

**ASSET PURCHASE AGREEMENT**

**by and between**

**XAVIER UNIVERSITY**

**and**

**CINCINNATI CLASSICAL PUBLIC RADIO, INC.**

**DATED AS OF MARCH 3, 2005**

## **TABLE OF CONTENTS**

TABLE OF DEFINITIONS.....	ii
LIST OF EXHIBITS AND SCHEDULES .....	iii
SECTION 1     ASSETS TO BE SOLD .....	1
SECTION 2     PURCHASE PRICE .....	5
SECTION 3     ADJUSTMENTS .....	6
SECTION 4     APPLICATION TO AND CONSENT BY COMMISSION.....	8
SECTION 5     LIABILITIES.....	10
SECTION 6     REPRESENTATIONS AND WARRANTIES OF THE SELLER.....	11
SECTION 7     WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER.....	22
SECTION 8     SELLER’S CONDUCT OF BUSINESS PRIOR TO CLOSING, BUYER’S ACCESS AND BUYER’S COVENANTS .....	25
SECTION 9     CONDITIONS FOR CLOSING.....	28
SECTION 10    OBLIGATIONS AT CLOSING.....	31
SECTION 11    [RESERVED] .....	34
SECTION 12    BROKERAGE .....	34
SECTION 13    INDEMNIFICATIONS .....	34
SECTION 14    RISK OF LOSS.....	38
SECTION 15    FEES AND EXPENSES.....	38
SECTION 16    [RESERVED] .....	39
SECTION 17    DEFAULT AND TERMINATION.....	39
SECTION 18    SURVIVAL OF WARRANTIES.....	41
SECTION 19    ADDITIONAL AGREEMENTS.....	41
SECTION 20    NOTICES.....	43
SECTION 21    MISCELLANEOUS .....	44

## **TABLE OF DEFINITIONS**

<b><u>Definition</u></b>	<b><u>Section</u></b>
Adjustment Items .....	§ 3.2
Adjustment Time .....	§ 3.1
Agreement .....	Preamble
Assets .....	§ 1.1
Assignment Application .....	§ 4.2(a)
Business Records .....	§ 1.1.6
Buyer .....	Preamble
Buyer's Closing Documents .....	§ 10.2
Claim .....	§ 13.3
Closing .....	§ 9.1
Closing Notice .....	§ 4.4
Closing Date .....	§ 9.1
Collection Period .....	§ 11
Commission .....	Preamble
Commission Authorizations .....	§ 1.1.1
Commission Inquiry .....	§ 8.1.6
Communications Laws .....	§ 6.6.1
Contracts .....	§ 1.1.4
Environmental Laws .....	§ 6.9.4
Escrow Agent .....	§ 2.2(a)
Escrow Agreement .....	§ 2.2(a)
Escrow Deposit .....	§ 2.2(a)
Excluded Assets .....	§ 1.2
Extension Period .....	§ 4.4
FCC .....	Preamble
Final Notice .....	§ 3.4
Final Order .....	§ 9.1
Intangibles .....	§ 1.1.5
Knowledge .....	§ 6.9.6
Leases .....	§ 6.5.3
Liens .....	§ 5.1
Minimum Loss .....	§ 13.5(a)
Notice of Claim .....	§ 13.3
Notice of Intention to Defend .....	§ 13.3
Notice of Objection .....	§ 13.3
Notice of Termination .....	§ 4.4
Purchase Price .....	§ 2.1
Real Property .....	§ 1.1.2
Retained Liabilities .....	§ 5.2
Seller .....	Preamble
Seller's Closing Documents .....	§ 10.1
Stations .....	Preamble
Tangible Personal Property .....	§ 1.1.3
Upset Date .....	§ 4.4

## **LIST OF EXHIBITS AND SCHEDULES**

Exhibit A	Escrow Agreement
Exhibit B	Bill of Sale
Exhibit C	Assignment and Assumption Agreement
Exhibit D	Opinion of Seller's FCC Counsel
Exhibit E	Title Affidavit
Schedule 1.1.1	Commission Authorizations
Schedule 1.1.2	Real Property
Schedule 1.1.3	Tangible Personal Property
Schedule 1.1.4	Contracts
Schedule 1.1.5	Intangible Assets
Schedule 2.3	Purchase Price Allocation
Schedule 6.4.1	Real Property Exceptions
Schedule 6.6.1	Actions Affecting Authorizations

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of this 3rd day of March, 2005, by and between Xavier University, a non-profit corporation organized under the laws of the State of Ohio ("Seller"), and Cincinnati Classical Public Radio, Inc., a non-profit corporation organized under the laws of the State of Ohio ("Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller holds certain licenses, permits and authorizations issued by the Federal Communications Commission (the "Commission" or "FCC") for the operation of non-commercial FM broadcast stations WVXU, Cincinnati, Ohio, WVXA, Rogers City, Michigan, WVXC, Chillicothe, Ohio, WVXH, Harrison, Michigan, WVXM, Manistee, Michigan, WVXR, Richmond, Indiana, and WVXW, West Union, Ohio, and FM broadcast translator station W237CF, Mackinaw City, Michigan (collectively, the "Stations"), and owns and leases certain assets used and useful in the operation of the Stations; and

**WHEREAS**, Buyer desires to purchase and/or assume certain of the assets used in the operation of the Stations, including the Stations' FCC authorizations.

**NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

### **SECTION 1 ASSETS TO BE SOLD**

1.1. On the Closing Date (as hereinafter defined), upon the terms and subject to the conditions set forth in this Agreement, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment from Seller, free and clear of all Liens, all of Seller's right, title and interest in and to the following (hereinafter collectively the "Assets"):

1.1.1. **Authorizations.** All licenses, permits and authorizations issued or granted by the Commission (including any pending applications for renewal thereof) for the operation of, or used in connection with the operation of, the Stations (hereinafter "Commission Authorizations"), including those listed in Schedule 1.1.1.

1.1.2. **Real Property.** All of Seller's rights in and to the land, buildings, improvements, and other real property used in connection with the operation of any of the Stations (hereinafter collectively the "Real Property") and which is listed and described in Schedule 1.1.2. The Real Property shall not include the Seller's studio/office property located at 1648 Herald Avenue, Cincinnati, Ohio.

1.1.3. **Tangible Personal Property.** All of Seller's rights in and to the fixed and tangible personal property used primarily in the operation of the Stations, including, but not limited to, the physical assets and equipment, leasehold improvements, furniture, fixtures, receivers, programming, tapes, transmitters, switches and related equipment, and music libraries listed in Schedule 1.1.3, together with replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date (hereinafter collectively the "Tangible Personal Property"). Further, within ten (10) days after the filing of the Assignment Application with the FCC, a representative of Buyer shall conduct a walk-through of the Seller's studio/office facilities at 1648 Herald Avenue, Cincinnati, Ohio, with a representative of Seller and create a list of Tangible Personal Property, including furniture, fixtures and equipment as well as broadcast archives and any awards granted to the Stations, that Buyer desires to have included in the transfer. Any Tangible Personal Property not placed on the list shall remain the property of Seller after the Closing Date. Seller shall, at its sole cost, be

entitled to make copies and retain for its own use and display any awards or broadcast archives that are listed by the Buyer and included in the transfer at Closing.

1.1.4. **Contracts.** All of Seller's rights in and to the contracts, agreements and leases (other than leases included as Real Property) to which Seller or the Stations are a party and which are listed in Schedule 1.1.4 (hereinafter collectively the "Contracts"), together with all contracts, agreements and leases entered into or acquired by the Seller between the date hereof and the Closing Date which Buyer elects to assume pursuant to a written assumption signed by Seller and Buyer.

1.1.5. **Intangibles.** All right, title and interest of Seller in and to the call letters of the Stations, the right to all slogans and service marks presently used or useful in conjunction with the Stations, together with other intangible property of Seller used or useful in the operation of or otherwise pertaining to the Stations including, without limitation, those as set forth on Schedule 1.1.5 and made a part hereof (hereinafter collectively the "Intangibles"); provided, however, that the Intangibles shall not include, and Seller shall retain exclusive rights to, and all right, title and interest whatsoever in the name "Xavier University" or any derivations therefrom and any signs, symbols or logos bearing such name.

1.1.6. **Business Records.** All of the Stations' engineering reports, logs, public files (as required by Commission rules), membership and underwriting databases, and other records that relate primarily to the Assets or the Stations (hereinafter collectively the "Business Records").

