

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is dated as of April 29, 2022, by and between Grand Valley State University, a Michigan public institution of higher education (“Seller”), and Smile FM, a Michigan not-for-profit corporation doing business as Superior Communications (“Buyer”).

WITNESSETH:

WHEREAS, Seller is the licensee of and owns and operates the following radio broadcast station (the “Station”), pursuant to authorizations issued by the Federal Communications Commission (the “FCC”):

WGVS(AM), Muskegon, Michigan (FCC Facility Id. 33695)

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain assets owned and held by Seller and used or useful solely in connection with the operation of the Station.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Sale of Assets.** On the Closing Date (as defined in Section 4), Seller agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer agrees to purchase and assume, all of the right, title and interest of Seller in and to certain assets and properties of Seller owned or held by Seller and used or useful solely in connection with the operation of the Station as identified below (the “Assets”) free and clear of liens, claims and encumbrances:

(a) **FCC Authorizations.** All FCC licenses, permits and authorizations to operate the Station (the “FCC Authorizations”) together with all licenses, permits and authorizations issued by any other governmental authority in connection with the operation of the Station, as set forth on Schedule 1(a);

(b) **Personal Property.** Certain equipment, supplies, spare parts, records required by the FCC to be created and retained by the Station, and other tangible personal property owned or held by Seller and used or useful in connection with the operation of the Station (the “Personal Property”), as set forth on Schedule 1(b).

(c) **No Assumed Contracts or Leases.** Unless otherwise agreed in writing by the parties, there are no other assumed contracts or assumed leases.

2. **Purchase Price: Escrow Deposit**

(a) In consideration of the sale, transfer, assignment, conveyance and delivery of the Assets to Buyer, Buyer shall pay to Seller a total purchase price of Twenty-Five Thousand Dollars (\$25,000.00) (the "Purchase Price"), paid as set forth below.

(b) Within three (3) days of the execution of this Agreement, Buyer shall deliver a deposit in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) (the "Deposit") by check to the Seller. Seller shall not deposit or cash the Deposit check prior to the Closing Date except as set forth herein.

(c) On the Closing Date, Buyer shall pay Seller, by wire transfer or by check, the sum of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) (the "Balance Due").

3. **FCC Consent: Assignment Application; Modification Application.**

(a) Seller and Buyer expressly agree that the assignment of the FCC Authorizations is subject to the prior consent of the FCC ("FCC Consent").

(b) Within five (5) business days after execution of this Agreement, Seller and Buyer shall jointly prepare and file with the FCC an application for assignment of the FCC Authorizations (the "Assignment Application") from Seller to Buyer. Seller and Buyer shall thereafter prosecute the Assignment Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the Assignment Application as expeditiously as practicable. Filing fees for the Assignment Application, if any, shall be split equally by the Buyer and Seller.

(c) As soon as is practicable after the execution of this Agreement, Buyer shall prepare, and Seller shall take such steps as are necessary to assist with the filing of, a request for Special Temporary Authority from the FCC to operate the Station after Closing from facilities specified by Buyer (the "STA Request") and, at Buyer's option, a request for a construction permit to modify the facilities of the Station to reflect facilities specified by Buyer (the "Modification Application").

4. **Closing.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur on a date (the "Closing Date") mutually agreed upon by Buyer and Seller within five (5) days after the FCC grant of the Assignment Application, subject to the satisfaction of the other conditions precedent to Closing set forth in this Agreement. Notwithstanding the foregoing sentence, if a Petition to Deny or other objection is filed against the Assignment Application, either party shall have the option to delay the Closing Date until three (3) business days after the FCC grant of the Assignment Application has become a Final Order. For the purposes of this Agreement, the term "Final Order" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari, or *sua sponte* action of the FCC with comparable effect shall be pending; and as to

which the time for filing any such request, petition, appeal, certiorari, or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

5. **Seller's Representations, Warranties and Other Obligations.** Seller represents and warrants that:

(a) Seller is a Michigan public institution of higher education.

(b) Seller has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement. This Agreement constitutes a valid and binding agreement of the Seller, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by Buyer do not conflict with or result in the breach of, or constitute a default of or violate, Buyer's governing documents.

(c) Seller is the authorized legal holder of the FCC Authorizations. The Station is currently silent pursuant to Special Temporary Authority granted by the FCC.

(d) Seller has good and marketable title to the Assets. Schedule 1(b) contains an accurate and complete list in all material respects of the Personal Property as of the date hereof. The Personal Property listed on Schedule 1(b) constitute all of the assets and properties required for the operation of the Station's transmission facilities as currently operated by Seller, except to the extent set forth on Schedule 1(b). The Assets are free of all liens, encumbrances or hypothecations. On the Closing Date, each item comprising the Assets shall be working order and in the same operating condition in all material respects as on the date of execution of this Agreement, ordinary wear and tear excepted.

(e) **Claims and Litigation.** There is no judgment outstanding or any claim or litigation or proceeding pending or, to Seller's knowledge, threatened regarding the title or interest of Seller to or in any of the Assets or the Station's operations, or which could prevent or adversely affect the ownership, use, or operation of the Station by Buyer. There is (i) no complaint or other proceeding pending, outstanding, or to Seller's knowledge threatened, before the FCC as a result of which an investigation, notice of apparent liability or order of forfeiture may be issued from the FCC relating to the Station, (ii) no FCC notice of apparent liability or order of forfeiture pending, outstanding, or to Seller's knowledge threatened, against Seller or the Station, and (iii) no investigation pending, outstanding, or to Seller's knowledge threatened, with respect to any violation or alleged violation of the Communications Act of 1934, as amended, or any FCC rule, regulation or policy by Seller.

6. **Buyer's Representations and Warranties.** Buyer represents and warrants that:

(a) Buyer is a not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Michigan.

