

## **ASSET PURCHASE AGREEMENT**

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), is dated as of the 9<sup>th</sup> day of November, 2017 (the “Effective Date”), by and between **EMPIRE BROADCASTING CORPORATION**, a New York corporation (“Seller”) and **EDUCATIONAL MEDIA FOUNDATION**, a California non-profit religious corporation (“Buyer”).

### **WITNESSETH:**

**WHEREAS**, Seller is the licensee of radio station WJKE(FM), Stillwater, New York (Channel 267A; 101.3 MHz; FIN# 20467) (the “Station”) pursuant to authorizations (the “FCC Authorizations”) issued by the Federal Communications Commission (the “FCC”);

**WHEREAS**, contemporaneously herewith, Buyer and Seller are entering into a Network Affiliation Agreement commencing November 15, 2017 (the “Affiliation Agreement”) relating to the Station; and

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

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **1. Assets and Liabilities.**

(a) On the Closing Date (as defined below), Seller shall sell, assign and transfer, or cause to be delivered, to Buyer, and Buyer shall purchase, assume and accept from Seller, the assets, properties, interests and rights of Seller of whatsoever kind and nature, used in connection with the operation of the Station and which are specifically described below, but excluding the Excluded Assets described in subparagraph (c) below, (collectively, the “Assets”):

(i) Seller’s antennas, transmitters, generator, equipment, machinery and other tangible personal property used in the conduct of the business or operations of the Station transmission facilities, as identified on Schedule 1(a)(i) hereto (collectively, the “Tangible Personal Property”), together with such modifications, improvements and additions thereto and replacements thereof occurring between the date hereof and the Closing Date.

(ii) all of the licenses, permits and other authorizations issued by the FCC (including, but not limited to, the FCC Authorizations), and any other federal, state or local governmental authorities to Seller in connection with the conduct of the business and the operation of the Station, including those identified on Schedule 1(a)(ii) hereto (collectively, the “Licenses”).

(iii) all of Seller’s interest in and to the leases (“Real Property Leases”) for the real property located in Stillwater, New York, including any appurtenant easements and

improvements located thereon, ("Leased Property"), as further identified and described on Schedule 1(a)(iii) hereto and referred to herein.

(iv) all of Seller's logs, books, files, data, FCC and other governmental applications, Tangible Personal Property manuals and assignable warranties, and other records relating to operation of the Station, including without limitation all electronic data processing files and systems related thereto, FCC filings and all records required by the FCC to be kept by the Station, including, but not limited to, the Station's public inspection file.

(b) The Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements and other liens, liabilities and encumbrances of every kind and nature ("Liens"), except (i) liens for taxes not due and payable or, that are being contested in good faith by appropriate proceedings; and (ii) liens or mortgages, in each case that will be released on or before the Closing or otherwise satisfied by Seller with Buyer's consent ("Permitted Liens").

(c) Buyer is not agreeing to, and shall not, assume any 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 except for the obligations of Seller arising after Closing under the Real Property Leases, or any other liabilities of Seller for which Buyer receives a credit under Section 2(c) (collectively, the "Assumed Liabilities"). All liabilities, except for the Assumed Liabilities, shall be retained by Seller and are referred to herein as the "Retained Liabilities". Without limiting the generality of the foregoing, it is understood and agreed that Buyer is not agreeing to, and shall not, assume (i) any liability or obligation of Seller to Seller's employees under any existing written or oral agreements with Seller, including any such liability or obligation in respect of wages, salaries, bonuses, accrued vacation or sick pay or any other matter, (ii) any liability arising out of any termination by Seller of the employment of any employee of the Station or any liability for any employee benefit plan or arrangement of Seller for Station employees, (iii) any liability or obligation of Seller arising with respect to the Real Property Leases at or prior to Closing or (iv) any liability or obligation of Seller arising under any contracts (other than post-closing obligations arising under the Real Property Leases) related to the Station.

(d) The following assets and obligations relating to the business of the Station shall be retained by Seller and shall not be sold, assigned or transferred to or assumed by Buyer (the "Excluded Assets"):

(i) any and all cash, cash equivalents, cash deposits to secure contract obligations and all other accounts receivable, bank deposits and securities held by Seller in respect of the Station at the Closing Date.

(ii) any and all claims of Seller with respect to transactions prior to the Closing.

(iii) all prepaid expenses.

(iv) all contracts of insurance and claims against insurers.

(v) all employee benefit plans and the assets thereof and all employment contracts.