1.1.7. **Prepaid Items.** All prepaid expenses, security deposits, deposits with utilities and other deposits relating to the Stations or their operation or the Assets, subject to adjustment as set forth in Section 3.

1.1.8. **Station Pledges.** All receivables from underwriting shall be prorated to the Closing Date based on the term of the underwriting agreement and future receivables attributable after Closing will be assigned, without recourse, to Buyer. All pledges received by Seller on or after February 23, 2005 ("2005 Pledges") from the fund drive that took place between February 23, 2005 and March 2, 2005, shall be segregated by Seller and applied to paying the costs of the Stations; if there is any cash left over from 2005 Pledges at Closing, Seller shall pay it over to Buyer at Closing or credit it to the Purchase Price, and any 2005 Pledges paid or payable after Closing will be assigned to Buyer, without recourse, at Closing.

1.2. **Excluded Assets.** The Assets shall not include the following assets, along with all rights, title and interest therein, which shall be referred to as the "Excluded Assets":

1.2.1. Except as specified in Section 1.1.8, all cash, bank deposits and other cash equivalents of Seller, such as certificates of deposit, commercial paper, Treasury bills and other marketable securities on hand and/or in banks, cash deposits with regard to the Stations (or any Station) made by Seller prior to the Closing Date and all receivables with regard to services rendered by the Stations (or any Station) prior to the Closing Date, which shall be retained by Seller;

1.2.2. All tangible and intangible personal property disposed of or consumed in the ordinary course of business between the date of this Agreement and the Closing Date, or as permitted under the terms hereof;

1.2.3. All agreements that have terminated or expired prior to the Closing Date in the ordinary course of business and as permitted hereunder;



1.2.4. Seller's minute books, charter documents, record books and such other books and records as they pertain to the organization and existence of Seller as well as any other records or materials relating to Seller generally and not involving specific aspects of the Stations' operation, which shall be retained by Seller;

1.2.5. Subject to Section 14 below, all contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller relating to property or equipment of the Stations repaired, replaced or restored by Seller prior to the Closing Date, and all rights in connection therewith, including, but not limited to, rights arising from any refunds due with respect to insurance premium payments to the extent they relate to such insurance policies, which shall be retained by Seller;

1.2.6. Any and all other claims of Seller with respect to transactions prior to the Closing Date and the proceeds thereof, which shall be retained by Seller;

1.2.7. All pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller, which shall be retained by Seller;

1.2.8. All claims of Seller with respect to any tax refund, which shall be retained by Seller;

1.2.9. The name "Xavier University" or any derivations therefrom and any signs, symbols or logos bearing such name, which shall be retained by Seller; and

1.2.10. Seller's studio/office property at 1648 Herald Avenue, Cincinnati, Ohio and those items of Tangible Personal Property located therein which are not listed by Buyer as set forth in Section 1.1.3 hereof.

## **SECTION 2 PURCHASE PRICE**

2.1. **Purchase Price.** In consideration of Seller's performance of this Agreement, including the sale, assignment, transfer, conveyance, setting over, and delivery of the Assets as defined herein to Buyer, the total purchase price (the "Purchase Price") to be paid by Buyer to Seller shall be FIFTEEN MILLION DOLLARS (\$15,000,000.00), subject to adjustment pursuant to Section 3.

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

(a) Within ten (10) days of execution and delivery of this Agreement, Buyer shall deposit TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the "Escrow Deposit") into escrow. The Escrow Deposit shall be held and disbursed by US Bank, NA (the "Escrow Agent"), pursuant to the terms of an Escrow Agreement in the form attached hereto as Exhibit A (the "Escrow Agreement"), which Escrow Agreement shall be signed by Seller, Buyer, and Escrow Agent simultaneously with the execution of this Agreement. At Closing, Buyer shall join with Seller in causing the Escrow Agent to send the Escrow Deposit to Seller by wire transfer of immediately available funds to a bank designated by Seller to be credited against the Purchase Price. All interest earned on the Escrow Deposit shall belong to Buyer and shall be delivered to Buyer upon the termination of the Escrow Agreement.

(b) On the Closing Date, Buyer will pay to Seller in the form of a certified check or by wire transfer of immediately available funds to a bank designated by Seller the sum of FOURTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS

(\$14,750,000.00), as adjusted to reflect any adjustments made at the Closing pursuant to Section 3.

2.3. **Allocation of Purchase Price.** The parties agree to allocate the Purchase Price among the Assets pursuant to Section 1060 of the Internal Revenue Code of 1986, as amended, in accordance with Schedule 2.3.

### **SECTION 3 ADJUSTMENTS**

3.1. **Adjustment Time.** The "Adjustment Time" as used herein shall be 12:01 A.M. Eastern time on the Closing Date.

3.2. **Adjustment Items.** The following items (the "Adjustment Items") shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day month, as appropriate, and the Purchase Price shall be adjusted pursuant to Section 3.3:

3.2.1. Rentals or other charges, payable or paid in respect of leasehold interests or tenancies, or leased transmitter sites, studios, offices or other Real Property or equipment under any lease or tenancy of Real Property described in Schedules 1.1.2 and 1.1.4.

3.2.2. Real and personal property taxes and assessments (including sewerage assessments and fees), levied or assessed against or otherwise paid or payable with respect to any of the Assets.

3.2.3. Transferable license, permit, and registration fees, and like items (including the Commission's annual regulatory fees, if any, which shall be prorated).

3.2.4. Charges for utilities (including but not limited to electricity, fuel, water, basic monthly telephone charges, long distance telephone calls, and sanitation and garbage disposal) furnished to or in connection with the Stations.

3.2.5. Unpaid obligations of Seller with respect to any lease, contract, or agreement which Buyer assumes. Remaining security deposits, if any, paid by Seller shall be credited to Seller and those paid to Seller shall be credited to Buyer.

3.2.6. Other similar items applicable to the Assets and/or attributable to the operations and/or the business of the Stations.

3.2.7. Items prepaid by Seller, (including, to the extent not otherwise described in this Section 3.2, those set forth in Section 1.1.7 or that involve contracts transferred to Buyer under Section 1.1.2 and/or 1.1.4.).

3.2.8. Seller shall credit Buyer with the cost paid by Buyer for Phase I Environmental audits performed by contractors of Buyer on the Real Property of the Stations in an amount not to exceed \$20,000.00.

3.2.9. Seller shall credit to Buyer an amount equal to the cost of the tangible and intangible personal property disposed of or consumed (and not replaced with comparable property) in the ordinary course of business as referenced in Section 1.2.2 hereof to the extent the same exceeds \$25,000.00.

3.3. **Proration Adjustment.** On the Closing Date, the closing payment described in Section 2.2(b) shall be adjusted by the aggregate amount of the prorations described in Section 3.2, as best estimated by Seller, pursuant to a written statement delivered by Seller to Buyer at least one (1) full business day prior to the Closing Date.

3.4. **Final Adjustments.** Proration of all items described in Section 3.2 shall be finally determined within sixty (60) days after the Closing Date via a final writing created by Seller and delivered to Buyer (the "Final Notice"). If such final determination, as reflected in the

Final Notice, differs from the amount calculated on the Closing Date, payment therefor shall be made to the party entitled thereto within thirty (30) days after the delivery of the Final Notice to Buyer. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section 3 and resolution of such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties; provided however, if Buyer and Seller cannot agree on a mutually acceptable qualified independent accountant, Buyer and Seller shall each select an accountant who together shall select a third qualified accountant to resolve any dispute pursuant to this Section 3. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

3.5. **Employees.** Buyer shall have no obligation to employ any employees of Seller.

#### **SECTION 4 APPLICATION TO AND CONSENT BY COMMISSION**

4.1. **Commission Consent.** Consummation of the transactions contemplated herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the Commission shall have given its consent in writing, without any condition materially adverse to Buyer or Seller, to the assignment of the Commission Authorizations from Seller to Buyer. For purposes of this Agreement, any reference to an action to be taken by or requested by the Commission shall be deemed to include an action to be taken by or requested by the Commission's staff under delegated authority.

