

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”) is entered into as of September 27, 2019 (the “Execution Date”), by and between **EMPIRE BROADCASTING CORPORATION**, a New York corporation, located at P.O. BOX 1507, CLIFTON PARK, NY 12065 (“Seller”) and **SARATOGA RADIO LLC**, a New York limited liability company, located at P.O. BOX 3100, SARATOGA SPRINGS, NY 12866 (“Buyer”).

### **WITNESSETH:**

WHEREAS, Seller is the licensee and owner of radio station WABY(AM), 900 kHz, Watervliet, New York, Facility ID No. 72620 (“WABY”), and is the permittee of a construction permit for FM radio translator W231DU, 94.1 MHz, Clifton Park, New York, Facility ID No. 201714 (“W231DU”) (WABY and W231DU together, the “Station”), pursuant to authorizations issued by the Federal Communications Commission (the “FCC”); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets used solely in connection with the Station, on the terms and subject to the conditions set forth herein, including the prior consent of the FCC; and

**WHEREAS**, Buyer and Seller believe that it would serve the public interest and facilitate a smooth transition of ownership if they were to enter into a local marketing agreement (the “LMA”) contemporaneously with this Agreement, whereby Buyer would offer programming for broadcast over WABY which Seller would agree to broadcast, subject to terms and conditions contained in the LMA; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### **1.**

#### **PURCHASE OF ASSETS**

1.1. Transfer of Assets. On the Closing Date (as hereinafter defined), subject to the conditions contained herein, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, the assets, properties, interests and rights of Seller (the “Acquired Assets”) listed below:

(a) All licenses, permits, pending applications and other authorizations relating to the Station issued to Seller by the FCC or filed by Seller with the FCC, or any other governmental authority on or prior to the Closing Date, together with renewals or modifications thereof, listed on Schedule 1.1 (a) attached hereto (the “Authorizations” or, in the case of those Authorizations issued by the FCC, the “FCC Licenses”);

(b) All equipment, office furniture and fixtures, office materials and supplies, inventory and other tangible personal property identified on Schedule 1.1(b) attached hereto, together with any additions thereto or replacements thereof made between the date hereof

and the Closing Date, and less any retirements or dispositions thereof made between the date hereof and the Closing Date (collectively, the “Tangible Personal Property”);

(c) Seller’s right, title and interest in and to Seller’s contracts, real property leases agreements and operating leases (but excluding any agreement for borrowed money, including any mortgage) written or oral, relating to the operation of the Station, as identified on Schedule 1.1(c) hereto, together with all contracts, agreements, real property leases and operating leases which Buyer agrees in writing to assume at the Closing that Seller enter into or acquire between the date hereof and the Closing Date (as hereinafter defined) (collectively, the “Contracts”);

(d) All of Seller’s logs, books, files, data, software, FCC and other governmental applications, equipment manuals and warranties, and other records relating solely to the operations of the Station and the other Acquired Assets, including without limitation all electronic data, processing files and systems, FCC filings and all records required by the FCC to be kept by the Station related solely to the Station; and

(e) All of Seller’s rights to and interests in the use of the call letters of the Station, *i.e.*, “WABY”, as call letters or as part of a trade name.

1.2 Excluded Contracts. Any Contract not listed on Schedule 1.1(c) shall be excluded from the Acquired Assets and retained by Seller. For clarity, the parties anticipate that the Seller’s tower lease that is in effect as of the Execution Date will terminate as of the Closing and that Buyer shall then-enter into a new tower lease for WABY. Accordingly, the Seller’s tower lease is specifically excluded from the Acquired Assets.

1.3 Liabilities. The Acquired Assets shall be transferred to Buyer free and clear of all liens, encumbrances, debts, security interests, mortgages, trusts, claims, pledges, charges, covenants, conditions or restrictions of any kind (“Liens”), except for Permitted Liens, as defined herein. As used herein, “Permitted Liens” means, collectively, the Assumed Obligations (as hereinafter defined), liens for taxes not yet due and payable, liens that will be released at or prior to the Closing Date, and with respect to real property, such other easements, rights of way, building and use restrictions, exceptions, reservations, and limitations that do not, individually or in the aggregate, in any material respect, detract from the value of the property subject thereto or impair the use thereof in the ordinary course of business of the Station.

