operations in the Premises.

vi. CMU shall not make any alterations or improvements to the Premises without the prior written consent of NMR.

vii. CMU may not operate equipment in or on the Premises in any manner that interferes with NMR's operations. The operation of the STL as of the date hereof does not interfere with NMR's operations.

viii. CMU will coordinate access to the equipment located in and on the STL Premises with NMR when such access is necessary.

ix. CMU's use of the Closet Premises shall be non-exclusive to CMU. CMU's non-exclusive use of the Roof Premises, which shall include the reasonable right of ingress and egress, shall be solely for the purpose of housing, operating, maintaining, repairing or removing the STL transmission equipment.

x. NMR shall at its own cost and expense be responsible for all trash removal, utilities, and custodial services at the Closet Premises.

xi. CMU shall keep the Closet Premises in good, clean condition. CMU shall be responsible for the cost of repairing any damage to the Closet Premises caused by CMU, including its agents and invitees, or caused by the installation or removal of CMU's equipment, belongings or other property. CMU shall not make any alterations or improvements to the Closet Premises without the prior written consent of NMR. NMR shall be responsible for the cost of repairing any

damage to the Closet Premises caused by NMR, including its agents, students and invitees, or caused by the installation or removal of their equipment, belongings or other property.

Exhibit B

[NMR to provide]