4.2. **Application For Commission Consent.**

(a) Seller and Buyer agree to proceed expeditiously and with due diligence and to use their best efforts and to cooperate with each other in seeking the Commission's approval of the assignment of the Commission Authorizations from Seller to Buyer. Within ten (10) business days after the date of this Agreement, each party shall have prepared its portion of an application to assign the Commission Authorizations (the "Assignment Application") for electronic filing with the Commission, including all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application. Each party further agrees expeditiously to prepare and submit amendments to the Assignment Application whenever such amendments are required by the Commission or its rules.

(b) Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. Any filing fees or grant fees imposed by the Commission shall be paid one-half (1/2) each by Seller and Buyer.

(c) Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it or the Assets or the business of the Stations unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in this Agreement. Seller agrees that a condition requiring the excision of either or both of Section 19.1 or 19.2 will not be deemed to have such a material adverse effect; provided, nonetheless, that Seller may contest the imposition of any such condition that would excise or limit Seller's rights under Section 19.1 and Buyer will cooperate with Seller in that regard. Buyer and Seller shall oppose any efforts by any third parties for

action against the Assignment Application, and for reconsideration or judicial review of the grant by the Commission of the Assignment Application (but nothing in this Section shall limit any party's right to terminate this Agreement pursuant to Section 4.4 and or Section 17 of this Agreement).

**4.3. Notice of Application.** Seller shall, at its own expense, provide the local public notice of the filing of the Assignment Application as required by the Commission's rules.

**4.4. Delay in Approval of Application.**

(a) If a Commission order granting the Assignment Application has not become a Final Order before the first anniversary of the date the Assignment Application has been accepted for filing by the Commission (the "Upset Date"), then either party, not then being in default, may terminate this Agreement without liability by giving ten (10) business days' prior written notice ("Notice of Termination") to the other party and, unless Buyer transmits a Closing Notice (as defined below) to Seller, the Agreement will be terminated and all of the rights and obligations of the parties hereunder will immediately cease and have no further force and effect. In the event of termination pursuant to this Section 4.4(a), each party shall bear its own expenses and the Escrow Agent shall return to Buyer the Escrow Deposit (including all interest earned thereon) without foreclosing any other remedies the Buyer or Seller may choose to pursue.

(b) Notwithstanding the foregoing, if the Commission grants the Assignment Application by the Upset Date, but the grant has not become a Final Order before the Upset Date, then neither Seller nor Buyer may terminate this Agreement pursuant to Section 4.4(a) for a period of six (6) months following the Upset Date (the "Extension Period"). If Seller transmits a Notice of Termination to Buyer following the conclusion of the Extension Period, Buyer shall have the right, but not the obligation, to compel Closing by providing written notice to Seller (the

“Closing Notice”) within ten (10) days of receipt of the Notice of Termination. Upon receipt by Seller of the Closing Notice, the parties shall close the transactions contemplated by this Agreement in accordance with Section 9.1.

## **SECTION 5 LIABILITIES**

5.1. **Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics’ and materialmen’s liens), pledges, conditional sales agreements, charges, mortgages (except as specified in Section 3.2.5), security interests and encumbrances (collectively, “Liens”) created or suffered by Seller prior to the Closing Date, whether existing now or in the future (except liens for property taxes not yet due as of the Closing Date, exceptions to title that do not interfere materially with the value of the Assets or the use of the Assets for their intended purpose and any lien or encumbrance that Buyer agrees to assume).

5.2. **Buyer’s Assumed Obligations.** Buyer covenants and agrees to assume at Closing and discharge when due following the Closing all of the unperformed duties of Seller accruing under the leases and other documents listed in Schedule 1.1.2 and the Contracts listed in Schedule 1.1.4, but only to the extent that such duties accrue after the Closing Date based on the operation of the Stations by Buyer following the Closing Date. Except as provided in the preceding sentence, Buyer is not agreeing to, and shall not, assume any other liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement (all of such liabilities and obligations shall be referred to herein as the “Retained Liabilities”).



5.3. **Seller's Liability.** Other than as specified in Section 5.2 above, Seller shall remain liable for, and covenants to pay, satisfy, or discharge, when due, all liabilities, payments, obligations, and duties under the Contracts and any leases or other instruments transferred or assigned to Buyer hereunder, accruing prior to or by reason of events occurring prior to the Closing Date.

## **SECTION 6 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants as follows:

**6.1. Organization and Standing.**

6.1.1. Seller is now and on the Closing Date will be a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Ohio. Seller has the requisite power to own the Assets and to carry on the business of the Stations as it now is being conducted.

6.1.2. Seller has the requisite power and authority to enter into this Agreement and all of Seller's Closing Documents (as defined in Section 10.1) that require Seller's signature. The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and the Seller's Closing Documents (on the Closing Date) are or will be authorized by all necessary corporate action of Seller.

**6.2. Binding Effect of Agreement.** This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, Seller's Closing Documents will constitute legal, valid and binding obligations of Seller enforceable against Seller in accordance with their terms. The execution, delivery, and performance of this Agreement or any of Seller's Closing Documents does not

violate any provision of Seller's organizational documents, contract provision or other commitment to which Seller or the Stations is a party or under which it or its property is bound, or any judgment or order, and will not result in the creation or imposition of any Lien of any nature whatsoever upon any of the Assets.

6.3. **Business Records.** Seller has maintained the Business Records of the Stations in the usual, regular and ordinary manner in accordance with good business practices.

6.4. **Real and Tangible Personal Property.**

6.4.1. **Real Property.** Schedule 1.1.2 accurately lists and describes all of the Real Property owned, leased or otherwise held or used by the Stations in connection with their operation, except for the offices and studio located at 1648 Herald Avenue, Cincinnati, Ohio. The Real Property listed in Schedule 1.1.2 comprises all real property interests necessary to conduct the business or operations of the Stations as now conducted, except for the offices and studio located at 1648 Herald Avenue, Cincinnati, Ohio. To Seller's knowledge, the Real Property, as well as the present uses thereof, conforms in all material respects with all material restrictive covenants and with all applicable zoning, environmental, and building codes, laws, rules and regulations. To Seller's knowledge and except as disclosed in Schedule 6.4.1, all improvements on the Real Property are structurally sound, in good condition and repair, and available for immediate use in the conduct of the business and operations of the Stations. No condemnation of any of the Real Property has occurred; there is no existing written notice covering future condemnation that has been provided to Seller; and to Seller's knowledge, Seller has no reason to believe that any of the Real Property will be condemned. All transmitting facilities of the Stations, including towers, antennas, guy lines, anchors and all other related buildings, structures and appurtenances are located entirely within the confines of the Real

Property. All utilities required for the operation of the Stations on the Real Property and improvements thereon either enter the Real Property through adjoining public streets or, if they pass through adjoining private land, do so in accordance with valid easements. To Seller's knowledge, the use of improvements on the Real Property and the conduct therein are not in violation of any law, statute, ordinance, rule or regulation of any government, governmental body, agency or authority (federal, state or local) in any respect. In connection with such use and conduct, to Seller's knowledge there are no problems with respect to adequate water supply, sewage and waste disposal facilities or air, water or land pollution, nor are there any pending or threatened eminent domain proceedings or special assessments with respect to the Real Property.

6.4.2. **Patents, Trademarks, Copyrights.** The Intangible Property includes all call signs, slogans, and logos used to promote or identify the Stations. Seller has no knowledge of any infringement or unlawful or unauthorized use of those promotional rights, including without limitation the use of any call sign, slogan or logo by any broadcast stations or cable systems in the Stations' communities of license which may be confusingly similar to the call signs, slogans, and logos currently used by the Stations.

6.4.3. **Tangible Personal Property.** Schedule 1.1.3 accurately lists all the material Tangible Personal Property owned, leased, or otherwise held or used by the Stations and/or Seller which is intended to be conveyed hereunder. Seller is the owner of and at Closing will have good, clear, marketable, and indefeasible title to all of the Tangible Personal Property listed in Schedule 1.1.3, free and clear of all Liens.

6.4.4. **Condition of Property.** Each item of Tangible Personal Property listed in Schedule 1.1.3 is in good maintenance, operating condition, and repair, subject to ordinary wear and tear, in accordance with generally accepted standards of practice in the broadcasting industry

and, to Seller's knowledge, is free from material defects in materials and workmanship. Except for the Excluded Assets, Seller does not have any material assets used, held for use or required for the conduct of the business of the Stations which are not set forth in the schedules hereto or otherwise described in Section 1.1 hereof, and the Assets include all assets necessary for the conduct of the business of the Stations as it is currently conducted by Seller.