1.4 Consents and Estoppels. To the extent that any Contract may not be assigned without the consent of any third party, Seller shall use commercially reasonable efforts to obtain, prior to the Closing Date, all written consents necessary for Seller to consummate the transactions contemplated by this Agreement (the “Consents”). With respect to any Contracts that are real estate or tower leases, Seller shall use commercially reasonable efforts to obtain customary estoppel certificates in a form reasonably acceptable to Buyer, executed by each of the landlords, and upon the receipt of any such estoppel certificate, Seller shall deliver such estoppel certificates to Buyer as promptly as practicable. Notwithstanding the foregoing, no Consents or estoppel certificates are conditions to Buyer’s obligation to close the transactions contemplated by this Agreement except for the Consents set forth on Schedule 1.3 attached hereto. If a Consent to assignment of a Contract is required and such Consent is not obtained

prior to Closing, with respect to each such Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Contract from and after Closing in accordance with its terms. Notwithstanding the foregoing, Buyer will not be liable for any obligations in any contract that has not been disclosed to and expressly assumed by Buyer.

## 2.

### ASSUMPTION OF OBLIGATIONS

2.1. Retained Liabilities. Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated herein, any liability, obligation, commitment, undertaking, expense or agreement of Seller of any nature whatsoever, whether known or unknown or absolute or contingent (herein collectively, the "Retained Liabilities"), other than any liability specified under Contracts incurred after the Closing Date ("Assumed Obligations"). Seller agrees and acknowledges that Buyer is not agreeing to assume, and shall not assume, any liability or obligation of Seller to Seller's employees.

## 3.

### CONSIDERATION

3.1 Purchase Price. In consideration for the transfer of the Acquired Assets, Buyer shall pay Seller the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) (the "Purchase Price").

3.2 Payment of Purchase Price. The Buyer shall pay the Purchase Price to the Seller by wire transfer of immediately available funds in accordance with written instructions delivered by the Seller reasonably in advance of Closing.

## 4.

### GOVERNMENTAL CONSENTS

4.1. FCC Consent. It is specifically understood and agreed by Buyer and Seller that consummation of the transactions contemplated hereby is expressly conditioned on and is subject to the prior consent and approval of the FCC ("FCC Consent") without the imposition of any conditions that might be expected to have a material adverse effect on the operation of the Station or with respect to Buyer.

4.2. FCC Application. Within ten (10) business days after execution of this Agreement or within such other timeframe as the parties may agree, the parties shall file with the FCC an application for assignment of the Station's FCC Licenses ("FCC Application") from Seller to Buyer. The parties shall thereafter use all reasonable efforts to obtain the grant of the FCC Application as expeditiously as practicable. If the FCC Consent imposes any condition on a party hereto, such party shall use reasonable efforts to comply with such condition; provided,

however, that no party shall be required hereunder to comply with any condition that would have a material adverse effect on the operations of such party or any affiliated entity, or expend other than nominal additional funds to comply therewith. If reconsideration, full FCC review, or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration, full FCC review, or judicial review; provided, however, such party shall not be required to take any action that would have a material adverse effect on the operations of such party or any affiliated entity. Nothing in this Section 4.2 shall be construed to limit a party's right to terminate this Agreement pursuant to Article 13 hereof.

4.3. W231DU Construction Permit Modification Application. At any time after the FCC Application has been filed, Buyer may file with the FCC, at Buyer's expense, an application to modify the construction permit for W231DU in a manner that will assist in securing a transmission site for W231DU ("Modification Application"). Seller shall provide its written consent to the Modification Application, which consent may be filed with the FCC. Seller and Buyer shall diligently prosecute the Modification Application before the FCC, taking all reasonable steps to facilitate the FCC's prompt consent to the Modification Application, and shall keep each other fully informed with respect to the status of the Modification Application.

