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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): The Johns Hopkins University
Individual(s) Association General Partnership Limited Partnership Corporation-State Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Your Public Radio Corporation Internal Address: Street Address: 2216 N. Charles Street City: Baltimore State: MD Zip: 21218
Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Maryland Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other
Execution Date: January 31, 2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 2316296
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: John R. Glassburn III, Esquire Internal Address: Street Address: Ober, Kaler, Grimes & Shriver 120 E. Baltimore Street City: Baltimore State: MD Zip: 21202

6. Total number of applications and registrations involved: 1
7. Total fee (37 CFR 3.41): \$ 40 Enclosed Authorized to be charged to deposit account
8. Deposit account number: (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. John R. Glassburn III, Esq. Signature Date 02/07/2002

Total number of pages including cover sheet, attachments, and document: 30

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Mall documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made as of the 19<sup>th</sup> day of September, 2001, by and between Maryland Public Radio Corporation, a Maryland nonstock corporation ("Buyer") and The Johns Hopkins University, a Maryland corporation ("Seller").

### R E C I T A L S:

A. Seller is engaged in the business of radio broadcasting and presently owns certain assets in connection with its operation of noncommercial radio broadcast station WJHU (88.1 FM) (the "Station").

B. Buyer and Seller have executed a letter of intent dated July 12, 2001 (the "Letter of Intent"), a copy of which is attached as Exhibit "A", that sets forth the intention of the parties to execute an asset purchase agreement.

C. Buyer intends to operate the Station as a noncommercial, public radio station, broadcasting news and other programming of interest to a noncommercial radio audience.

D. Seller is willing to sell to Buyer, and Buyer is willing to purchase from Seller, substantially all of the assets, business, and rights of Seller related to the conduct of the Station on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the Recitals and of the mutual covenants, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

### **ARTICLE I PURCHASE AND SALE**

**1.1. Purchase and Sale.** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase all of Seller's right, title and interest, both legal and equitable, in and to all assets owned, used or useable in the operation of the Station, other than Retained Assets (as defined herein) (collectively, "Purchased Assets"). The Purchased Assets, shall include, without limitation, the following:

(a) Contracts. All agreements, including those listed on Schedule 3.6, under which Seller conducts the business of the Station, whether written, oral or implied, including all contractual obligations incurred by Seller for the underwriting of programs ("Contracts");

(b) Supporter Lists. All lists and computer tapes and programs in Seller's possession concerning past, present and potential members, donors, sponsors, underwriters, or providers of in-kind services to the Station;

(c) Equipment. All machinery, equipment, furniture, fixtures, furnishings, and other items of tangible personal property owned or leased by Seller that are used or useable in the operation of the Station, including, without limitation, those items listed on Schedule 1.1(c) ("Equipment");

(d) Intangible Property. Except as specifically excluded on Schedule 1.1(d) (which Schedule 1.1(d) also lists, but is not intended to limit, the Intangible Property that is being transferred), all copyrights, trademarks, sound recordings of programming developed by Seller or Station, computer software which Seller owns, licenses, or otherwise has the legal right to use in connection with the operation of the Station, and the goodwill associated with the Station (collectively, "Intangible Property");

(e) Licenses. All licenses, permits and authorizations issued by the Federal Communications Commission ("FCC") to Seller for the operation of the Station and all auxiliary facilities licensed by the FCC for operation in connection with the Station, as listed on Schedule 1.1(e) ("Licenses");

(f) Leases. All leases of real property, leasehold improvements, and equipment related to the Station as listed on Schedule 1.1(f) ("Leases");

(g) Accounts Receivable. All accounts receivable of Seller, except as provided on Schedule 1.1(g), related to the Station and set forth in Seller's or the Station's financial statements or accounting records as of the Closing Date, subject to the provisions of Section 9.1 of this Agreement ("Accounts Receivable").

(h) Records. Files, books and records, including technical information and engineering data, programming information, sales records, underwriting records, and FCC logs, relating to the Station; and

(i) Contracts for Additional Broadcast Rights or Facilities. Any contract related to Seller's right to obtain broadcast rights or purchase broadcast facilities or assets.

Notwithstanding any provision of this Agreement to the contrary, Seller shall not transfer, convey or assign to Buyer, but shall retain, all of its right, title and interest in and to the Retained Assets, which consist of the following:

(i) Cash. That portion of cash the Seller has as of the Closing Date that is needed to pay Seller's pre-Closing operating expenses, subject to the provisions of Section 9.1 of this Agreement;

(ii) Contracts of Insurance. All insurance policies of Seller;

(iii) Retirement Assets. Any pension profit sharing or retirement plans or trusts or related assets;

(iv) Rights to WJHU. Seller shall retain all rights in the call letters WJHU; and

(v) Phone Numbers. Seller shall retain all rights to the phone numbers currently utilized in connection with the operation of the Station.

**1.2. Earnest Money.** Upon signing of the Letter of Intent, Buyer delivered Ten Thousand Eighty Dollars (\$10,080) to Seller to be held in escrow. Simultaneously with the execution of this Agreement by Buyer and Seller, Seller is delivering the \$10,080 to Mercantile-Safe Deposit & Trust (the "Escrow Agent") and Buyer is delivering additional funds to the Escrow Agent so that a total of Two Hundred Fifty Thousand Dollars (\$250,000) is held by the Escrow Agent. The \$250,000 plus accrued interest is the "Earnest Money". The Earnest Money shall be held pursuant to an escrow agreement in the form of Exhibit "B" attached hereto.

**1.3. Financing Commitment and Closing.**

(a) Upon execution of this Agreement, Buyer delivered a document evidencing a lender's intention to loan to Buyer such portion of the Purchase Price as may be needed by Buyer. Within fifteen (15) days after the execution of this Agreement by Buyer and Seller, Buyer will deliver a financing commitment to Seller.

(b) Buyer and Seller shall use all reasonable efforts to complete the transactions contemplated by this Agreement. The meeting to finalize the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Ober, Kaler, Grimes & Shriver, P.C., 120 E. Baltimore Street, Baltimore, MD 21202, at such time and on such date as mutually agreed by the Buyer and Seller (the "Closing Date").

**1.4. Payment on Closing.** At the Closing on the Closing Date, Buyer shall:

(a) Cause the Escrow Agent to pay to Seller the Earnest Money, by check or wire transfer, in immediately available funds; and

(b) Deliver to Seller, by certified check or wire transfer in immediately available funds, an amount equal to the purchase price of Five Million Dollars (\$5,000,000) (the "Purchase Price"), less the Earnest Money.