(vi) all contracts that are terminated in accordance with the terms and provisions of this Agreement or have expired prior to Closing in the ordinary course of business, and all loans and loan agreements.

(vii) all tangible personal property disposed of or consumed between the date hereof and Closing in the ordinary course of business.

(viii) Seller's corporate records.

(ix) all commitments, contracts, leases and agreements except to the extent that they are specifically assumed in this Agreement.

(x) Seller's trademarks and logos.

(xi) all of Seller's advertising contracts and advertiser/customer lists.

(xii) the equipment listed on Schedule 1(d)(xii).

## **2. Purchase Price.**

(a) Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date, Buyer shall pay to Seller the aggregate sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) (the "Purchase Price"), which shall be paid by Buyer by wire transfer of same day federal funds to an account designated by Seller at least two (2) business days before the Closing Date.

(b) At a date not later than three (3) business days after the Effective Date, Buyer shall deliver to WashingtonFirst Bank (the "Escrow Agent") the sum of Fifty-Five Thousand and 00/100 Dollars (\$55,000) to be held as an Escrow Deposit (the "Escrow Deposit") pursuant to an Escrow Agreement (the "Escrow Agreement") of even date herewith. The Escrow Deposit shall be paid to Seller as partial payment of the cash Purchase Price due at Closing to Seller, or shall otherwise be made available to Seller or released to Buyer in accordance with the provisions of this Agreement. Buyer shall be entitled to any interest earned on the Escrow Deposit. Buyer and Seller shall equally share and pay any fees of the bank for serving as escrow agent.

(c) Except as otherwise provided in the Affiliation Agreement, the parties agree to prorate all expenses arising out of the operation of the Station which are incurred, accrued or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include, but not be limited to, power and utilities charges; FCC regulatory fees (of which there will be none); real and property and personal property taxes related to the Assets which shall be based upon the most recent tax bills and information available; security deposits under the Real Property Leases (if any); and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within sixty (60) days after the Closing Date.

### **3. FCC Consent; FCC Applications.**

(a) At a date not later than ten (10) business days after the Effective Date, Buyer and Seller shall execute, file and diligently prosecute an application with the FCC (the “Assignment Application”) requesting its consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station (the “FCC Consent”). Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay, and to promptly consummate this Agreement in full, provided, however, that neither Seller nor Buyer will be required to participate in a trial-type hearing before the FCC or a judicial appeal from any adverse FCC action.

(b) Seller agrees to reasonably cooperate with Buyer in connection with the filing of an application by Buyer to modify the FCC license to designate the Station as a non-commercial facility and to request a waiver of the FCC’s “main studio” rules under the provisions of Section 73.3517(a) of the FCC’s rules (“Non-Commercial Application”) to be effective on or after the Closing Date, so long as any such Non-Commercial Application is filed on a basis that is contingent and effective only upon a prior Closing, and does not adversely affect any operations of Seller. The grant of the application and waiver shall not be a condition to Closing hereunder. The Non-Commercial Application shall be made and prosecution thereof shall be conducted solely at Buyer’s expense. Seller will provide a written statement to Buyer authorizing the filing of the Non-Commercial Application as required by FCC rules.

(c) The Affiliation Agreement shall commence (“Affiliation Agreement Commencement Date”) at 12:01 a.m. on November 15, 2017.

**4. Closing Date; Closing Place.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall occur on a date fixed by Buyer (the “Closing Date”), which such date shall be no later than ten (10) days following the date on which the FCC Consent shall have been granted and the other conditions to closing set forth in Section 8 have either been waived or satisfied. In the event a petition to deny or other objection is filed at the FCC against the Assignment Application, Buyer may postpone Closing to a date which is no later than ten (10) days following the date on which the FCC Consent shall have become a Final Order (defined below) and the other conditions to closing set forth in Section 8 have either been waived or satisfied. Buyer shall deliver to Seller at least ten (10) days’ prior written notice of the Closing Date. For purposes of this Agreement, “Final Order” means an FCC Consent (a) that is no longer subject to review, set aside, or rehearing by the FCC or any court, and (b) that has received no timely requests for stay, petition for rehearing or appeal. The Closing shall take place remotely by email, or in such other manner and at such other place as the parties may agree in writing. In the event Closing occurs before the FCC Consent shall have become a Final Order, Buyer and Seller agree to enter into an unwind agreement at Closing to provide a mechanism to return the Assets of the Station to Seller and the Purchase Price to Buyer if the FCC Consent is rescinded.