**6.5. Contracts.**

6.5.1. Schedule 1.1.4 accurately lists all agreements and other contracts (or, when the same are oral, complete and correct descriptions thereof) with respect to the Stations to be conveyed hereby (except for leases included as Real Property, which are listed in Schedule 1.1.2). Seller has furnished to Buyer true and complete copies of all contracts used by Seller in its operation of the Stations, whether or not assumed by Buyer under this Agreement, including all amendments, modifications, and supplements thereto.

6.5.2. The Contracts listed in Schedule 1.1.4 are in full force and effect and valid, binding, and enforceable in accordance with their terms, and, except and to the extent as therein stated, are assignable by Seller to Buyer on the same terms and conditions as Seller now enjoys, and Seller has performed in all material respects all the obligations imposed upon Seller under any such Contracts. To Seller's knowledge, no third party is in breach of any such Contract.

6.5.3. Schedule 1.1.2 fairly describes all of the leases for the rental of real property which Buyer has agreed to assume, and to which Seller and/or the Stations are a party or under which Seller and/or the Stations are bound for the rental of real property (the "Leases"). All such Leases are in full force and effect and are valid, binding, and enforceable in accordance with their terms, and Seller has duly performed all of its material obligations under such Leases.

With respect to the Leases: (i) there is no default by Seller and (ii) to Seller's knowledge, there is no claim of default against Seller or against any other party to such Leases, no event or circumstance that with the passage of time or the giving of notice or both would result in a default by any other party, and no outstanding notice of termination.

**6.6. Authorizations.**

6.6.1. Seller is the authorized legal holder of all licenses, permits, and authorizations necessary to operate the business of the Stations lawfully and as it is now being conducted, including, without limitation, the Commission Authorizations listed in Schedule 1.1.1, none of which is subject to any restrictions or conditions (other than conditions or restrictions placed on the stations by the Communications Laws or as are found on the face of the Commission Authorizations) which would limit in any respect the operation of the Stations as now operated. All such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act of 1934, as amended, and all rules and regulations issued thereunder (collectively, the "Communications Laws"). Seller is operating the Stations in all material respects in accordance with the Commission Authorizations and the Communications Laws. There is no action pending or, to Seller's knowledge, threatened before the Commission or other body to revoke, refuse to renew, suspend or modify any of the Commission Authorizations; and there is no action pending or, to Seller's knowledge, threatened before the Commission or other body which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Stations or their operation, except as provided in Schedule 6.6.1.

6.6.2. All reports, applications and other documents required to be filed by Seller with the Commission or any other administrative body with respect to the Stations or their operations have been timely filed and all such reports, applications and documents are true and correct in all material respects. Seller is aware of no matters that might result in the modification, suspension or revocation of any Commission Authorizations pertaining to the Stations.

**6.7. Litigation and Insurance.**

6.7.1. **Litigation; Compliance With Law.** The Stations are in compliance in all material respects with all applicable federal, state and local laws, ordinances and regulations, including compliance with the Communications Laws. Other than proceedings affecting the broadcasting industry in general or described in Schedule 6.6.1, there is no complaint, claim, litigation, investigation, or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding, pending or, to Seller's knowledge, threatened, against the Stations, Seller, or any of the Assets being sold or transferred to Buyer, including, without limitation, any proceeding which may (a) materially adversely affect the Assets or the Commission Authorizations to be assigned hereunder, or the operation of the Stations, or the ability of Buyer to own and operate the Stations, or the use, ownership, or operation of any of the Assets by Buyer, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, modification or suspension of the Commission Authorizations, or the issuance or imposition of any administrative sanction that might adversely affect the Assets or the Commission Authorizations, or the operation of the Stations or the ability of Buyer to own and operate the Stations or the use, ownership, or operation of any of the Assets by Buyer. In addition, to

Seller's knowledge, no such litigation, investigation, or proceeding has been threatened. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Stations.

6.7.2. **Insurance.** All of the Tangible Personal Property listed in Schedule 1.1.3 is insured under the policies listed and described in Schedule 1.1.3, and all such policies are in full force and effect, and all premiums for all insurance policies have been paid when due. Seller has and will continue until Closing to have insurance policies to the extent customary and reasonable in the radio broadcasting industry. No application for insurance for the Stations or Assets, submitted by Seller within the last three (3) years, has been rejected.

6.8. **Employees and Labor Relations.**

6.8.1. Seller: (a) is not a party to any collective bargaining agreement covering or relating to any of the Stations' employees and has not recognized, and to Seller's knowledge, is not required to recognize, and has received no demand for recognition by any contract with any of the employees of the Stations or to any other employment contract, labor agreement, or union agreement, written or oral; (b) other than as disclosed in the Schedules hereto, has not promulgated any policy or entered into any agreement relating to the payment of pensions, profit sharing, or bonuses to any of its employees whose employment, if terminated or suspended, for which Buyer will be liable; and (c) to Seller's knowledge, has not committed any unfair labor practices.

6.8.2. Seller has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those relating to rates, hours, equal employment opportunity and the withholding and payment of taxes and contributions and has withheld all amounts required by law or agreement to be withheld from the wages or salaries of the Stations' employees and is not liable to the employees or any government body for arrears of wages or for any tax or penalty for failure to comply with the foregoing.

**6.9. Taxes and Other Matters.**

6.9.1. **Payment of Taxes.** All returns and reports concerning franchise taxes, unemployment insurance, withholding and payroll taxes, sales taxes, personal property taxes, license taxes, social security taxes, and all other reports required to have been filed by the Seller relating to the Assets, the Stations, and/or its operation pursuant to any law or regulation have been duly filed, and all taxes, interest, assessments, and penalties which are due to any taxing authority, federal, state, or local, with respect to any tax period ending on or prior to the making of this warranty have been duly paid.

6.9.2. **Insolvency Proceedings.** No insolvency proceedings of any kind, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Purchased Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings.

6.9.3. **Intangibles.** Seller has full and exclusive right, title to or interest in and to all of the Intangibles, including, without limitation, the call letters of the Stations and all copyrights, patents, program rights, trade names, trademarks, logos, service marks, proprietary



information, and other similar rights or symbols associated therewith, together with all goodwill associated therewith; and, to Seller's knowledge, all intellectual properties, as described on Schedule 1.1.5, are free from infringements, interference, litigation and disputes of any kind or nature whatsoever.

**6.9.4. Environmental Matters.** Buyer acknowledges and agrees that Seller is making, and has made, no representation or warranty, express or implied, regarding the environmental condition of any of the Assets.

**6.9.5. No Untrue Statements or Omission.** No representation or warranty made by Seller in this Agreement or any schedule, exhibit, statement, certificate, or other document furnished by Seller to Buyer pursuant to this Agreement contains any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Seller set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

**6.10. Information Held in Confidence.** From the date hereof until the Closing Date, Seller and all representative of Seller will hold in strict confidence, and will not disclose to any third party, any data and information obtained from Buyer in connection with the transactions contemplated by this Agreement, except insofar as any of such data and information may be required by law to be publicly disclosed or submitted to the Commission. If the transactions contemplated by this Agreement are not consummated, Seller will return to Buyer all such data and information, including, but not limited to, all documents, copies of documents and memoranda or other materials prepared by Seller which incorporate data or information obtained from Buyer and all other data and information available to Seller in connection with this

transaction, contemplated by this Agreement, except that which may be required by law to be submitted to the Commission. The provisions of this Section 6.10 shall survive termination of the Agreement.

6.11. **Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Assets are now, or on the Closing Date will be, pending. Seller has not at the Closing Date shall not have made any assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

6.12. **Financial Statements.** The Stations' financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, and are true and complete in all material respects as of the respective dates thereof. Except as and to the extent reflected or reserved therefor in the Stations' most recent balance sheet, there are no liabilities with regard to the Stations or the Assets.

6.13. **Absence of Material Change.** Since the date of the most recent balance sheet of the Stations delivered to Buyer and except as otherwise provided herein:

(a) there has not been and there is not threatened any material physical damage or loss to any of the Assets (whether or not such damage or loss is covered by insurance);

(b) Seller has not taken any action with respect to the Stations outside of the ordinary and usual course of business, except as related to the transactions contemplated by this Agreement;

- (c) Seller with respect to the Stations or the Assets has not borrowed any money or become contingently liable for any obligation or liability of others;
- (d) Seller has with respect to the Stations paid all of its liabilities and obligations as they became due;
- (e) Seller with respect to the Stations has not incurred any liability or obligation of any nature to any party, except for obligations arising from the purchase of goods or the rendition of services in the ordinary course of business;
- (f) Seller has not waived any right of substantial value;
- (g) Seller has maintained its books, accounts and records in the usual, customary and ordinary manner.