**1.5. Non-Assumption of Liabilities.** Buyer does not and shall not assume or become obligated to pay any debt, obligation or liability of any kind or nature of Seller or the Station, whether known or unknown, fixed or contingent. Notwithstanding the foregoing, Buyer will assume certain Contracts as specified in the Assignment and Assumption Agreement to be separately executed by the parties. Notwithstanding the foregoing, Buyer may accept an assignment of Seller's contractual rights to obtain broadcast rights

or purchase broadcast facilities or assets. In the event Buyer accepts such assignment, Buyer will assume the associated costs.

**1.6. Risk of Loss.** The risk of any material loss, taking, condemnation, damage or destruction of or to any of the Purchased Assets of the Station (collectively, "Events of Loss") prior to the Closing shall be upon Seller and the risk of all Events of Loss at or subsequent to the Closing shall be upon Buyer.

**1.7. Allocation of Purchase Price.** Buyer and Seller agree that the Purchase Price shall be allocated as will be separately agreed by the parties prior to Closing. Neither party shall, in connection with any tax return, any refund claim, any litigation or investigation or otherwise, take any position with respect to the allocation of the Purchase Price that is inconsistent with the manner of allocation to be agreed by the parties.

**1.8 Due Diligence Inspection.** Buyer has made such examinations, inspections and investigations of the Purchased Assets as Buyer in its sole and exclusive discretion has deemed necessary and Buyer agrees to accept the Purchased Assets in such condition existing as of the date of such examinations, inspections, and investigations.

## ARTICLE II

### GOVERNMENTAL APPROVALS AND CONTROL OF STATION

**2.1. FCC Consent.** It is specifically understood and agreed by Buyer and Seller that the Closing shall be in all respects subject to, and conditioned upon, the receipt of prior FCC consent to the assignment of the license of the Station as a radio broadcast station (the "FCC Consent"). Buyer and Seller shall prepare and file with the FCC as soon as practicable, but in no event later than five (5) business days after the execution of this Agreement, all requisite applications and other necessary instruments and documents to request the FCC Consent. After the aforesaid applications, instruments and documents have been filed with the FCC, Buyer and Seller shall prosecute such applications with all reasonable diligence and take all steps reasonably necessary to obtain the requisite FCC Consent.

**2.2. Control Prior to Closing.** Between the date hereof and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct, the operation of the Station. Such operation, including complete control and supervision of all programs, employees and policies, shall be the sole responsibility of Seller.

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

Seller represents and warrants to Buyer as follows:

**3.1. Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

**3.2. Power and Authority; Enforceability.** Seller has full corporate power and authority to own, lease, and operate the Purchased Assets and to conduct the business of the Station as it is now being conducted. Seller's execution, delivery and performance of this Agreement and all of the documents and instruments required hereby, and the consummation of the transactions contemplated hereby, have been duly authorized by the Executive Committee of Seller's Board of Trustees and no other corporate proceedings on the part of Seller are required to authorize the execution and delivery of this Agreement and the other documents required hereunder, or the consummation of the transactions contemplated hereby, except for the filing of Articles of Transfer, which will be separately executed by the parties, with the Maryland State Department of Assessments and Taxation ("SDAT"). This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Seller, the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally, and by general equitable principles which may limit the right to obtain equitable remedies.

**3.3. Absence of Conflicting Agreements.** Except as set forth on Schedule 3.3, neither the execution, delivery or performance of this Agreement in accordance with its terms by Seller nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement, does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) Conflict with, result in a breach of, or constitute a default under the Charter, Bylaws or other organizational agreements or documents of Seller, or conflict with or result in a breach of any federal, state or local law, statute, ordinance, rule or regulation applicable to Seller, or any court of administrative order or process, or any contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to, the ownership or operation of the Station or the Purchased Assets;

(b) Result in the creation of any mortgages, liens, pledges, privileges, claims, rights, charges and security interests of any kind or nature (collectively, "Liens") upon any of the Purchased Assets;

(c) Terminate, amend or modify, or give any party the right to terminate, amend, modify, abandon or refuse to perform any contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to the ownership or operation of the Station or the Purchased Assets;

(d) Require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency, or other authority other than the FCC; or

(e) Require the consent of any Person under any agreement, arrangement or commitment of any nature to which Seller is a party or bound, or by which the Purchased Assets are bound or subject.

**3.4. Title to Purchased Assets; Liens and Encumbrances.** Except as set forth on Schedule 3.4, Seller owns good and marketable title to, or has valid leasehold interests in, all of the Purchased Assets free and clear of any Liens.

**3.5. Equipment.** Except as set forth on Schedule 3.5:

(a) Each material item of Equipment, necessary for or used in the operation of the Station in the manner in which it has been and is currently operated, is in operating condition and repair, ordinary wear and tear excepted, and in compliance with FCC rules and regulations;

(b) The Equipment includes all items of tangible personal property utilized by Seller in connection with owning and operating the Station; and

(c) The list of Equipment on Schedule 1.1(c) is a true and correct list of all items of tangible personal property necessary for or used in the operation of the Station in the manner in which it has been and is currently operated.

**3.6. Contracts.** Except as set forth on Schedule 3.6:

(a) Schedule 3.6 lists all Contracts except for (i) underwriting agreements that involve less than \$1,000 in airtime and require performance over a period of less than sixty (60) days and, (ii) Tradeout Agreements (as defined herein), and (iii) other agreements which are cancelable by Seller or its assignee without breach or penalty on not more than thirty (30) days notice and which involve average annual payments or receipts by the Station of less than \$5,000 in the case of any single contract and \$15,000 in the aggregate;

(b) To Knowledge of Seller, Seller has performed in all material respects each term, covenant and condition of each of the Contracts required to be listed on Schedule 3.6, and no default, or any event which with the passing of time or giving of notice would constitute a default, on the part of Seller, or any other party thereto, exists under any of the Contracts;

(c) To Knowledge of Seller each of the Contracts listed on Schedule 3.6 is in full force and effect and, to Knowledge of Seller, unimpaired by any acts or omissions of Seller, and constitutes the legal and binding obligation of, and is legally enforceable against, Seller and against each other party thereto in accordance with its terms;

(d) Seller has furnished true and complete copies of all Contracts listed on Schedule 3.6, including all amendments, modifications and supplements thereto, and Schedule 3.6 contains summaries of all oral contracts;

(e) Schedule 3.6(e) sets forth an accurate and complete list of all contracts, agreements or commitments of Seller, whether oral or written, pursuant to which Seller has provided airtime of the Station in consideration for any property or services in lieu of or in addition to cash ("Tradeout Agreements"), and sets forth for each Tradeout Agreement the parties thereto, the value of broadcast time required to be provided on the Station from and after the date shown on Schedule 3.6(e), and the value of goods and services to be provided to the Station from and after such date which do not, in either case, exceed \$5,000 in the aggregate;

(f) Except for those agreements that require consent to assignment listed on Schedule 3.3, Seller's right, title and interest in and to each of the Contracts is fully assignable to Buyer without the consent, approval or waiver of any other natural person, general or limited partnership, corporation, limited liability company or other entity (each a "Person").