**5. Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer:

(a) Seller is a New York corporation duly formed, validly existing and in good standing under the laws of the State of New York. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement, the Escrow Agreement and the Affiliation Agreement have been duly and validly executed and delivered by Seller and constitute the legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms.

(b) The execution, delivery, and performance of this Agreement, the Escrow Agreement and the Affiliation Agreement by Seller will not (i) constitute a violation of or conflict with Seller's organizational documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation relating to the business of the Station and to which Seller or any of the Assets may be subject, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller or any of the Assets, (iv) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (v) require the consent or approval of any governmental authority or other third party, other than the FCC Consent.

(c) Schedule 1(a)(i) hereto contains a complete and accurate list of the Tangible Personal Property that is necessary to conduct the operation of the Station in the manner in which it is currently operated (other than those assets which are Excluded Assets) and will be acquired by Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Each item of Tangible Personal Property (i) is in good operating condition, (ii) has been maintained in a manner consistent with generally accepted standards of good engineering practice, and (iii) is operating in substantial compliance with all Licenses, including, but not limited to, the FCC Authorizations and rules and regulations of all relevant federal and state governments, agencies, or departments, including, but not limited to, the FCC.

(d) No item of Tangible Personal Property contains any Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any applicable regulations of any federal, state, or local department of natural resources or federal, state, or local environmental protection agency now or at any time hereafter in effect ("Environmental Laws"). Without limiting the generality of the foregoing, Hazardous Materials includes, but is not limited to, polychlorinated biphenyls (PCBs), asbestos, lead-based paints,

infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including crude oil or any fraction thereof).

(e) To Seller's knowledge, there are no underground storage tanks located at the Leased Property and there are not now, nor have there been, any Hazardous Materials stored upon the Leased Property that, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any Environmental Laws.

(f) Schedule 1(a)(ii) contains a true and complete list of the FCC Authorizations and all other Licenses that are required for the lawful conduct of the business and operations of the Station in the manner and to the full extent it is presently operated. Seller lawfully holds each of the FCC Authorizations and Licenses listed on Schedule 1(a)(ii). Except as set forth in Schedule 1(a)(ii), Seller is operating the Station in all material respects in accordance with the FCC Authorizations, and all applicable rules, regulations and policies of the FCC (collectively, the "Communications Laws"), including that the Station is now and on the Closing Date will be transmitting at no less than ninety percent (90%) of its authorized power. The Station is not short-spaced to any other station. There is not now pending or, to Seller's knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations or Licenses, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller. Except as set forth in Schedule 1(a)(ii), all material reports and filings required to be filed with the FCC by Seller with respect to the operation of the Station have been timely filed, and all such reports and filings are accurate and currently are in material compliance.

(g) Schedule 1(a)(iii), contains a description of the Real Property Leases. Seller has provided Buyer with a complete and correct copy of the Real Property Leases together with all amendments and assignments related thereto. Each Real Property Lease is in effect and binding upon Seller and, to Seller's knowledge, the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has, and will convey to Buyer at the Closing, a valid leasehold interest in the Real Property Leases. Seller is not (and to Seller's knowledge, the lessor (including any ground lessor) is not) in material breach or default under the Real Property Leases or any ground lease and to Seller's knowledge, no events or circumstances have occurred which, with or without notice or lapse of time or both, would constitute defaults under the Real Property Leases or any related ground lease. There is full legal and practical access to the Leased Property (including vehicular access to a public roadway) and all utilities necessary for Buyer's use of the Leased Property as a radio tower facility are installed and are in working order, and are subject to valid easements, where necessary. Seller will provide Buyer with access to a true, complete and correct copy of all title reports, surveys, reports, structural analysis or other records that are in Seller's possession or control relating to the Leased Property, the tower or other Assets.

(h) To Seller's knowledge, the buildings, towers, guys and other fixtures situated on the Leased Property are free of structural defects and are suitable for their intended uses. Seller has no knowledge that they have not been properly maintained and repaired or that they do not

comply in all material respects with applicable zoning, health and safety laws and codes. The operations of the Station do not exceed permissible levels of exposure to RF radiation specified in either the Communications Laws or any other applicable Environmental Laws.