## **SECTION 7 WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER**

Buyer covenants, represents, and warrants as follows:

7.1. **Organization and Standing.** Buyer is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Ohio.

7.2. **Authorization and Binding Obligation.** Buyer has the requisite power and authority to enter into this Agreement and all of Buyer's Closing Documents (as defined in Section 10.2). The execution, delivery and performance of this Agreement (as of the date of execution of this Agreement and on the Closing Date) and Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary corporate action of Buyer. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement. Upon execution, the Buyer's Closing

Documents will constitute valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms.

7.3. **No Contravention.** The execution, delivery and performance of this Agreement do not violate any provision of the Buyer's organizational documents, or any contract provision or other commitment to which Buyer is bound, or any judgment or order.

7.4. **Litigation.** Except for administrative rule makings or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint, before the Commission, other governmental body, or court, of any nature pending or, to the best of Buyer's knowledge, threatened against or affecting Buyer which would adversely affect Buyer's authority or ability to carry out this Agreement.

7.5. **Information Held in Confidence.** Except with respect to Buyer's prospective lenders, if any, from the date hereof until the Closing Date, Buyer and other representatives of Buyer will hold in strict confidence, and will not disclose to any third party, any data and information obtained in connection with the transactions contemplated by this Agreement with respect to the business of Seller, except insofar as any of such data and information may be required by law to be publicly disclosed or submitted to the Commission. If the transactions contemplated by this Agreement are not consummated, Buyer will return to Seller all such data and information, including, but not limited to, all documents, copies of documents and memoranda or other materials prepared by Buyer which incorporate data or information obtained from Seller and all other data and information made available to Buyer in connection with this transactions, contemplated by this Agreement, except that which may be required by law to be

submitted to the Commission. The provisions of this Section 7.5 shall survive termination of this Agreement.

7.6. **Buyer's Qualifications.** There is no fact that would, under present law (including the Communications Laws), disqualify Buyer from being the assignee of the Stations or that would delay Commission approval of the Assignment Application. Should Buyer become aware of any such fact, it will so inform Seller within two (2) business days of its awareness and will use its best efforts to remove any such disqualification. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification.

7.7. **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any schedule, exhibit, statement, certificate, or other document furnished by Buyer to Seller pursuant to this Agreement contains any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading.

7.8. **Reliance.** Neither Buyer nor any person acting as Buyer's representative or on Buyer's behalf has relied on any representation or statement of Seller or any other person except as expressly set forth in this Agreement. Buyer acknowledges that it has been given full opportunity to examine, to its satisfaction, the Contracts listed or described in Schedule 1.1.4.

7.9. **Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Buyer, or any of Buyer's respective assets or properties are now, or on the Closing Date will be, pending. Buyer has not and at the Closing Date shall not have made any assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

**SECTION 8**  
**SELLER'S CONDUCT OF BUSINESS PRIOR**  
**TO CLOSING, BUYER'S ACCESS AND BUYER'S COVENANTS**

8.1. **Affirmative Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Stations and their operation, and during such period, Seller shall:

8.1.1. Operate the Stations in good faith and in a manner consistent with the normal and prudent operation of broadcast stations and in accordance with the Communications Laws and the Commission Authorizations.

8.1.2. Keep and preserve the Business Records in accordance with good business practice.

8.1.3. Make reasonable efforts to endeavor to protect the service area of the Stations, as currently authorized by the Commission, from interference from other stations, existing or proposed, of which Seller has actual knowledge, to the extent such interference is prohibited by the Communications Laws, and promptly give Buyer notice of any such proposed interference.

8.1.4. Deliver to Buyer within five (5) days after filing thereof with the Commission copies of any and all reports, applications, and/or responses relating to the Stations which are filed with the Commission on or prior to the Closing Date, including a copy of any Commission inquiries to which the filing is responsive (in the event of an oral Commission inquiry, Seller will furnish a written summary thereof).

8.1.5. Give prompt notice to Buyer of any occurrence that comes to Seller's attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of Seller or Buyer contained in this Agreement.

8.1.6. Use its best efforts to defend any complaint, claim, litigation, investigation or judicial, administrative or other proceeding of any nature, pending or threatened against Seller or any of the Assets, arising out of or relating to the operation of the Stations by Seller or use or ownership of any of the Assets prior to the Closing Date, including, but not limited to, any claim or proceeding arising from that certain inquiry letter, dated August 20, 2004, from the Commission to Seller concerning potential violations by the Seller of Sections 73.621 and 73.1212 of the Commission's rules (the "Commission Inquiry").

8.2. **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets, the Stations, or the operation thereof, without the consent of Buyer:

8.2.1. Cancel, modify, alter, amend, encumber, or in any way discharge, terminate, or impair any agreements or leases pertaining to the Stations identified on Schedules 1.1.2 and 1.1.4, other than in the ordinary course of business.

8.2.2. By any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms the Commission Authorizations or give the Commission grounds to institute any proceeding for the revocation, suspension or modification of any such Commission Authorization, or fail to prosecute with due diligence any pending applications with respect to such Commission Authorizations.

8.2.3. Other than in the usual and ordinary course of business, sell or dispose of any of the Assets unless Seller replaces such Assets with assets having an aggregate value at least equal to the aggregate value of the Assets sold or otherwise disposed of and such replacement Assets allow the Stations to operate in the ordinary course as existed prior to such replacement.

8.2.4. Create or suffer or permit the creation of any mortgage, conditional sales agreement, security interest, Lien, hypothecation, pledge, encumbrance, restriction, liability, charge, claim or imperfection of title on any of the Assets or with respect thereto.

8.2.5. Take any action that would prevent Seller from consummating the transactions contemplated in this Agreement.

8.2.6. Enter into any transaction which is not in the ordinary course of business.

8.3. **Buyer's Access.** Between the date hereof and the Closing Date, subject to confidentiality restrictions in Section 7.5 hereof, Seller will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers, and other representatives, reasonable access during reasonable business hours to the Assets. Seller shall furnish to Buyer such information and materials concerning the Stations' affairs as Buyer may reasonably request, so far as such information and materials pertain to the operation of the Stations and, upon Buyer's reasonable request, shall cooperate with Buyer and Buyer's consultants in Buyer's performance of its due diligence contemplated by this Agreement.

8.4. **Restrictions on Buyer.** Nothing contained in this Agreement shall give Buyer any right to control the programming or operations of the Stations prior to the Closing Date and Seller shall have complete control of the programming and operation of the Stations between the



date hereof and the Closing Date and shall operate the Stations in conformity with the requirements of law and this Agreement.

8.5. **Buyer's Covenants.** From the date of this Agreement until the Closing Date, Buyer covenants that it will not take any action, or fail to take any action, that would disqualify it from becoming the licensee of the Stations or delay the grant of the Assignment Application by the Commission. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this Agreement.

## **SECTION 9 CONDITIONS FOR CLOSING**

9.1. **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at a location and on a date to be set by the parties (the "Closing Date") at a time after the Commission has granted the Assignment Application, provided that such date shall be set no later than the earlier of (a) a date fifteen (15) business days after the grant by the Commission of the Assignment Application becomes a Final Order; or (b) a date fifteen (15) business days after Buyer transmits the Closing Notice to Seller pursuant to Section 4.4 hereof. For purposes of this Agreement, a "Final Order" means an action by the Commission as to which (a) no request for stay by the Commission is pending, no such stay is in effect, and the deadline for filing a request for any such stay has passed; (b) no appeal, petition for rehearing or reconsideration, or application for review is pending before the Commission and the deadline for filing any such appeal, petition or application has passed; (c) the Commission has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, or

the Commission's action is pending or in effect, and the deadline for filing any such appeal or request has passed.

**9.2. Conditions Precedent to Obligations of Buyer.** The performance of the obligations of Buyer under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Buyer may, at its election, waive any of such conditions on the Closing Date, notwithstanding that such condition is not fulfilled on the Closing Date):

9.2.1. Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.2.2. Each of Seller's representations and warranties contained in this Agreement or in any schedule, certificate, or document delivered pursuant to the provisions hereof shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of the Closing Date, except for changes permitted under this Agreement.