**3.7. Intangible Property.** Except as set forth on Schedule 3.7:

(a) There are no claims, demands or proceedings instituted, pending or, to Knowledge of Seller, threatened by any third party pertaining to or challenging Seller's right to use any of the Intangible Property;

(b) To Knowledge of Seller, Seller is not infringing upon or otherwise acting adversely to any trademark, trade name, patent or copyright owned by a third party;

(c) There are no royalty agreements between Seller and any third party relating to any of the Intangible Property;

(d) The Intangible Property constitutes all of the material intangible and intellectual property interests and other intellectual property necessary or appropriate for or used in the operation of the Station (other than copyrights and trademarks with respect to Seller's right to broadcast programs as part of the Station's programming and for which Seller is or will be obligated to compensate the vendor of such programs, including all program barter agreements);



(e) Except for those matters that require consent to assignment listed on Schedule 3.3, Seller's right, title and interest in and to the Intangible Property are fully assignable to Buyer without the consent, approval, or waiver of any Person.

(f) All registered copyrights and trademarks, if any, are listed on Schedule 1.1(d);

**3.8. Leases.** Except as set forth on Schedule 3.8:

(a) The Leases described on Schedule 1.1(f) constitute all of the lease agreements between Seller and third parties relating to the operation of the Station or the Purchased Assets;

(b) To Knowledge of Seller, Seller has performed in all material respects each term, covenant and condition of each of the Leases which is required to be performed by Seller at or before the date hereof, and no default or event, which with the passing of time or giving of notice, or both, would constitute a default on the part of the Seller or on the part of any other party thereto, exists under any Lease;

(c) Each of the Leases is in full force and effect and constitutes the legal and binding obligation of, and is legally enforceable against Seller, and to Knowledge of Seller, against each other party thereto in accordance with its terms; and

(d) Except for the required third-party consents listed on Schedule 3.3, Seller's right, title and interest in and to each of the Leases is assignable to Buyer without the consent, waiver or approval of any Person.

**3.9. Financial Statements.**

(a) Attached as Schedule 3.9 are true and complete copies of the audited financial statements of Seller or Station, as appropriate, for fiscal years 1999 and 2000, and unaudited financial statements as of June 30, 2001.

(b) No warranty or representation is given as to the income or business of the Station or whether it will be likely to attain any level of income or business in the future.

**3.10. No Changes.** Except as set forth on Schedule 3.10 or as otherwise contemplated by this Agreement, since June 30, 2001, there has not been any:

(a) Contract or transaction entered into by Seller with respect to the Station, except in the ordinary course of business consistent with past practices conducted as of that date;

- (b) Default under any indebtedness of Seller, or any event which with the lapse of time or the giving of notice, or both, would constitute such a default;
- (c) Amendment or termination of any Contract, Lease, or License to which Seller is a party, except in the ordinary course of business;
- (d) Material increase in compensation paid, payable or to become payable to any of its employees at the Station or any material change in personnel policies or benefits, except in the ordinary course of business consistent with past practices;
- (e) Commitment to or liability to any labor organization which represents, or proposes to represent, employees of the Station;
- (f) Sale, assignment, lease or other transfer or disposition of any of the Purchased Assets or properties of the Station, except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;
- (g) Agreement by Seller to do any of the foregoing.

**3.11. No Litigation; Labor Disputes.** Except as set forth on Schedule 3.11:

- (a) Except for FCC rulemaking procedures generally affecting the radio broadcasting industry, to Knowledge of Seller there is no decree, judgment, order, investigation, litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority, pending or threatened, to which Seller is a party or otherwise relating to the Station or the Purchased Assets.
- (b) The Station is not subject to or bound by any labor agreement or collective bargaining agreement; there is no labor dispute, grievance, controversy, strike or request for union representation pending, or to Knowledge of Seller, threatened against Seller relating to or affecting the business or operations of the Station; and, to Knowledge of Seller, there has been no occurrence of any events which would give rise to any such labor dispute, controversy, strike or request for representation.

**3.12. Governmental Authorizations.** Seller holds, and on the Closing Date will hold, all valid Licenses from the FCC necessary to operate the Station as a noncommercial radio broadcast station. Schedule 1.1(e) includes a true and complete list of the Licenses. The Licenses are in full force and effect and Seller is the authorized legal holder thereof. As of the date hereof, to Knowledge of Seller, no action or proceeding is pending or threatened before the FCC or any other governmental authority to revoke, refuse to renew or modify such Licenses or other authorizations of the Station.

**3.13. Compliance with FCC Requirements.** To Knowledge of Seller, except as set forth on Schedule 3.13, the Station, its physical facilities, electrical and mechanical systems, and transmitting and studio equipment are being and have been operated in all material respects in accordance with the specifications of the applicable Licenses, and Seller and the Station are in compliance in all material respects with all requirements, rules and regulations of the FCC. To knowledge of Seller, Seller has complied in all material respects with all requirements of the FCC and the Federal Aviation Administration with respect to the construction and/or alteration of Seller's antenna structures, and "no hazard" determinations for each antenna structure have been obtained, where required. To Knowledge of Seller, except as set forth on Schedule 3.13, all obligations, reports and other filings required by the FCC with respect to the Station, including without limitation, items required to be placed in the Station's public inspection file have, in all material respects been duly and currently filed as of the date hereof, and are true and complete in all material respects. After the Closing Date, Seller shall furnish to Buyer all information required by the FCC relating to the operation of the Station prior to the Closing Date.

**3.14. Insurance.** Schedule 3.14 is a correct list of all liability, casualty and errors and omissions insurance policies insuring the business, properties and assets of the Station, and all such policies are in full force and effect. Seller is not in default with respect to such insurance policies, nor has Seller failed to give any notice or present any claim under any policy in a due and timely fashion.