(i) The tower used in the operation of the Station at the Leased Property is obstruction-marked, monitored and lighted, to Seller's knowledge to the extent required by, and in accordance with, the rules and regulations of the FAA, the FCC or any other governmental authority. All improvements of Seller or the tower lessor located on the Leased Property are, to Seller's knowledge, in compliance with applicable zoning, wetlands, NEPA, FCC, FAA, the National Historic Preservation Act and any related or similar state laws, land use laws and applicable title covenants, conditions, restrictions and reservations in all respects, now and at the time of development of the Leased Property as a broadcasting facility.

(j) The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Assets to Buyer, will transfer good and marketable title to the Assets free and clear of all Liens (other than Permitted Liens) and Buyer will assume the Assumed Liabilities.

(k) Buyer shall have no obligation to offer employment to any employee of Seller or the Station, and shall have no liability with respect to any such employee or for benefits of any kind or nature.

(l) Other than Bergner & Co., (whose fees will be paid by Seller), there is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

(m) Seller is not subject to any order, writ, injunction, judgment, arbitration decision or decree having binding effect and affecting the business of the Station or the Assets or which restrains or enjoins the transactions contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or to the best of Seller's knowledge, threatened against Seller. To the best of Seller's knowledge, with respect to the Station, Seller has complied in all material respects with all applicable laws, regulations, orders or decrees. The present uses by Seller of the Assets do not violate any such laws, regulations, orders or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

(n) Seller has complied and currently is in material compliance with all applicable laws, statutes, rules, regulations, codes and ordinances of all Environmental Laws relating to the discharge of air pollutants, water pollutants or process waste water, Hazardous Materials, or toxic substances, or otherwise relating to the environment, 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 Commission, and Environmental Laws.

(o) There is now, and through the Closing there shall be, in full force and effect with reputable insurance companies fire and property insurance with respect to all Tangible Personal Property in commercially reasonable amounts sufficient to repair or replace the applicable Assets.

(p) Seller has duly, timely, and in the required manner filed all federal, state, and local, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid prior to the Closing Date which, if not filed or paid as the case might be would interfere with Buyer's full use and enjoyment of the Assets after the Closing Date. No event has occurred which imposes on Buyer any liability for any taxes, penalties or interest due or to become due from Seller from any taxing authority.

(q) Except for administrative rulemaking or other proceedings of general applicability to the radio broadcast industry: (i) there is no proceeding or investigation of any nature pending or, to the best of Seller's knowledge, threatened against Seller (in relation to the Station), any of the Station or the FCC Authorizations or affecting the same; and (ii) no writ, decree, or similar instrument has been rendered or is pending against Seller which would materially and adversely affect the Assets or Seller's ability to perform under this Agreement.

(r) On or before the Closing Date, Seller shall furnish to Buyer revised schedules to this Agreement as may be necessary to render such Schedules accurate and complete as of the Closing Date. Seller shall give detailed written notice to Buyer promptly upon the occurrence of or becoming aware of the impending or threatened occurrence of, any event which would cause or constitute a breach or would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of Seller's representations or warranties contained in this Agreement or in any Schedule. Seller shall promptly disclose to Buyer any significant problems or developments with respect to the Assets.

**6. Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller:

(a) Buyer is a non-profit, religious corporation duly organized, validly existing and in good standing under the laws of the State of California, and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Buyer will have the requisite authority to undertake operation of the Station in the State of New York by the Closing Date.

(b) Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.



(c) There is no broker or finder or other person, who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Buyer.

(d) Buyer is legally, technically, and financially qualified to hold the FCC license for and to operate the Station. To Buyer's knowledge, there is no investigation or inquiry in progress at the FCC that might delay approval of Buyer to be the licensee of the Station.

## **7. Covenants.**

Except as otherwise provided in the Affiliation Agreement:

(a) Seller covenants with Buyer that, between the Effective Date and the Closing Date, Seller shall act in accordance with the following:

(i) Seller shall maintain the Tangible Personal Property in accordance with standards of good engineering practice and replace any of such property, which shall be worn out, lost, stolen or destroyed with like property of substantially equivalent kind and value.

(ii) Subject to the Affiliation Agreement, Seller shall continue to operate and maintain the Station in accordance with the terms of the Licenses and in material compliance with all applicable laws, rules, and regulations. Seller shall deliver to Buyer, promptly after filing, copies of any reports, applications or responses to the FCC or any communications from the FCC or any other party directed to the FCC related to the Station which are filed between the Effective Date and the Closing Date. Except as otherwise approved by Buyer, Seller shall not file any application to modify the Station's facilities except such modifications as are contemplated by the Non-Commercial Application or required by the public interest as determined in the sole discretion of Seller, exercised in good faith after consultation with Buyer, and Seller shall take all actions necessary to keep the Licenses valid and in full force and effect.