## 5.

### CLOSING

5.1. Closing. Except as otherwise mutually agreed upon by Seller and Buyer, the consummation of the transactions contemplated herein (the "Closing") shall occur within thirty (30) business days after the FCC Consent shall have become a Final Order (as hereinafter defined) (the "Closing Date") and the other conditions to the Closing set forth in Article 9 hereof shall have either been waived or satisfied. As used herein, the term "Final Order" means a written action or order issued by the FCC setting forth the FCC Consent (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration, appeal or stay, and the time for filing any such requests and for the FCC to set aside the action on its own motion (whether upon reconsideration or otherwise) has expired, or (ii) in the event of review, reconsideration or appeal, the time for further review, reconsideration or appeal has expired. Notwithstanding the foregoing, (x) Buyer, at its sole option, may elect to proceed with the Closing at any time following FCC Consent but prior to the date on which the FCC Consent shall have become a Final Order and (y) the parties shall close on FCC Consent if no petitions or other objections were filed with respect to the FCC Application. The Closing shall be held by exchange of documents via facsimile or email, or as Seller and Buyer may otherwise agree, or at such place and at such time as the parties hereto may agree.

## 6.

### REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller does hereby represent, warrant and covenant as follows:

6.1. Authority. Seller is a for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York. Seller's execution, delivery and

performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary company actions on its part. This Agreement has been duly executed and delivered by Seller and this Agreement constitutes, and the other agreements to be executed in connection herewith will constitute, the valid and binding obligation of Seller, enforceable in accordance with their terms.

6.2. No Conflict. The execution, delivery and performance of this Agreement by Seller will not (i) conflict with, or result in a violation of, any provision of the corporate articles or bylaws of Seller, including any amendments thereof; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any Contract, by which Seller is bound or any of the Acquired Assets may be subject, (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 Acquired Assets, (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on any of the Acquired Assets, or (v) require the consent or approval of any governmental authority, lending institution or other third party other than the FCC Consent.

6.3. Authorizations. Schedule 1.1(a) hereto contains a true and complete list of the Authorizations, including the FCC Licenses. Seller is the authorized legal holder of the Authorizations. The Authorizations are validly issued, in good standing and in full force and effect in all material respects. The Authorizations are all of the licenses, permits or other authorizations from governmental and regulatory authorities necessary to operate the Station. None of the licenses, permits and authorizations listed on Schedule 1.1(a) is subject to any restrictions or conditions that would limit in any material respect the operations of the Station. Seller has operated and is operating the Station in all material respects in accordance with the Authorizations, the Communications Act of 1934, as amended (the "Act"), and all rules, regulations and policies of the FCC (the "Communications Laws"), although W231DU has not yet been constructed. There is not now pending or, to Seller's knowledge, threatened, any action by or before the FCC to revoke, cancel, rescind, modify, displace or refuse to renew any of the FCC 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, and to the best of Seller's knowledge, there is no factual or legal basis for any such FCC action or proceeding to be instituted. All material reports and filings required to be filed with the FCC by Seller with respect to the operation and ownership of the Station have been timely filed, and all such reports and filings are accurate and complete in all material respects.

6.4 Tangible Personal Property. Schedule 1.1(b) hereto contains a true and complete list of the Tangible Personal Property. The Tangible Personal Property which is leased is identified as such on Schedule 1.1(b). The Tangible Personal Property is all of the tangible personal property necessary to operate the Station. Seller (i) is the lawful owner of all of the Tangible Personal Property it purports to own, and (ii) has valid leasehold interests in the Tangible Personal Property it purports to lease, in all cases free and clear of any Liens, except for Permitted Liens. Buyer has had an opportunity to examine the Tangible Personal Property.

Seller shall deliver the Tangible Personal Property “as-is, where-is.” To Seller’s belief, the Tangible Personal Property is in working order and condition, considering the equipment’s age and configuration, and is available for immediate use in the business and operation of the Station. As of the Execution Date, the Tangible Personal Property that is transmitting equipment is compliant with FCC rules with respect to power, modulation, and control mechanism and is available for immediate use in the business and operation of the Station.