**3.15. Brokers.** This Agreement, the sale and purchase of the Purchased Assets, and any other transaction contemplated by this Agreement were not induced or produced through any Person acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity, other than the Persons listed on Schedule 3.15, whose fees and expenses shall be paid and satisfied by Seller at Closing.

**3.16. Employees.** Schedule 3.16 is a true and complete list of all of Seller's employees involved in the operation of the Station, which list identifies the name and position of such employees. Except as set forth on Schedule 3.16, there are no employment agreements, consulting agreements or independent contractor agreements to which Seller is a party relating to the Station that are not terminable at will.

**3.17. Financial Benefit Plans.** Except as set forth on Schedule 3.17, Seller has not at any time maintained or been a party to or made contributions to any employee benefit plan for Station employees ("Station Employee Benefit Plan"). To Knowledge of Seller, any Station Employee Benefit Plans maintained by Seller are, and have in the past been, in all material respects maintained and administered in compliance with the Employee Retirement Income Security Act of 1974 (as amended) and the Internal Revenue Code of 1986 (as amended), and other applicable law.

### **3.18. Environmental Compliance.**

(a) To Knowledge of Seller, Seller has complied and is in material compliance with the rules and regulations of the FCC, the Environmental Protection Agency and any other federal, state or local government authority pertaining to human exposure to RF radiation and all applicable rules and regulations of federal, state and local laws, including statutes, regulations, ordinances, codes and rules, as amended, relating to the discharge of air pollutants, water pollutants or process waste water, or otherwise relating to the environment or Hazardous Materials or toxic substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect (collectively, "Environmental Laws").

(b) Seller is not a party to any litigation or administrative proceeding and, to Knowledge of Seller, there is not any litigation or administrative proceeding threatened against it, which in either case (i) asserts or alleges that Seller violated any Environmental Laws with respect to the Leased Real Property, (ii) asserts or alleges that Seller is required to clean up, remove or take remedial or other response action due to the disposal, depositing, discharge, leaking or other release of any wastes, substances, or materials that are deemed hazardous, toxic, pollutants or contaminants, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any Environmental Laws ("Hazardous Materials") at any leased real property utilized in connection with the Station ("Leased Real Property") or (iii) asserts or alleges that Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal or remedial or other response action which arises out of or is related to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials by Seller at the Leased Real Property.

(c) To Knowledge of Seller, with respect to the period during which Seller occupied the Leased Real Property, and, with respect to the time before Seller occupied any Leased Real Property, no Person has caused or permitted Hazardous Materials to be stored, deposited, treated, recycled or disposed of on, under or at any Leased Real Property.

(d) To Knowledge of Seller, there are not now, nor have there previously been, tanks or other facilities on, under, or at the Leased Real Property which contained any Hazardous Materials.

(e) To Knowledge of Seller, the operation of the Station does not exceed the permissible levels of exposure to RF radiation specified in the FCC's current rules, regulations and policies concerning RF radiation.

**3.19. Accounts Receivable.** All Accounts Receivable represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. Except as stated on Schedule 3.19, the Accounts Receivable are current and collectable. There is no contest, claim, or right of setoff under any contract with any obligor of an Account Receivable relating to the amount or validity of such Account Receivable. Seller's financial records include a complete and accurate list of all Accounts Receivable.

**3.20. Representations and Warranties as of the Closing Date.** Seller's representations and warranties set forth in this Agreement shall be true and correct as of the date of this Agreement and the Closing Date. All such representations and warranties shall survive the consummation of the transactions contemplated by this Agreement for a period of six (6) months.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

**4.1. Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland.

**4.2. Power and Authority; Enforceability.** Buyer has full corporate power to purchase the Purchased Assets pursuant to this Agreement. Buyer's execution, delivery and performance of this Agreement and all of the documents and instruments required hereby, and the consummation of the transactions contemplated hereby, have been duly authorized by the Buyer's Board of Directors and no other corporate proceedings on the part of Buyer are required to authorize the execution and delivery of this Agreement and the other documents required hereunder, or the consummation of the transactions contemplated hereby. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect, affecting the enforceability or right of creditors generally, and by general equitable principles which may limit the right to obtain equitable remedies.

**4.3. Absence of Conflicting Laws and Agreements.** Except as set forth on Schedule 4.3, neither the execution, delivery or performance of this Agreement by Buyer, nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement, does or will, after the giving of notice, or the lapse of time, or otherwise:

(a) Conflict with, result in a breach of, or constitute a default under, Buyer's Charter, Bylaws or other organizational agreements or documents of any type, or any federal, state or local law, statute, ordinance, rule or regulation, or any court or administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer or its assets is bound;

(b) Require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency other than the FCC Consent; or

(c) Require the consent of any Person under any agreement, arrangement or commitment of any nature to which Buyer is a party or by which it is bound.

**4.4 Qualifications.** Buyer is financially and otherwise qualified to be an FCC licensee of the Station under all requirements, rules, and regulations of the FCC, including the licensing and service requirements provided in 47 C.F.R. § 73.503 for noncommercial, educational FM broadcast stations. Further, Buyer has no reason to believe that an FCC application for assignment of the Licenses to Buyer would not be approved in the ordinary course without any rule waiver or exception.

**4.5 Financial Statements.** Buyer's financial condition has not materially changed from the pro-forma financial statements previously provided to Seller.

**4.6 Litigation.** Buyer has no knowledge of any decree, judgment, order, investigation, litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority, pending or threatened, to which Buyer is a party and which would prohibit or interfere with Buyer's ability to consummate the transactions contemplated by this Agreement.

**4.7 Representations and Warranties as of the Closing Date.** Buyer's representations and warranties set forth in this Agreement shall be true and correct as of the date of this Agreement and the Closing Date. All such representations and warranties shall survive the consummation of the transactions contemplated by this Agreement for a period of six (6) months.

## ARTICLE V

### CERTAIN MATTERS PENDING THE CLOSING

From and after the date of this Agreement and until the Closing (unless otherwise provided herein):

**5.1. Access.** Buyer and its authorized agents, officers and representatives shall have reasonable access to the Station and the Purchased Assets to conduct such examination and investigation of the Station and the Purchased Assets as it deems reasonably necessary, provided that advance notice is provided to Seller and such examinations shall

be during the Station's normal business hours, not unreasonably interfere with the Station's normal operations and activities, and not be in violation of Section 2.2 concerning "control."