9.2.3. Seller shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date and shall be in compliance therewith on the Closing Date.

9.2.4. Seller shall be the holder of the Commission Authorizations listed in Schedule 1.1.1.

9.2.5. All outstanding mortgages, liens, security agreements, and other charges and encumbrances on the Assets shall have been discharged and satisfied, or arrangements made to discharge same at Closing.

9.2.6. Seller shall have paid at or before the Closing Date all real and personal property sales, transfer and gains taxes or fees incurred as a result of this Agreement.

9.2.7. Seller shall have delivered to Buyer an inventory of the Tangible Personal Property to be conveyed, current as of the Closing Date. There shall be no material changes between Schedule 1.1.3 and the inventory of Tangible Personal Property as of the Closing Date other than changes pursuant to Section 8.2.3 or that have been agreed to and accepted by Buyer, in its reasonable discretion.

9.2.8. Seller shall have delivered to Buyer all necessary consents required to transfer the Assets, including but not limited to consents for all Contracts and leases for Real Property requiring such consent.

9.2.9. Buyer may terminate this agreement on a date on or before sixty (60) days after the date hereof if, by such time, Buyer has not obtained a commitment for financing for the Purchase Price on terms acceptable to it, within its reasonable discretion by delivering written notice to Seller at any time prior to such date; in the absence of such notice being delivered to Seller by Buyer within such time, Buyer shall for all purposes be deemed to waive this condition set forth in this Section 9.2.9.

9.2.10. Buyer shall have approved the condition of title to the Real Property (including, without limitation, easements, restrictions, and other matters of record as to the Real Property), any assessments against the Real Property, and the zoning of the Real Property. Buyer's approval shall not be unreasonably withheld. Further, Buyer shall have received surveys at Buyer's cost of the Real Property and environmental assessments according to the provisions of Section 3.2.8 reasonably satisfactory to Buyer and Buyer's title insurer. If any title commitment or other evidence of title or search of the appropriate real estate records or any

survey or environmental assessment discloses any matter that Buyer reasonably believes could materially and adversely affect Buyer's use and enjoyment of the Real Property described therein, then Buyer shall notify Seller in writing of such matters within 10 business days after receiving the title commitments, surveys, environmental assessments and copies of recorded documents for the parcel or Real Property covered thereby (the "Title Objection Notice"). Seller shall use commercially reasonable efforts to cure each such title objection and take all steps required by the title insurer to eliminate each title objection as an exception to the title commitment. If Seller fails to cure such objection within 30 days of Buyer's written notice, or if Seller notifies Buyer in writing within 30 days of Buyer's written notice that Seller elects not to attempt to cure such objection, Buyer may notify Seller in writing that Buyer elects to terminate this Agreement, in which case the Escrow Deposit shall be returned to the Buyer and this Agreement shall terminate and be of no further force and effect, or Buyer may choose to waive such objections in writing. Buyer shall provide the Title Objection Notice no later than forty-five (45) days after the filing of the Assignment Application as contemplated by Section 4.2 hereof and, in the absence of such notice being provided to Seller by Buyer, Buyer shall for all purposes be deemed to waive this condition set forth in this Section 9.2.10.

9.2.11. Seller shall have provided a title affidavit in the form attached hereto as Exhibit E and otherwise in form and substance not inconsistent with Seller's obligations under this Agreement and reasonably acceptable to Buyer's title insurer.

9.3.           **Conditions Precedent to Obligations of Seller.** The performance of the obligations of the Seller under this Agreement is subject to the satisfaction of each of the following express conditions precedent (provided that Seller may, at its election, waive any of

such conditions at Closing, notwithstanding that such condition is not fulfilled on the Closing Date):

9.3.1. Buyer shall have delivered to Seller the Buyer's Closing Documents (as described in Section 10.2 below).

9.3.2. Each of Buyer's representations and warranties contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof shall be true in all material respects at and as of Closing Date with the same force and effect as if each such representation or warranty was made at and as of the Closing Date, except for changes permitted by this Agreement.

9.3.3. Buyer shall perform all of the obligations set forth in Section 2.2 of this Agreement with respect to the payment of the Purchase Price.

9.3.4. Buyer shall have agreed in form reasonably acceptable to Seller to assume all obligations under the Contracts assigned to Buyer arising on or after the Closing Date.

9.4. **Failure of Conditions Precedent to Obligations of Buyer.** In case of the failure of any of the conditions precedent described in Section 9.2 hereof, and if Seller has failed to cure same by the earlier of thirty (30) days after notice from Buyer or the Upset Date, Buyer shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent constitutes a material default by Seller, Buyer shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 17 hereof. Buyer shall not be deemed to have waived any failure by Seller to fulfill any of the conditions precedent described in Section 9.2 if Buyer does not have actual knowledge of such failure at the time of Closing.

9.5. **Failure of Conditions Precedent to Obligations of Seller.** In case of the failure of any of the conditions precedent described in Section 9.3 hereof, and if Buyer has failed to cure the same by the earlier of thirty (30) days after notice from Seller or the Upset Date, Seller shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent results from a material default by Buyer, Seller shall have the right, at its option, to exercise any or all of its rights or remedies for default provided in Section 17 hereof. Seller shall not be deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 9.3 if Seller does not have actual knowledge of such failure at the time of Closing.

## **SECTION 10 OBLIGATIONS AT CLOSING**

10.1. **Closing Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following ("Seller's Closing Documents"):

10.1.1. An executed bill of sale in form and substance as attached as Exhibit B transferring to Buyer all Tangible Personal Property to be transferred hereunder.

10.1.2. Limited warranty deeds in the usual form conveying good and marketable title to the owned Real Property and any improvements thereon, with all required documentary stamps attached and in proper form for recording.

10.1.3. An executed assignment and assumption agreement in form and substance as attached as Exhibit C assigning to Buyer the Contracts and Leases to Real Property to be assigned hereunder.

10.1.4. An executed assignment and transfer in form and substance reasonably satisfactory to counsel for Buyer assigning and transferring to Buyer all of the Commission Authorizations and the Intangibles.

10.1.5. A certified copy of the resolutions of Seller's trustees authorizing the execution, delivery, and performance of this Agreement by Seller and the consummation of the transactions provided for herein.

10.1.6. A certificate of Seller stating that (a) all of the representations and warranties of Seller set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date as if then made, and (b) all covenants set forth in this Agreement to be performed by Seller on or prior to the Closing Date have been performed in all material respects.

10.1.7. All Business Records not retained by Seller pursuant hereto.

10.1.8. Possession and/or ownership of and all right, title and/or interest in and to the Assets.

10.1.9. Instructions executed on behalf of Seller directing the Escrow Agent to apply the Escrow Deposit toward payment of the Purchase Price.

10.1.10. An opinion of Seller's FCC counsel in form and substance as attached in Exhibit D.

10.1.11. An assignment of Prepaid Items (as described in Section 1.1.7) and of station pledges (as described in Section 1.1.8), without recourse.

10.1.12. The title affidavit referenced in Section 9.2.11 hereof.

10.2. **Closing Documents to be Delivered by Buyer.** At the Closing, Buyer shall deliver to Seller the following ("Buyer's Closing Documents"):

10.2.1. The Purchase Price as provided in Section 2.2.

10.2.2. A certificate executed by Buyer's chief executive officer stating that (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects.

10.2.3. An assignment and assumption agreement assigning the Contracts and Leases to be assigned hereunder executed by Buyer, in form and substance attached as Exhibit C hereto.

10.2.4. An assignment and assumption agreement assigning the Commission Authorizations and Intangibles to Buyer executed by Buyer, in form and substance reasonably satisfactory to Seller.

10.2.5. A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein.

10.2.6. Instructions executed on behalf of Buyer directing the Escrow Agreement to apply the Escrow Deposit toward payment of the Purchase Price.

10.2.7. A written statement granting an appointment of a representative of Seller as a director of Buyer's governing board.