6.5 Contracts. Schedule 1.1(c) hereto contains a true and complete list of all Contracts that are to be conveyed to Buyer at the Closing. Except as set forth on Schedule 1.1(c), Seller has performed in all material respects, is not in violation or breach of, in any material respect, and has not received in writing any claim or threat that it has breached any of the terms and conditions of, any Contract. Neither Seller nor, to Seller’s knowledge, any other party to any Contract is in default thereunder or breach thereof. Seller has delivered to Buyer a true, accurate and complete copy of each Contract, including all amendments, supplements or modifications thereto or waivers thereunder. Except as set forth in Schedule 1.3 attached hereto, neither the execution and delivery by Seller of this Agreement nor the consummation by Seller of the transactions contemplated under this Agreement requires the consent of any party to a Contract, and any Contract requiring Consent to assignment by a third party is identified on Schedule 1.3. Seller is not aware of any intention of any party to any Contract (a) to terminate such Contract other than in accordance with the terms of such Contract, or to amend the terms thereof, (b) to refuse to renew such Contract upon expiration of its term, if such Contract contemplates renewal or (c) to renew such Contract upon their expiration only upon terms and conditions which are materially less favorable to Seller. Assuming that the Consents (defined in Section 1.3) shall have been obtained, Seller has full legal power and authority to assign its rights under each Contract to Buyer in accordance with this Agreement.

6.6 Compliance With Law. To the best of Seller’s knowledge, the Acquired Assets and the Seller’s operation and ownership of the Station are in compliance with all applicable statutes, laws, ordinances, regulations, rules or orders of any federal, state or local government in all material respects.

6.7 Litigation. There are no claims, actions, suits, litigation, labor disputes, arbitrations, proceedings or investigations pending or, to the best of Seller’s knowledge, threatened against or affecting Seller, the Acquired Assets or the transactions contemplated by this Agreement. Seller is not subject to any order, judgment, writ, injunction or decree of any court or governmental agency or entity with respect to the Station or the Acquired Assets.

6.8 Taxes. Seller has paid any and all taxes required to be paid by Seller with respect to the Station. There are no pending or, to the best of Seller’s knowledge, threatened, investigations or claims against Seller for or relating to any liability in respect of taxes. All taxes required to be withheld by Seller on or before the date hereof have been withheld and paid when due to the appropriate agency or authority.

6.9 Disclosure. To the best of Seller’s knowledge, the representations and warranties of Seller herein or in any document, exhibit, statement, certificate or schedule furnished by or on behalf of Seller to Buyer as required by this Agreement do not contain nor will contain any untrue statement of a material fact or omit or will omit to state any material fact necessary in

order to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. From the date of this Agreement, through the Closing Date, Seller shall advise Buyer in writing immediately of all changes, if any, in circumstances that would cause any representation, warranty or statement contained herein to be materially inaccurate or would have a material adverse effect on the Station.

6.10 Qualification. Seller knows of no reason why it should not be found to be legally, financially and otherwise qualified to be the licensee of, assign, own and operate the Station under the Communications Laws, and knows of no facts that would, under existing law and existing Communications Laws, disqualify Seller as an assignor of the FCC Licenses or as the owner and operator of the Station. From the date hereof through the Closing Date, Seller shall maintain its qualifications to own the FCC Licenses and will take no action that will impair such qualifications or cause the grant of the FCC Consent to be materially delayed.

6.11 Employees. Buyer shall have no obligation to offer employment to any employee of Seller or the Station. Buyer shall have no liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended, and accepted by such employee, and subject to the terms and conditions thereof.

6.12 Insurance. All of the material Acquired Assets that are insurable are insured against loss, injury, or damage to the full extent of their replacement value.

6.13 Sufficiency of Acquired Assets. The Acquired Assets are sufficient for the operations of the Station as permitted under the FCC Licenses.

## 7.

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

7.1. Organization and Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and has the requisite legal authority to carry on its business as it is now being conducted.