(iii) Seller shall maintain insurance on all of the Tangible Personal Property in such amounts as necessary to repair or rebuild the applicable Tangible Personal Property.

(iv) Seller shall not, without the prior written consent of Buyer, sell, lease, transfer or agree to sell, lease or transfer any of the Assets.

(v) Seller shall afford, and shall cause its respective officers, directors, employees and agents to afford, to Buyer, its prospective financing sources and its and their respective officers, employees, advisors and agents reasonable access during regular business hours to Seller's officers, employees, independent contractors, agents, properties, records and contracts relating to the Assets, and shall furnish Buyer all operating and other data and information with respect to the Assets as Buyer, through its respective officers, employees, advisors or agents, may reasonably request.

(vi) Seller shall be in material compliance with all federal, state and local laws, rules and regulations with respect to operation of the Station.

(vii) Seller shall not amend, terminate or fail to renew the Real Property Leases and shall obtain consent of the lessor to each Real Property Lease (to the extent required by the terms thereof) for the assignment of such Real Property Lease to Buyer at Closing.

(b) Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to satisfy any condition to the parties' obligations hereunder in its power to satisfy and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement, provided, however, that neither Seller nor Buyer will be required to participate in a trial-type hearing before the FCC or a judicial appeal from any adverse FCC action.

## **8. Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent:

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

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been granted and shall have become a Final Order if any petition to deny or other objection was filed against the Assignment Application.

(iv) Buyer shall have delivered to Seller, on the Closing Date, the full amount of the Purchase Price.

(v) Buyer shall have delivered to Seller the documents required to be delivered pursuant to Section 9(b).

(vi) Buyer shall not be subject to any voluntary or involuntary petition under Federal bankruptcy law, or any state receivership or similarly proceeding.

(vii) The Affiliation Agreement shall not have been terminated except in the event of unilateral breach by Seller or mutual agreement of Buyer and Seller.

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

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

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) None of the events or conditions referenced in Section 18 below shall have occurred and not been remedied as set forth in Section 18.

(iv) The FCC Consent shall have been granted or shall have become a Final Order as provided in Section 4 above.

(v) Seller shall have delivered to Buyer the documents required to be delivered pursuant to Section 9(a).

(vi) Seller shall have obtained estoppel certificates from the lessor of each Real Property Lease which shall include the lessor's consent to the assignment of the applicable Real Property Lease to Buyer;

(vii) The Real Property Lease for the Saratoga Springs RCL Site shall be amended to permit Buyer to install a satellite dish on the Leased Property or a receive antenna on a telephone like pole adjacent to transmitter building on the Leased Property on terms reasonably acceptable to Buyer.

(viii) Seller and the landlord of the Radar Road Site shall have entered into the Radar Extension (as defined in Schedule 1(a)(iii)).

(ix) Seller shall not be subject to any voluntary or involuntary petition under Federal bankruptcy law, or any state receivership or similarly proceeding.

(x) The repairs and deferred maintenance items described in Schedule 8(b)(x) shall have been completed at no cost to Buyer.

(xi) Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

## **9. Closing Deliveries.**

(a) At the Closing, Seller shall deliver, or cause to be delivered, to Buyer the following:

(i) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Seller pursuant to the Real Property Leases ("Real Property Lease Assignment"), executed by Seller.

(ii) a Bill of Sale vesting in Buyer good and marketable title in and to the Assets ("Bill of Sale"), executed by Seller.

(iii) an Assignment transferring to Buyer the rights and obligations of Seller pursuant to FCC Authorizations (“FCC Assignment”), executed by Seller .

(iv) if required written consent of the applicable landlord to the assignment of each Real Property Lease from Seller to Buyer.

(v) certified copies of the resolutions of the Board of Directors of Seller authorizing and approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby and thereby.

(vi) a certificate, dated as of the Closing Date, executed by an officer of Seller, certifying Seller’s fulfillment of Seller’s conditions precedent under this Agreement.

(vii) a joint notice to the Escrow Agent, executed by Seller.

(viii) a closing statement, executed by Seller.

(ix) an IRS Form W-9, completed and executed by Seller.

(x) a copy of a recent utility bill for the Leased Property.