**SECTION 11  
[RESERVED]**

**SECTION 12  
BROKERAGE**

Seller and Buyer each represents and warrants to the other that it knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions, other than Public Radio Capital, whose fees shall be paid by Buyer, and Patrick Communications, whose fees shall be paid by Seller. Buyer and Seller hereby agree to indemnify each other from and against any claim of any such obligation or liability by any person, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

**SECTION 13  
INDEMNIFICATIONS**

13.1. **Breach of Seller's Agreements, Representations, and Warranties.** Seller shall reimburse Buyer for, and indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by Buyer by reason of:

(a) any breach of any warranty, representation, or agreement of Seller contained under this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement;

(b) the operation of the Stations or the use or ownership of the Assets prior to the Closing Date, including, but not limited to, (i) any and all claims, liabilities, and obligations arising or required to be performed prior to the Closing Date under the Agreements, or any other lease, contract, or agreement, and (ii) any complaint, claim, litigation, investigation or judicial, administrative or other proceeding of any nature, pending or threatened, against Seller with regard to any of the Assets arising from events that occurred or are alleged to have occurred, prior to the Closing Date, that are caused by Seller, including but not limited to the Commission Inquiry and any claims or proceedings arising therefrom;

(c) any transaction entered into by Seller or arising in connection with the Stations or the operation of the business thereof or any of the Assets prior to the Closing;

(d) any Retained Liabilities; or

(e) any and all actions, suits, or proceedings, incident to any of the foregoing.

**13.2. Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall reimburse Seller for, and indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including without being limited to, payments, fines, penalties, interest, taxes, assessments, reasonable attorneys' fees and accounting fees of any kind or nature), contingent or otherwise, arising out of or sustained by Seller by reason of:

(a) any breach of any warranty, representation, or agreement of Buyer contained under this Agreement or any certificate or other instrument furnished by Buyer pursuant to this Agreement,

(b) the operation of the Stations subsequent to Closing (including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed subsequent to the Closing under any lease, contract or agreement),

(c) any transaction entered into by Buyer or arising in connection with the Stations or the operation of the Stations subsequent to the Closing,

(d) any and all liabilities or obligations of Seller specifically assumed by Buyer pursuant to this Agreement, or

(e) any and all actions, suits, or proceedings incident to any of the foregoing.

13.3. **Notice of Claim.** Buyer and Seller agree to give prompt written notice to each other of any claim for indemnification under Sections 13.1 or 13.2 hereof ("Notice of Claim"), which amount is believed to be required to discharge the obligations of the indemnifying party resulting therefrom (the "Claim"). Within ten (10) days after having been given the Notice of Claim, the indemnifying party may deliver to the other party (i) a written notice of objection to the payment of such Claim ("Notice of Objection"), which Notice of Objection shall set forth the basis for such objection; or (ii) a written notice that the indemnifying party intends to defend against such Claim in good faith ("Notice of Intention to Defend"). If such a Notice of Intention to Defend is delivered, the indemnifying party shall have the right to hold in abeyance its Claim for indemnification if and so long as such defense is conducted by the indemnifying party at the latter's expense in a manner effective to protect the indemnified party against such Claim. If no Notice of Objection or Notice of Intention to Defend is given within the prescribed ten (10) day period, the indemnifying party shall promptly pay to the indemnified party the Claim set forth in the Notice of Claim, subject to Section 13.5. If the parties are unable to resolve any Notice of Claim and corresponding Notice of Objection, either party may take whatever action it deems

reasonable, including without limitation, the filing of a claim, petition, or other pleading in a court of competent jurisdiction.

13.4. **Sole Remedy.** Except as specified to the contrary in this Agreement, or for instances of fraud or intentional misconduct, the right to indemnification pursuant to Section 13 shall be the sole and exclusive remedy of each party in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement.

13.5. **Limitation on Liability.** The indemnifying party's liability for all Claims under this Section 13 shall be subject to the following limitations:

(a) the indemnifying party shall have no liability for Claims under Section 13.1 or Section 13.2, as the case may be, until the aggregate amount of the Claims incurred exceeds \$20,000 (the "Minimum Loss"). After the Minimum Loss is exceeded, the indemnitee shall be entitled to be paid the entire amount of its Claims, including the Minimum Loss, subject to the limitations on recovery and recourse set forth in this Section 13;

(b) the indemnifying party's aggregate liability for all Claims under Section 13.1 or Section 13.2, as the case may be, shall not exceed Three Million Dollars (\$3 million).

(c) other than claims permitted pursuant to Section 18.1(a) and (b), no claim may be made more than one (1) year after the Closing Date, except with regard to claims by third parties, for which the time limit shall be two (2) years.

#### **SECTION 14 RISK OF LOSS**

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty

or cause, reasonable wear and tear excepted, prior to the Closing Date, is assumed and shall be borne by the Seller at all times before the Closing Date and thereafter by Buyer. If any such loss or damage occurs prior to the Closing Date, Seller shall give prompt written notice of the loss or damage to Buyer and shall promptly take all steps to rebuild, replace, restore or repair any such damaged property at its own cost and expense. In the event that Seller does not fully replace or restore any such lost or damaged Asset or Assets by the Closing Date, Buyer may, at its option, upon written notice to Seller, either (i) terminate this Agreement, or (ii) elect to close without restoration, in which event Seller will assign all insurance proceeds paid or payable by reason of the loss or damage to such damaged Asset(s) to Buyer and, to the extent such proceeds are not sufficient to repair or replace the Assets, the Purchase Price shall be accordingly adjusted at Closing. If Buyer terminates this Agreement under this Section, each party shall bear its own expenses, and the Escrow Agent shall deliver to Buyer the Escrow Deposit and all interest earned thereon. Buyer's option to terminate this Agreement under this Section 14 shall arise only if such damage is so substantial that it prevents WVXU from operating in its normal and customary manner for a period of five (5) or more consecutive days.

## **SECTION 15 FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. Subject to Section 12, all other expenses incurred in connection with this transaction shall be borne by the party incurring same. Seller shall pay any sales and transfer taxes resulting from the transactions contemplated by this Agreement.

**SECTION 16**  
**[RESERVED]**

**SECTION 17**  
**DEFAULT AND TERMINATION**

17.1. A party shall be in "default" under this Agreement if it makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

17.2. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to initiate a cure of the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may terminate this Agreement and/or exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings. Notwithstanding the foregoing, neither party shall have any right to cure such party's wrongful failure to consummate this transaction, as provided herein, on the Closing Date.

17.3. Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's default, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be

entitled to receive as liquidated damages the Escrow Deposit except for all interest earned thereon. Such liquidated damages shall be in lieu of any other remedies at law or in equity to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the transaction contemplated by this Agreement. All interest or other proceeds from the investment of the Escrow Deposit, less any compensation due the Escrow Agent, shall be paid to Buyer. Buyer and Seller each acknowledge and agree that the liquidated damage amount is reasonable in light of the anticipated harm which would be caused by Buyer's breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transaction to be consummated hereunder.

17.4. Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event Buyer elects to terminate this Agreement as a result of Seller's default instead of seeking specific performance, Buyer shall be entitled to the return of the Escrow Deposit and all interest earned thereon and to recover from Seller Buyer's actual costs occasioned by Seller's default, including without limitation, attorneys fees and costs, bank commitment fees, due diligence costs and other expenses reasonably incurred by Buyer in attempting to consummate the transaction contemplated by this Agreement, but no other damages or costs.

## **SECTION 18 SURVIVAL OF WARRANTIES**

18.1. All representations and warranties made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for the following time periods, and, except as provided in Section 13.5(c), no claim may be made by Buyer thereafter:

(a) The representations and warranties in Sections 6.1 (Organization and Standing) and 6.2 (Binding Effect of Agreement) shall survive the Closing without limitation;

(b) The representations and warranties in Sections 6.3 (Business Records) and 6.9.1 (Payment of Taxes) shall survive the Closing for three (3) years; and

(c) The remaining representations and warranties shall survive the Closing for one (1) year.

18.2. Neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors and assigns.

## **SECTION 19 ADDITIONAL AGREEMENTS**

19.1 Notwithstanding any other limitation, including those set forth in Sections 13 and 18, in the event that Buyer sells all or substantially all of the Assets attributable to the Station currently designated as WVXU within ten (10) years of the Closing Date, Buyer will pay Seller fifty percent (50%) of the excess of the sale price of such Assets over the amount attributed



thereto in the allocation of Purchase Price set forth in Schedule 2.3 hereof. The payment described in this Section 19.1 shall be paid pro rata in the form of consideration paid to Buyer. For example, if the consideration paid by the acquiror to Buyer is fifty percent (50%) in cash and fifty percent (50%) in equity securities of the acquiror, then the payment described herein paid by Buyer to Seller also shall be fifty percent (50%) and fifty percent (50%) in equity securities of the acquiror. This Section 19.1 shall not apply to any Assets attributable to any of the Stations other than WVXU.