(b) Buyer has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this

Agreement. This Agreement constitutes a valid and binding agreement of the Buyer, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by Buyer do not conflict with or result in the breach of, or constitute a default of or violate, Buyer's governing documents.

(c) Buyer is qualified to hold the FCC Authorizations. Buyer is financially qualified to perform this transaction.

7. **Further Assurances.** After Closing, each party shall, from time to time at the request of, and without further cost or expense to the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

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 issued without any condition that would have a material adverse effect upon Seller.

(iv) On the Closing Date, Buyer shall have delivered the Balance Due and authorized deposit of the Deposit by Seller.

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction or waiver 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) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Buyer.

9. **Closing Deliveries.** At the Closing, the parties shall deliver to each other such documents, instruments and agreements as either party shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to the requesting party or the requesting party's counsel.

10. **Assignment.** No party shall assign or attempt to assign any of the rights or obligations under this Agreement without the prior written consent of the other party hereto.

11. **Indemnification.**

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

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

12. **Risk of Loss.** Risk of loss, damage, or destruction to the Assets to be sold and conveyed hereunder shall be upon the Seller until Closing Date, and after Closing upon the Buyer.

13. **Specific Performance.** The parties recognize that if Seller refuses to perform under the provisions of this Agreement or otherwise breaches its obligation to consummate this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

14. **Termination.**

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

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

(ii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Seller, that would prevent or make unlawful the Closing.

(iii) Material Breach by Buyer. If the Buyer defaults by material breach of this Agreement and such material default is not rectified with thirty (30) days of the effective date of the written notice referenced above.

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

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

(ii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Buyer, that would prevent or make unlawful the Closing.

(iii) Material Breach by Seller. If the Seller defaults by material breach of this agreement and such material default is not rectified with thirty (30) days of the effective date of the written notice referenced above.

(c) Termination by Either Party. This Agreement may be terminated by either party, if the terminating party is not then in material default, upon written notice, if the Closing shall not have occurred within twelve (12) months after public notice of the FCC's acceptance for filing of the Assignment Application.

(d) Effect of Termination.

(i) Upon termination: (A) if neither party is in material breach of any provision of this Agreement, the parties shall not have any further liability to each other, and the Deposit shall be returned to Buyer; or (B) if either party shall be in material breach of any provision of this Agreement, the other party shall have the rights and remedies available at law, including for Seller the right to retain the Deposit and including for Buyer the right of specific performance provided in Section 13 above. Any and all provisions of this Agreement notwithstanding, neither Seller nor Buyer shall be liable to the other for punitive or consequential damages.

(ii) In the event of a default by either party that results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses (whether incurred in arbitration, at trial, or on appeal).

15. **Miscellaneous.**

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and permitted assigns.

(b) Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

(c) The construction and performance of this Agreement shall be governed by the laws of the State of Michigan, without regard to its conflict of law provisions. The venue for any dispute arising under this Agreement shall be in the courts of the jurisdiction where the transmission facility is located.

(d) This Agreement embodies the entire agreement and understanding of the parties hereto relating to the matter provided for herein, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

(e) No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

(f) The representations, covenants, and warranties herein shall survive the Closing Date for a period of one (1) year.

(g) Buyer and Seller shall bear their respective costs and expenses for attorneys, accountants, brokers and advisors retained by or representing them in connection with their respective negotiation and execution of this Agreement and the performance of their respective obligations hereunder.

16. **Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered one (1) business day after having been sent by national overnight courier service and addressed as set forth in Schedule 16 (or to such other address as any party may request by written notice).

17. **Counterparts.** This Agreement may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Agreement may be signed and exchanged by facsimile or email (PDF) transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

18. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.


[Remainder of Page Intentionally Blank]

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

GRAND VALLEY STATE UNIVERSITY

By: 
Name: Matthew E. McLogan
Title: Vice President for University Relations

BUYER:

SMILE FM

By: _____
Name: Edward Czelada
Title: President

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER: **GRAND VALLEY STATE UNIVERSITY**

By: _____
Name: Matthew E. McLogan
Title: Vice President for University Relations

BUYER: **SMILE FM**

By: Edward Czelada
Name: Edward Czelada
Title: President

SCHEDULE 1(a)

FCC Authorizations

<u>Call Sign</u>	<u>Facility ID Number</u>	<u>Location</u>	<u>File Number</u>	<u>Authorization Expiration Date</u>
WGVS(AM)	33695	Muskegon, MI	BL-19860604AD	10/01/2028

SCHEDULE 1(b)

Personal Property

Inventory

Orban Optimod-AM
Model: 9100B1/U10
Serial: 1948514 AC
GVSU TAG: 28608

Harris Gates One
Part Number: 994-9202-002
Serial: MPS107728-00001
MFG: April 29, 1994
Frequency: 850 KHz
A/C 230V, Single Phase, 60 Hz
GVSU TAG: UNKNOWN

Broadcast Electronics AM-5¹
Part Number: 907-5000
Serial: 142
MFG: August 1994
Frequency: 1480 KHz
A/C 220V, 3 Phase, 60 Hz
GVSU TAG: 28722

Miscellaneous

FCC and other records relating to the Station

¹ [As of 4-8-2022, this item is not functional. Buyer has been notified.]

SCHEDULE 16

Notices

Notices to Seller:

WGVU Public Media
301 Fulton Street W.
Grand Rapids, MI 49504
Attn: James Rademaker

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

Derek Teslik
Gray Miller Persh LLP
2233 Wisconsin Ave., NW
Suite 226
Washington, DC 20007
dteslik@graymillerpersh.com

Notices to Buyer:

Smile FM d/b/a Superior Communications
172 N. Cedar Street
Imlay City, MI 48444