(xi) all releases of liens, mortgages, financing statements, security interests and other encumbrances necessary to convey clear title to the Assets free of any Liens, except for the Permitted Liens.

(xii) the unwind agreement (if Closing occurs before the FCC Consent shall have become a Final Order).

(xiii) such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement, executed by Seller.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) the Purchase Price.

(ii) the Real Property Lease Assignment, executed by Buyer.

(iii) the Bill of Sale, executed by Buyer.

(iv) the FCC Assignment, executed by Buyer.

(v) a certificate, dated the Closing Date, executed by an officer of Buyer, certifying the fulfillment of Buyer’s conditions precedent under this Agreement.

(vi) a joint notice to Escrow Agent, executed by Buyer.

(vii) a closing statement, executed by Buyer.

(viii) the unwind agreement (if Closing occurs before the FCC Consent shall have become a Final Order).

(ix) such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement, executed by Buyer.

#### **10. Indemnification and Survival.**

(a) Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) either the breach by Seller of any of its representations or warranties or the failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station prior to the Closing.

(b) Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) either the breach by Buyer of any of its material representations or warranties or the failure by Buyer to perform any of its material covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station, as conducted by Buyer, subsequent to the Closing.

(c) Claims by one party against the other that do not involve third-party claims shall be permitted only to the extent that damages exceed Twenty Thousand Dollars (\$20,000.00), and shall be limited to a maximum of the amount of the Purchase Price. In no event may either party claim other than actual damages against the other; no party may claim consequential, exemplary, or punitive damages or damages for lost business opportunities.

(d) If either party hereto (the "Indemnitee") receives notice or otherwise obtains knowledge of any third-party claim or matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnitee under this Section 10(d), then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith. The Indemnifying Party shall have the right, at its option, to assume the complete defense of such matter at its own expense and with its own counsel, provided such counsel is reasonably satisfactory to the Indemnitee. If the Indemnifying Party elects to assume the defense of such matter, then (i) notwithstanding anything to the contrary contained herein, the Indemnifying Party shall not be required to pay or otherwise indemnify the Indemnitee against any such matter following the Indemnifying Party's election to assume the defense of such matter, (ii) the Indemnitee shall fully cooperate as reasonably requested by the Indemnifying Party in the defense or settlement of such matter, (iii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, and (iv) the Indemnitee shall have the right to participate in the

defense of such matter, at its own expense unless legal counsel has advised that representation by Buyer and Seller by the same legal counsel would constitute a conflict of interest or is otherwise inappropriate. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter by the Indemnified Party without the Indemnifying Party's prior written consent. An Indemnifying Party may not settle a third-party claim without the Indemnified Party's prior written consent unless the Indemnified Party receives a release from all matters relating to the claim and is not obligated to make any payment to the claimant.

(e) The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect except any representation related to Seller's title to the Assets which shall survive until the expiration of any applicable statute of limitations, and (ii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

## **11. Termination**

(a) This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in default or breach of any of its material obligations under this Agreement, upon written notice to the other upon the occurrence of any of the following: (i) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or thirty (30) days after receipt of the notice of breach from the non-breaching party, provided, however, that if notice of default is given 30 days or less prior to the Closing Date the Closing Date will automatically be extended to the first business day after the end of the cure period, and provided further that such opportunity to cure shall not apply to the failure of a party to perform its obligations set forth in Section 4 or Section 9, hereof; (ii) if the Assignment Application is denied by Final Order; (iii) if the Assignment Application is designated for a trial-type hearing; (iv) if a judicial appeal is taken from FCC grant of the Assignment Application; (v) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement; or (vi) if the Closing has not occurred within twelve (12) months after the Effective Date.

Upon a termination of this Agreement by Seller due to a breach by Buyer of any of its material obligations under this Agreement, Seller's sole remedy shall be payment by Buyer to Seller, as liquidated damages and not as a penalty, of an amount equal to the Escrow Deposit ("Liquidated Damages").

THE DELIVERY OF THE LIQUIDATED DAMAGES AMOUNT TO SELLER SHALL BE CONSIDERED LIQUIDATED DAMAGES AND NOT A PENALTY, AND SHALL BE THE RECIPIENT'S SOLE REMEDY AT LAW OR IN EQUITY FOR A BREACH HEREUNDER IF CLOSING DOES NOT OCCUR. BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY A 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.