19.2 Beginning as of the Closing Date, Seller may designate one (1) person as a director of Buyer's board of directors, and the person so designated shall become a member of Buyer's board of directors if the person meets the reasonable qualifications established by Buyer for service as a director of Buyer. This right shall continue for ten (10) years after the Closing Date.

19.3 At any time after the Closing Date, should Buyer change the fundamental nature of the current programming on the Station (or any of them) as of the Closing Date, Buyer, upon written demand of Seller, shall cease using the name and mark "X-Star" and "X-Star Network" as expeditiously as possible and shall obtain other call signs that do not include the letter "X" and, at such a time as the new call signs are received, will cease using the existing call signs of the Stations.

19.4 Until such time as this Agreement is terminated, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or

proposals from any person (other than Buyer) relating to any business combination transaction involving the Stations or the Assets other than in the ordinary course of business.

19.5. For a period of five (5) years after the Closing Date, Seller shall not, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any person engaged in or planning to become engaged in the operation of a radio station in any of the radio markets in which any of the Stations operates; provided, however, that Seller may make a passive investment of less than Ten Percent (10%) of any class of the securities of any entity if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934.

## **SECTION 20 NOTICES**

20. All notices, requests, demands, waivers, consents and other communications required or permitted hereunder shall be in writing and be deemed to have been duly given when delivered in person (against receipt) to the party to be notified at the address set out below or sent by registered or certified mail, or by express mail or courier, postage prepaid, return receipt requested, addressed to the party to be notified, as follows:

If to Seller:

Dr. J. Richard Hirte, Senior Vice President of Financial Administration  
Xavier University  
3800 Victory Parkway  
Cincinnati, OH 45207

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

Joseph H. Feldhaus  
Beckman Weil Shepardson LLC  
1200 Mercantile Center  
120 East Fourth Street  
Cincinnati, OH 45202-4010

and to

Howard M. Liberman  
Drinker Biddle & Reath LLP  
1500 K Street, N.W., Suite 1100  
Washington, DC 20005

If to Buyer:

Richard N. Eiswerth, President  
Cincinnati Classical Public Radio, Inc.  
1223 Central Parkway  
Cincinnati, Ohio 45214

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

Daniel J. Hoffheimer  
Taft, Stettinius & Hollister  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3957

and to

Kenneth C. Howard, Jr.  
Baker & Hostetler LLP  
1050 Connecticut Ave. N.W., Suite 1100  
Washington, DC 20036

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

## SECTION 21 MISCELLANEOUS

21.1. **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret or construe the meaning of the Sections themselves or the intentions of the parties.

21.2. **Entire Agreement.** This Agreement and any other agreements entered into pursuant to this Agreement set forth the entire agreement of the parties with respect to the subject matter hereof and are intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed or modified in any respect or particular unless each such alteration, amendment, change or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. No provision, condition or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

21.3. **Binding Effect and Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Neither party hereto may assign this Agreement or its rights and obligations hereunder without the prior written consent of the other. Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

21.4. **Additional Documents.** The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement, the

effective vesting in Buyer of title to the Assets, and/or the successful processing by the Commission of the Assignment Application to be filed with it, as provided in Section 4 hereof.

21.5. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall comprise one and the same instrument.

21.6. **Legal Actions.** If either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorney's fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

21.7. **Governing Law.** The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of Ohio.

21.8. **Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

21.9. **Time is of the Essence.** Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

21.10. **Severability.** Whenever possible each provision of this Agreement will be interpreted so as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise affecting the remainder of such provision or the remaining provisions of this Agreement.

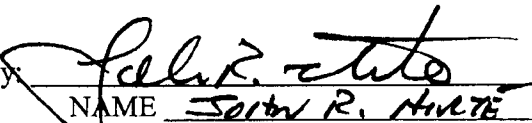
21.11. **Publicity.** Seller and Buyer agree that, except as required by law, all public announcements relating to this Agreement or the transactions contemplated hereby, including announcements to employees, will be made only as may be agreed upon by the parties, which consent shall not be unreasonably withheld.

21.12. **Singular/Plural, Gender.** Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes all genders.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized as of the day and year first above written.


SELLER:

XAVIER UNIVERSITY

By:   
NAME John R. Harte  
TITLE Executive Vice President

BUYER:

CINCINNATI CLASSICAL PUBLIC RADIO, INC.

By:   
NAME Richard N. Eisenth  
TITLE President - General Manager

#### **Schedule 6.4.1**

#### **CONDITION OF CERTAIN ASSETS**

##### **1. WVXM - Manistee, Michigan**

WVXM's transmission line shorted out during a windstorm on December 20, 2004, and repairs cannot be completed until Spring. Temporary facilities were installed February 1, 2005, to continue providing service on WVXM at reduced power of approximately 3,200 watts. Complete repairs shall be made by Seller at Seller's sole cost and expense, when weather permits, anticipated to be in late spring of 2005.

##### **2. WVXA - Rogers City, Michigan**

Seller acquired this station in January 1998. The prior owner had previously installed a 6-bay FM antenna on the existing 350 foot tower (the "Existing Tower"). Seller has been unable to determine whether or not a new structural analysis was made of the existing tower when the 6-bay antenna was attached. Seller has been informed that the 6-bay antenna would cause the tower to be out of compliance with EIA Code, Version D and has also been informed that there is no immediate danger of the tower collapsing unless there would be a "massive ice storm," the risk of which Seller has been informed is low. Seller intended to replace the tower with an approximately 500-foot tower (the "New Tower") and on August 17, 2004, received an FCC construction permit (the "Construction Permit") for such replacement, which will be assigned to Buyer at Closing.

As soon after Closing as is practicable, Buyer shall undertake and diligently prosecute the work necessary to replace the Existing Tower with the New Tower, as well as with all necessary transmitting equipment that will increase Station WVXA's coverage as specified in the Construction Permit (the "Upgrade"). Upon completion of the Upgrade, Buyer will submit to the FCC an application for a new license for this station, in accordance with the FCC rules. Seller shall promptly pay to Buyer, upon invoice therefore, for all out-of-pocket costs incurred by Buyer and paid to third party contractors or material suppliers in completing the Upgrade, provided, Seller shall not be required to expend more than \$250,000.00 pursuant to its obligations hereunder.

Immediately upon completion of the Upgrade, Buyer agrees to take reasonable and persistent efforts to market and sell the subject station to a bona fide purchaser and to expeditiously consummate such sale. Upon the closing of the sale of Station WVXA, the consideration received by Buyer (which shall include the value of any cash received, noncompetes, promissory notes, or any other consideration) will be disbursed in the following order of priority:

- a. The Buyer shall first receive a base price (the "Base Price"), out of which will be paid any transaction costs associated with the sale, including legal and brokerage fees, shall be retained by Buyer. The Base Price will be determined prior to Closing (as defined in Section 9.1 of the Agreement) by the Appraisal Method and memorialized by the Buyer and Seller by written agreement at Closing.



- b. Seller shall be reimbursed for the costs it paid to complete the Upgrade.
- c. The remaining proceeds shall be divided equally between Buyer and Seller.

In the event Buyer sells Station WVXA as part of the sale of some or all of Buyer's other stations, the value of Station WVXA shall be determined by the Appraisal Method. In valuing Station WVXA, the appraisers will also perform appraisals of the other stations being sold in the transaction; provided, however, the sum of the total value of the appraisals for Station WVXA and the other stations being sold shall be equal to the purchase price for all the stations. Buyer shall be required to pay Seller said proceeds within thirty (30) days of establishment of the value as contemplated herein (but only after a sale of Station WVXA). Any amount not timely paid shall accrue interest at five percent (5%) or New York Prime, whichever is greater.

"Appraisal Method" as used in this Schedule 6.4.1 shall be deemed to mean the following procedure:

Each party shall select a qualified media appraiser to establish the value of Station WVXA and the value shall be determined by the average of the two appraisals. If the two appraisals of Station WVXA differ by more than ten percent (10%), then the two appraisers shall agree on a third qualified media appraiser who shall undertake an appraisal under the same methodology as described above, and the value will be the average of the three appraisals.