**5.2. Operations Pending Closing.** After the date hereof and prior to the Closing, Seller shall:

- (a) Operate the Station in accordance, in all material respects, with applicable FCC requirements, rules and regulations;
- (b) Maintain the Equipment in its present working order, ordinary wear and tear and usage excepted, and replace any of the Equipment which shall be worn out, broken, lost, stolen or destroyed, which Equipment would have been replaced in the ordinary course of business in accordance with past practices;
- (c) Not sell, lease, mortgage, pledge or otherwise dispose of any of the Purchased Assets except for transactions in the ordinary and regular course of the operation of the Station;
- (d) Use reasonable efforts to preserve its business organization, to the extent consistent with the consummation of the transactions contemplated by this Agreement, to keep available the services of Station employees and to preserve the goodwill of donors, underwriters and others doing business with Seller;
- (e) Notify Buyer of any material increase in the rate or nature of the compensation (including wages, salaries and bonuses) which is paid or payable to any employee of Station, except pursuant to existing compensation and fringe benefit plans, practices and arrangements which have been disclosed to Buyer, and also notify Buyer prior to the renewal of any employment or consulting agreement, or other contract or arrangement with respect to the performance of personal services;
- (f) Maintain in full force and effect policies of liability and casualty insurance of substantially the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Station;
- (g) Not enter into any Tradeout Agreements relating to the Station that create obligations or liabilities of Seller extending to or beyond the Closing Date without the prior written consent of Buyer;
- (h) Proceed with all reasonable diligence to satisfy its obligations pursuant to Tradeout Agreements in the ordinary course of business of the Station; and
- (i) Make all payments necessary to maintain the programming license agreements with National Public Radio and Public Radio International.

**5.3. Consents.** Seller will use reasonable efforts to obtain all consents and approvals required from third Persons, whose consent or approval is required pursuant to any Contract or Lease, prior to the Closing Date.

**5.4. Cooperation.** Buyer and Seller will cooperate in all respects in connection with: (a) securing any non-governmental approvals, consents and waivers required of third parties; and (b) giving notices to any governmental authority, or securing the permission, approval, determination, consent or waiver of any governmental authority, required by law in connection with the transfer of the Purchased Assets from Seller to Buyer.

**5.5. Release of Liens.** At or prior to the Closing, Seller shall obtain the release of all Liens disclosed in the Schedules hereto and any other Liens on the Purchased Assets, and shall duly file releases or terminations of all such Liens with each governmental agency or office with which any such Lien or evidence thereof shall have been previously filed.

**5.6. Public Announcement.** Seller shall publish and broadcast a public notice concerning the filing of the application for assignment of the Licenses in accordance with the requirements of the FCC's Rules. As to any other announcements, no party hereto shall issue any press release or public announcement without prior approval of the other party hereto, which shall not be unreasonably withheld, except to the extent that such party shall be obligated by law, rule or regulation, in which case the other party shall be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

**5.7. Fundraiser.** Seller shall conduct its regularly scheduled fall fundraiser (the "Fundraiser"), conferring with Buyer on the format and content.

## ARTICLE VI

### CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER

Each and every obligation of Buyer to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

**6.1. Financing.** Within 15 days of the date of this Agreement, Buyer shall have obtained a commitment from a lender to fund such portion of the Purchase Price as may be needed by Buyer.

**6.2. Compliance with Agreement.** Seller shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing.

**6.3. Proceedings and Instruments Satisfactory.** All proceedings and actions of Seller, its officers and individuals connected with Seller, necessary for corporate action to be taken in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall have been taken and shall be complete to the reasonable



satisfaction of Buyer and Buyer's counsel, and Seller shall have made available to Buyer for examination the originals, or true and correct copies, of all documents which Buyer may reasonably request in connection with the transactions contemplated by this Agreement.

**6.4. Representations and Warranties.** The representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date, except for changes permitted or contemplated by this Agreement.

**6.5. Event of Loss.** Between the date of this Agreement and the Closing, neither the Station nor the Purchased Assets shall have sustained any material loss, taking, condemnation, damage, or destruction (an "Event of Loss") which individually or in the aggregate would cost in excess of \$25,000 to repair and such repair shall not have been completed on or prior to the Closing Date; provided, however, Seller may elect to extend the Closing Date for a reasonable period, not to exceed ninety (90) days, necessary to complete such repairs.

**6.6. Deliveries at Closing.** Seller will execute, or cause to be executed, and deliver to Buyer the following documents:

- (a) The Assignment and Assumption Agreement;
- (b) A Bill of Sale to be separately executed by the parties;
- (c) Articles of Transfer;
- (d) A copy of instruments evidencing any required consents, including, but not limited to, estoppel certificates, for Leases or Contracts;
- (e) The document indicating the agreed allocation of Purchase Price;
- (f) A certificate of good standing of Seller issued not earlier than 15 days prior to the Closing Date by the SDAT;
- (g) Certified copies of resolutions of the Executive Committee of the Board of Trustees of Seller authorizing the execution, delivery and performance of this Agreement, the other documents required pursuant to this Agreement, and the transactions contemplated hereby; and
- (h) An insurance certificate evidencing commercial liability insurance in an amount of \$3 million combined single limit of coverage that lists Buyer as an additional insured and provides Buyer with 30 days prior written notice of any modification, reduction or cancellation of such insurance.

(i) Such other documents, instruments, certificates, and items as shall be reasonably requested by Buyer's counsel to establish the due authorization of this Agreement and to consummate the transactions contemplated hereunder.

**6.7. Absence of Investigations and Proceedings.** Except for governmental investigations relating to the broadcast industry generally, or as set forth on Schedule 6.7, there shall be no decree, judgment, order, or litigation at law or in equity, no arbitration proceedings, and no proceeding pending before or by any commission, agency or other administrative or regulatory body or authority to which Seller is a party or to which the Station or the Purchased Assets are subject, including any with respect to condemnation, zoning, use or occupancy, which would materially and adversely affect the ability of Buyer to acquire the Purchased Assets or to operate the Station or use the Purchased Assets in the same manner as operated and used by Seller. Without limiting the generality of the foregoing, no action or proceeding shall be pending before the FCC or any governmental authority to revoke, modify in any material respect or refuse to renew any of the Licenses. No suit, action or other proceeding shall be pending before any court or governmental authority in which it is sought to restrain or prohibit, or obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby.