If Seller is entitled to the Liquidated Damages, Buyer shall take all actions as are reasonably necessary or convenient in order to cause the Escrow Agent to promptly deliver the Escrow Deposit to Seller and shall refrain from any action which would cause any delay in the making of such payment to Seller.

(b) Upon a termination of this Agreement due to a breach by Seller of any of its material obligations under this Agreement, Buyer shall be entitled to the release of the Escrow Deposit, and Buyer may seek all rights and remedies that it may have in equity or at law.

(c) Upon a termination of this Agreement for any reason other than as a result of a breach by Buyer of any of Buyer's material obligations under this Agreement, Buyer shall be entitled to the release of the Escrow Deposit, and thereafter neither party will have any further liability or obligation to the other with respect to this Agreement, except with respect to any provisions herein that by their terms survive termination.

(d) All claims for damages between the parties shall be limited to actual out-of-pocket damages and shall not include any consequential or punitive damages or penalties or claims for lost revenues.

**12. Specific Performance.** Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled, (in lieu of any other rights and remedies on account of such failure if such relief is granted), to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

**13. Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery, or on the first business day of attempted delivery by a courier service, or five (5) business days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Buyer, to:

Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765

Attn: Mike Novak, CEO  
Facsimile: (916) 251-1956

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

Paige K. Fronabarger, Esq.  
Wilkinson, Barker, Knauer LLP  
1800 M Street, NW  
Suite 800N  
Washington, DC 20036  
Facsimile: (202) 783-5851

If to Seller, to:

Empire Broadcasting Corporation  
100 Saratoga Village Blvd, Suite 21  
Malta, New York 12020  
Attn: Joseph A. Reilly

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

Lawrence M. Miller, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, N.W. –Suite 200  
Washington, DC 20007-3501  
Facsimile: (202) 965-1729

**14. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York without giving effect to the State's choice or conflicts of law provisions.

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

**16. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original but both of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile or other electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or Portable Document Format (pdf) to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a



facsimile machine or other electronic means as a defense to the formation of a contract and each such party forever waives any such defense.

**17. Expenses.** Except as otherwise set forth in this Agreement, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The FCC filing fees relating to the Assignment Application shall be shared equally between Buyer and Seller. Federal, state, local and other transfer and sales taxes applicable to imposed upon or arising out of the transfer to Buyer of the Assets as contemplated hereby, if any, shall be paid by the party responsible for such amounts under applicable law.

**18. Risk of Loss.** The risk of loss to any of the Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Assets, provided, however, that in the event that Assets with a value of greater than Fifteen Thousand and 00/100 Dollars (\$15,000.00) are damaged or lost on the date otherwise scheduled for Closing, Buyer may, at its option, either (a) postpone Closing for a period of up to sixty (60) days while Seller repairs or replaces such Assets, or (b) elect to close with the Assets in their current condition, in which case Seller shall assign all proceeds from insurance on such lost or damaged Assets to Buyer, and Buyer shall have the responsibility to repair or replace the Assets. Seller shall have no responsibility to repair or replace damaged or destroyed Assets not covered by insurance if the cost of such repair exceeds Fifteen Thousand and 00/100 Dollars (\$15,000.00), provided, however, that should Seller advise Buyer within five (5) days after being requested to do so that Seller will not repair or replace such Assets, Buyer may terminate this Agreement without penalty upon written notice to Seller.

**19. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and permitted assigns. No party may voluntarily or involuntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided, however, that Seller may withhold consent to assignment of Buyer's right to acquire the Station to any entity not controlled by Buyer at Seller's sole discretion.

**20. Entire Agreement; Modifications; Headings.** This Agreement and the exhibits attached hereto supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties. The headings and captions in this Agreement are for only the convenience of the parties and may not be deemed to affect the substantive terms of this Agreement.

**21. Schedules and Exhibits.** Unless otherwise specified herein, each schedule and exhibit referred to in this Agreement is attached hereto, and each such schedule and exhibit is hereby incorporated by reference herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the Effective Date.

**SELLER:**

**EMPIRE BROADCASTING  
CORPORATION**

By: 

Name: Joseph A. Reilly

Title: President

Date: 11/8/17

**BUYER:**

**EDUCATIONAL MEDIA FOUNDATION**

By: 

Name: Alan Mason

Title: President

Date: 11/4/17

SCHEDULE 1(a)(i)

Tangible Personal Property

1	BE FM 3.5 Transmitter
1	Schivley FM Antenna (3 Bay)
1	1-5/8 Feed Line (250 Ft)
1	1/2" RF Feed (300 FT)
1	Sine Systems RFC1-B Remote Control
1	Burk TC-8 Remote Control
1	Telewave Watt Meter
1	Scala Paraflector
1	Marti YC-450 Antenna
1	Approximately 12x12 Building with Exhaust Fan
1	Work Bench
1	Equipment Rack

SCHEDULE 1(a)(ii)

FCC Licenses

Station WJKE(FM), Stillwater, New York

Facility ID Number 20467

*Empire Broadcasting Corporation*

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
Broadcast Renewal	WJKE(FM)	BRH-20140130ABC	5/23/2014	6/1/2022
Broadcast License	WJKE(FM)	BLH-19950309KA	7/11/1995	6/1/2022

## SCHEDULE 1(a)(iii)

### Real Property Leases

#### 1. **“Saratoga Springs RCL Site”**

Tower Site Lease between the United States of America, Department of Transportation, Federal Aviation Administration (as Landlord) and Voice of Saratoga, Inc. (as assumed by Anastos Media Group and thereafter by Empire Broadcasting Corporation) (as Tenant) pertaining to WJKE (former call signs WQAR and WSSV) dated June 28, 1991, as amended, including: (1) Supplemental Lease Agreement No.1 to Lease No. DTFA 05-91-Z-60064, effective October 1, 1996, (2) Supplemental Lease Agreement No.2 to Lease No. DTF A 05-91-Z-60064, dated June 10, 1998 (effective July 1, 1996), and (3) Supplemental Lease Agreement to Lease No. DTF AOS-91-Z, dated May 27, 2011 (effective October 1, 2011) for tower site described as the Saratoga Springs RCL Site located in the Town of Stillwater, County of Saratoga Springs, State of New York.

- *Landlord consent required to assign agreement to Buyer*

#### 2. **“Radar Road Site”**

Tower and Transmitter Site and Lease Agreement between Saratoga Endeavors, LLC (successor in interest of Laquidara Construction, Inc.) (as Landlord) and Fair Way Communications, Inc. (as assumed by Anastos Broadcast Group, Inc. (later known as Anastos Media Group, Inc.) and thereafter by Empire Broadcasting Corporation) (as Tenant) as amended by certain Modifications of Lease Agreement dated October 14, 2004, May 31, 2006, January 14, 2009, August 21, 2012, June 13, 2014 for use of certain real property located on Radar Road in the Town of Stillwater, Saratoga County, State of New York, more particularly described as Tax Map No. 207-1-12.4

- *Landlord consent required to assign agreement to Buyer*

**Note:** Landlord and Tenant have either entered into or will enter into Modification of Lease substantially in the form attached hereto to extend the term of the lease for the Radar Road Site from June 1, 2017 to May 31, 2022 (“Radar Extension”).

SCHEDULE 1(d)(xii)

Excluded Equipment

1	Dell Optiplex PC
1	BT ACS 8.2 Plus Stereo Switcher
2	22" Dell Color LCD Monitor
4	Avocent KVM
2	ASI XLR Break Out Box
1	Radio Systems RS-12 Studio Console
1	Denon DCD595 CD Players
1	Telos 1x6 Phone Interface Hybrid
1	Telos 10 Line Teleswitch
1	Single Line Telephone
1	Radio Systems Distribution Amp
1	Microdynamics TC-8 Remote Control
2	Symetrix 528E Microphone Processors
2	Sentry 100A Studio Monitors
1	Wooden CD Rack
1	Wooden 5'6" CD Shelf
1	Sony CD Player – CDP XE 370
2	Electrovoice RE20 Microphone
1	Studio Furniture
1	Mosley PCL610 STL Transmitter
1	Omnia 6 FM Processor
1	Crown XLS 1000 Power Amplifier
1	TFT 844 FM Mod Monitor
1	Broadcast Tools 1x6 PGM Switch
1	Mosely 6030 STL receiver
1	Marti CR10 RPU receiver
1	Marti RPT-15 RPU transmitter
1	BE FX30 Exciter

### SCHEDULE 8(b)(x)

#### Required Repairs

- The roof and door on transmitter equipment building will be repaired.\*
- The window AC units in transmitter equipment building which appear to be inoperable will be repaired or replaced.\*
- Pressurize Station's coax line and empty related nitrogen tanks on site and make any repairs damage to coax and/or antenna

\* These items are the responsibility of the landlord under the lease and Seller shall work with the landlord to have these repairs completed prior to Closing.