**6.8. Compliance with Laws.** Buyer's satisfaction that the Station is operating in compliance with FCC rules and regulations, and otherwise within the limits of all local, state, and federal laws governing the business of the Station.

**6.9. Governmental Consents.** The FCC Consent shall have been issued and it shall be one to which no action, request for stay, petition for rehearing or reconsideration, appeal or review by the FCC on its own motion is pending, and as to which the time for filing or initiation of any such request, petition, appeal or review has expired (a "Final Order"). The FCC Consent shall be in full force and effect and shall contain no provision materially adverse to Buyer. All other authorizations, consents and approvals of any and all governmental regulatory authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

**6.10. Absence of Liens.** On the Closing Date and simultaneously with the Closing, there shall not be any Liens on the Purchased Assets.

If any of the conditions set forth in this Article VI have not been satisfied, Buyer may, in its sole discretion, nevertheless elect to proceed with the consummation of the transactions contemplated hereby.

## ARTICLE VII CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER

Each and every obligation of Seller to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:

**7.1. Compliance with Agreement.** Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing.

**7.2. Proceedings and Instruments Satisfactory.** All proceedings and actions of Buyer, its officers and individuals connected with Buyer, necessary for corporate action to be taken in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall have been taken and shall be complete to the reasonable satisfaction of Seller and Seller's counsel, and Buyer shall have made available to Seller for examination the originals, or true and correct copies, of all documents which Seller may reasonably request in connection with the transactions contemplated by this Agreement.

**7.3. Representations and Warranties.** The representations and warranties made by Buyer shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

**7.4. Deliveries at Closing.** Buyer will make the payments described in Section 1.4. Buyer will execute, or cause to be executed, and deliver to Seller the following documents:

- (a) The Assignment and Assumption Agreement;
- (b) The Bill of Sale;
- (c) Articles of Transfer;
- (d) A certificate of good standing of Buyer issued not earlier than 15 days prior to the Closing Date by the SDAT;
- (e) Certified copies of resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement, the other documents required pursuant to this Agreement, and the transactions contemplated hereby; and
- (f) An insurance certificate evidencing commercial liability insurance in an amount of \$3 million combined single limit of coverage, which insurance shall be written on an occurrence basis and shall be primary and noncontributory with respect to any coverage maintained by Seller. Such insurance shall include Seller as an additional insured and shall provide Seller with 30 days prior written notice of any modification, reduction or cancellation of such coverage.

(g) Such other documents, instruments, certificates, and items as shall be reasonably requested by Seller's counsel to establish the due authorization of this Agreement and to consummate the transactions contemplated hereunder.

**7.5. Governmental Consents.** The FCC Consent shall have been issued and shall, at Closing, be a Final Order and in full force and effect, and shall contain no provision adverse to Seller. All other material authorizations, consents or approvals of any and all governmental regulatory authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

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

## **ARTICLE VIII INDEMNIFICATION**

### **8.1. Indemnification by Seller.**

(a) Seller shall indemnify and hold Buyer, Buyer's employees, officers, directors, and agents (collectively, "Buyer Indemnified Parties") harmless from and against, and agree promptly to defend Buyer Indemnified Parties from and reimburse Buyer Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney's fees and other legal costs and expenses) which Buyer Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

- (i) any material breach or inaccuracy of any of the representations and warranties made by Seller in or pursuant to this Agreement, or in any instrument, certificate or affidavit delivered by Seller at the Closing in accordance with the provisions of any Section hereof;
- (ii) any material failure by Seller to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and materials delivered by Seller pursuant to this Agreement;
- (iii) all third-party claims against or liabilities of Seller of any nature, whether accrued, absolute, contingent or otherwise, which existed as of the Closing Date or arise out of the operation or ownership of the Station or the Purchased Assets prior to the Closing, and which are not assumed by Buyer pursuant to the terms of this Agreement;  
or

- (iv) any suit, action or other proceeding brought by any governmental authority or Person (other than Buyer) arising out of any of the matters referred to in Sections 8.1(a)(i), 8.1(a)(ii), or 8.1(a)(iii).

(b) The amounts for which Seller shall be liable under Section 8.1 of this Agreement shall be credited for (i) any insurance proceeds payable to Buyer Indemnified Parties in connection with the facts giving rise to the right of indemnification and (ii) any tax benefits received by or accruing to the Buyer Indemnified Parties.

(c) Notwithstanding any other provision to the contrary, Seller shall not be required to indemnify and hold harmless Buyer Indemnified Parties unless: (1) Buyer has asserted a claim with respect to such matters within eighteen (18) months after the Closing; and (2) such claims in the aggregate meet a minimum threshold amount of at least \$100,000.

## **8.2. Indemnification by Buyer.**

(a) Buyer shall indemnify and hold Seller, Seller's employees, officers, directors, and agents (collectively, "Seller Indemnified Parties") harmless from and against, and agrees to promptly defend Seller Indemnified Parties from and reimburse Seller Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney's fees and other legal costs and expenses) which Seller Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

- (i) any material breach or inaccuracy of any representations and warranties made by Buyer in or pursuant to this Agreement, or in any instrument, certificate or affidavit delivered by Buyer at the Closing in accordance with the provisions of any Section hereof;
- (ii) any material failure by Buyer to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and materials delivered by Buyer pursuant to this Agreement;
- (iii) all third-party claims against or liabilities of any nature, whether accrued, absolute, contingent or otherwise, which arise out of the operation or ownership of the Station or the Purchased Assets after the Closing Date; or
- (iv) any suit, action or other proceeding brought by any governmental authority or Person (other than Seller) arising out of any of the matters referred to in Sections 8.2(a)(i), 8.2(a)(ii), or 8.2(a)(iii).

(b) The amounts for which Buyer shall be liable under Section 8.2(a) of this Agreement shall be credited for (i) any insurance proceeds payable to Seller Indemnified Parties from insurance policies in connection with the facts giving rise to the right of indemnification and (ii) any tax benefits received by or accruing to the Seller Indemnified Parties.

(c) Notwithstanding any other provision to the contrary, Buyer shall not be required to indemnify and hold harmless Seller Indemnified Parties unless: (1) Seller has asserted a claim with respect to such matters within eighteen (18) months after the Closing; and (2) such claims in the aggregate meet a minimum threshold amount of at least \$100,000.

(d) Nothing contained in this Section 8.2, or elsewhere herein, shall provide Seller Indemnified Parties with rights of indemnification or other remedies against Buyer in connection with matters covered by Sections 8.2(a)(i) and (ii) in amounts greater than as set forth in Section 10.3 if the transactions contemplated by this Agreement fail to close.

### **8.3 Notification of Claims.**

(a) A party entitled to be indemnified pursuant to Section 8.1 or 8.2 (the "Indemnified Party") shall notify the party liable for such indemnification (the "Indemnifying Party") in writing of any claim or demand that the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. Subject to the Indemnifying Party's right to defend third party claims in good faith as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article VIII within thirty (30) days after the receipt of written notice thereof from the Indemnified Party.

(b) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 8.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party that the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Section 8.1 or 8.2, the Indemnifying Party shall have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 8.3(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand without the written consent of the Indemnifying Party. The Indemnified Party shall make

available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligation to do so.

## ARTICLE IX FURTHER AGREEMENTS

### 9.1. Division of Cash and Pre-Closing Costs.

(a) At Closing, Seller shall deliver to Buyer all of the Station's cash, including, without limitation, the Community Service Grant from the Corporation for Public Broadcasting (subject to the rules of the Corporation for Public Broadcasting regarding transferring the Community Service Grant) and money raised from the Fundraiser, except that which is necessary to pay Seller's costs of operating the Station in the ordinary course of business through the Closing Date, and an estimate of the Seller's pro-rata portion of any pre-Closing costs of operating the Station that were not capable of being satisfied on the Closing Date and any accounts receivable for services rendered prior to the Closing Date.

(b) Within thirty (30) days after the Closing Date (i) Buyer and Seller will determine Seller's pro-rata portion of any pre-Closing costs of operating the Station that were not capable of being satisfied on the Closing Date, and (ii) Buyer and Seller will determine Seller's pro-rata portion, if any, of underwriting receipts received for services previously rendered. The parties will determine these amounts in good faith and offset them against each other, with Buyer or Seller, as the case may be, promptly paying the difference to the other.

### 9.2. Station Employees.

(a) With the prior consent of Seller, Buyer may, at any time after the date of execution of this Agreement, approach Station employees and make arrangements or enter into agreements with such employees concerning becoming employees of the Buyer, although Buyer assumes by this Agreement no obligation to employ or continue the employment of any Person after the Closing. All such offers of employment shall be expressly conditioned upon the consummation of the Closing. Any Station employee who thereby becomes employed by Buyer shall constitute a Transferred Employee.

(b) Seller shall be solely responsible for and shall pay all salaries and other compensation (including, but not limited to, any deferred or incentive compensation and any severance pay) which will or may become payable at any time in the future to any Transferred Employee for services rendered by Transferred Employee to Seller on or before the Closing Date.

**9.3. Bulk Transfer.** Buyer and Seller hereby waive compliance with the Maryland Bulk Transfer provisions of the Uniform Commercial Code and all similar laws.

**9.4. Sublease.** Buyer shall sublease to Seller, pursuant to a sublease to be separately executed by the parties, that portion of the Leased Real Property that is not currently utilized by Seller in connection with Seller's operation of the Station.

**9.5. Underwriting Contracts of the Station.** One (1) week prior to the Closing Date, Seller shall deliver to Buyer financial statements detailing the revenue from underwriting contracts for the prior three months (the "Current Revenue") and the monthly average of revenue from underwriting contracts from fiscal year 2000 (the "Past Revenue"). If Current Revenue is not at least ninety (90) percent of three (3) times Past Revenue, Seller agrees to make payments to Buyer as follows: (1) Beginning on the Closing Date, Seller shall pay Buyer the lesser of (i) the amount necessary to make Current Revenue equal to at least 90% of three times Past Revenue or (ii) \$4,000; and (2) The payments in (1) hereof shall continue to be made on the fifteenth of each month following the Closing Date (using the three most recent months to recalculate Current Revenue) until the earlier of (i) the completion of three consecutive months where Current Revenue equals or exceeds 90% of three times Past Revenue or (ii) June 30, 2002 (this payment would be made on July 15, 2002).

**9.6. Web Site Link.** For a period of three (3) months after the Closing Date, Seller shall cause its web site, [www.wjhu.org](http://www.wjhu.org), to redirect all traffic on such site to a web site to be designated by Buyer.

**9.7. Use of WJHU Call Letters.** For a period of six (6) months after the Closing Date, Seller shall not use the call letters WJHU for any over-the-air broadcast radio station. Seller acknowledges that Buyer's remedy at law for a breach of this Section 9.7 would be inadequate. Therefore, Buyer, in addition to any other remedies that may be available, shall be entitled to seek preliminary and permanent injunctive relief, without the necessity of proving actual damages or posting a bond.

**9.8. Compliance with Corporation for Public Broadcasting Guidelines.** Buyer agrees to act in accordance with the publicly announced guidelines of the Corporation for Public Broadcasting regarding: (1) the control of mailing lists of donors and subscribers; (2) the protection of subscribers' privacy; and (3) the ban on providing lists of donors and subscribers to political campaigns or committees.

## ARTICLE X TERMINATION; MISCELLANEOUS

**10.1. Termination.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date, as follows:

- (a) By mutual written agreement of Seller and Buyer;



(b) By Buyer or Seller if a Final Order shall not have been issued on or before the date that is one year after the date of this Agreement;

(c) By Buyer, if Buyer is not then in material breach of this Agreement and Seller is then in breach of this Agreement, and such breach remains uncured within thirty (30) days after Seller's receipt of written notice thereof from Buyer;

(d) By Seller, if Seller is not then in material breach of this Agreement and Buyer is then in breach of this Agreement, and such breach remains uncured within thirty (30) days after Buyer's receipt of written notice thereof from Seller;  
or

(e) By Buyer or Seller, if Buyer does not have available to it sufficient funds, both loan proceeds and cash, to deliver the Purchase Price at Closing.

## **10.2. Rights on Termination.**

(a) Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated by Buyer pursuant to Section 10.1(c), then Buyer shall be entitled to pursue legal and equitable remedies against Seller for monetary damages to recover its expenses incurred with respect to this Agreement and the transactions contemplated herein, due to such default or breach, or, as an alternative to and in lieu of monetary damages, Buyer may instead seek specific performance (Seller hereby acknowledging that the Purchased Assets are unique and that Buyer has no adequate remedy at law if Seller breaches this Agreement) and Buyer shall be entitled to have the Earnest Money returned to Buyer pursuant to the terms of the Escrow Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated pursuant to Sections 10.1(a) or 10.1(d), then Seller shall be entitled to be paid as its sole liquidated damages, pursuant to Section 10.3, the Earnest Money pursuant to the terms of the Escrow Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated pursuant to 10.1(b), then the Earnest Money shall be returned to Buyer.

(d) Notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated pursuant to 10.1(e), Seller shall be entitled to claim and be paid as its sole liquidated damages, pursuant to Section 10.3, the Earnest Money pursuant to the terms of the Escrow Agreement; provided, however, that if Seller is in material default under this Agreement, and such default is not cured within thirty (30) days of receipt of written notice of the default from Buyer, the Earnest Money shall be returned to Buyer.

(e) The rights and duties of the parties hereto vis-à-vis instructions and notices to the Escrow Agent shall be controlled by the Escrow Agreement.

**10.3. Liquidated Damages.** Buyer and Seller agree that if the transactions contemplated herein fail to close for any reason set forth in Section 10.2(b), Seller's sole and exclusive remedy under Section 10.2(b) shall be the right to claim and be paid the Earnest Money. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm that would be caused by Buyer's breach and failure to close under the terms of the Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Buyer's breach of this Agreement is incapable of estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. The provisions of this Section 10.3 shall apply regardless of whether or not Seller has terminated this Agreement pursuant to Section 10.1.

**10.4. Definition of Knowledge.** As used in this Agreement, the Phrase "to Knowledge of Seller," shall mean to the actual, subjective knowledge of Dennis O'Shea, Executive Director, Communication and Public Affairs, and shall exclude any imputed or constructive knowledge and any duty to make any investigation.

**10.5. Schedules.** Any disclosure with respect to a Section of this Agreement requires a specific reference in the Schedules to such Section of the Agreement to which any such disclosure applies, and no disclosure shall be deemed to apply with respect to any Section to which it does not expressly apply.

**10.6. Further Assurances.** The parties hereto agree that they will from time to time execute and deliver any and all additional and supplemental documents, and do such other acts and things which may be necessary or desirable to effect the purposes of this Agreement, and the consummation of the transactions contemplated hereby.

**10.7. Entire Agreement; Amendment; Waiver.** This Agreement and the documents required to be delivered pursuant hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**10.8. Expenses; Taxes.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the parties shall pay the fees and expenses of its respective counsel, accountants and other experts incident to the negotiation, drafting and execution of this Agreement and

consummation of the transactions contemplated hereby. Additionally, Seller shall pay all sales, transfer, gains, and other taxes imposed as a result of consummation of the transactions contemplated herein.

**10.9. Benefit; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and their respective proper successors and assigns. This Agreement (and any rights, obligations or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the other party; provided, however, either party may assign this Agreement to an entity wholly owned by such party, provided such party continues to be fully obligated hereunder.

**10.10. Confidentiality.**

(a) Buyer agrees that prior to Closing, Buyer and its respective agents and representatives shall not use for its or their own benefit (except when required by law, rule or regulation, and except for use in connection with Buyer's financing of the transaction and Buyer's investigation of the Station and the Purchased Assets in connection with this Agreement), and shall hold in strict confidence and not disclose, (i) any data or information relating to Seller, its affiliates, or the Station obtained from Seller or any of its employees, agents or representatives in connection with this Agreement, or (ii) any data and information relating to the business, supporters, financial statements, conditions or operations of the Station which is confidential in nature and not generally known to the public (clauses (i) and (ii) together, "Seller's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Buyer shall return to Seller all data, information and any other written material obtained by Buyer from Seller in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Seller's Information to any third party or using any of Seller's Information for its own benefit or that of any other Person.

(b) Seller agrees that Seller and its agents and representatives shall not use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with their investigations and review of Buyer in connection with this Agreement), and shall hold in strict confidence and not disclose, (i) any data or information, relating to Buyer or its affiliates, obtained from Buyer or from any of its officers, employees, agents or representatives in connection with this Agreement, or (ii) any data and information relating to the business, supporters, financial statements, conditions or operations of the Buyer which is confidential in nature and not generally known to the public (clauses (i) and (ii) together "Buyer's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Seller shall return to Buyer all data, information and any other written material obtained by Seller from Buyer in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Buyer's Information to any third party or using any of Buyer's Information for its own benefit or that of any other Person.

(c) Notwithstanding any other provision to the contrary herein, the provisions of this Section 10.10 shall survive the termination of this Agreement.

**10.11. Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) if sent by telecopy or facsimile machine to the number shown below, on the date of such confirmed facsimile or telecopy transmission, or (iii) when properly deposited for delivery by commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, on the date that is two days after the date set forth in the records of such delivery service or on the return receipt and addressed as follows, unless and until either of such parties notifies the other in accordance with this Section of a change of address or change of telecopy number:

If to Buyer:                Marc Steiner, President  
Maryland Public Radio Corporation  
2216 N. Charles Street  
Baltimore, MD 21218  
(410) 516-1976 (Fax)

With copies to:            Frank C. Bonaventure, Jr., Esquire  
E. Scott Johnson, Esquire  
Ober, Kaler, Grimes & Shriver, P.C.  
120 E. Baltimore St.  
Baltimore, MD 21202  
(410) 547-0699 (Fax)

If to Seller:                Fred Puddester, Executive Director of Budget  
and Financial Planning and Analysis  
Johns Hopkins University, University Budget Office  
3400 N. Charles St., 231 Garland Hall  
Baltimore, MD 21218  
(410) 516-7331 (FAX)

With a copy to:            Estelle Fishbein, V.P. and General Counsel  
Johns Hopkins University  
3400 N. Charles St., 113 Garland Hall  
Baltimore, MD 21218  
(410) 516-5448 (Fax)

**10.12. Counterparts; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission

shall be deemed an original for all intents and purposes. The Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**10.13. No Reliance.** Except for any assignees permitted by Section 10.9 of this Agreement:

- (a) No third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement; and
- (b) Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**10.14. Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of each party have participated in the preparation hereof. If any court determines that any provision of this Agreement is unenforceable in accordance with its terms, the provision shall be deemed to have been amended to the extent required to render it valid and enforceable, and such court is hereby authorized and directed to amend the provision to the extent, but only to the extent that, such court determines such amendment is necessary to make it valid and enforceable.

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


**10.16. Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Maryland, without regard to the conflict of law principles thereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

"BUYER"

MARYLAND PUBLIC RADIO CORPORATION

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

Name: Marc Steiner  
Title: President

"SELLER"

THE JOHNS HOPKINS UNIVERSITY

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

Name: James T. McGill  
Title: Senior Vice President for  
Finance and Administration