7.2. Authority. Buyer's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Buyer and this Agreement constitutes, and the other agreements to be executed in connection herewith will constitute, the valid and binding obligation of Buyer, enforceable in accordance with their terms.

7.3. Litigation. There are no claims, actions, suits, litigation, labor disputes, arbitrations, proceedings or investigations pending or, to the knowledge of Buyer, threatened against Buyer or relating to the transactions contemplated by this Agreement.

7.4. Financial Capability. Buyer has on hand or from committed sources the funds necessary to consummate the transactions contemplated by this Agreement and to operate the station for at least three months.

7.5. No Conflict. The execution, delivery and performance of this Agreement by Buyer will not (i) conflict with, or result in a violation of, any provision of the Articles of Organization or Operating Agreement of Buyer, including any amendments thereof; (ii) constitute or result in a breach of or default (or an event that with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract applicable to Buyer's obligations herein, by which Buyer is bound, (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 Buyer, or (iv) require the consent or approval of any governmental authority, lending institution or other third party other than the FCC Consent.

7.6. Qualification. Buyer knows of no reason why it should not be found to be legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Laws, and knows of no facts that would under existing law and existing Communications Laws disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. From the date hereof through the Closing Date, Buyer shall maintain its qualifications to acquire the FCC Licenses and will take no action that will impair such qualifications or cause the grant of the FCC Consent to be materially delayed. Notwithstanding the foregoing, Seller understands and acknowledges that Buyer is in part indirectly owned by foreign citizens ("Border Media") and that the FCC has previously granted a petition for declaratory ruling and an application filed by Border Media seeking FCC consent to the assignment of a license of an FM radio station (on a finding by the FCC that such grants served the public interest) and that Buyer intends to rely on such prior grants in securing FCC Consent in the transactions contemplated by this Agreement.

7.7. Disclosure. To the best of Buyer's knowledge, the representations and warranties of Buyer herein or in any document, exhibit, statement, certificate or schedule furnished by or on behalf of Buyer to Seller as required by this Agreement do not contain nor will contain any untrue statement of a material fact and do not omit nor will omit to state any material fact necessary in order to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. From the date of this Agreement, through the Closing Date, Buyer shall advise Seller in writing immediately of all changes, if any, in circumstances that would cause any representation, warranty or statement contained herein to be inaccurate or would have a material adverse effect on the transactions contemplated herein.

## 8.

### SELLER COVENANTS

8.1. Operation of Station. Between the Execution Date of this Agreement and the Closing Date, Seller shall maintain and preserve Seller's rights under the Authorizations and operate the Station in the ordinary course of business. In particular, without limitation, Seller shall:



(a) Use commercially reasonable efforts to preserve and protect all of the Acquired Assets in good repair and condition, except for normal wear and tear, and maintain such Acquired Assets according to industry standards, good engineering practices and all applicable Communications Laws;

(b) Maintain and preserve Seller's rights under the FCC Licenses, operate the Station in accordance with the Act, the Communications Laws and the FCC Licenses, timely file and prosecute any required extensions of outstanding construction permits, applications or authorizations that may expire prior to the Closing Date;

(c) Ensure that WABY is operating pursuant to valid FCC authorization at the time of commencement of the LMA;

(d) And Seller shall not:

(i) Place or allow to be placed on any of the Acquired Assets any Lien, other than a Permitted Lien;

(ii) Sell or otherwise dispose of any Acquired Asset;

(iii) Commit any act or omit to do any act that will cause a breach of any material Contract or terminate or fail to renew any material Contract;

(iv) Violate in any material respect any law, statute, rule, governmental regulation or order of any court or governmental or regulatory authority (whether Federal, State or local) applicable to the Station that would have a material adverse effect on Seller's qualifications to be the licensee of the Station; or

(v) Cause or permit by any act, or failure to act, any of the FCC Licenses to expire, be surrendered, adversely modified, or otherwise terminated, or the FCC to institute any proceedings for the suspension, revocation or adverse modification of any of the FCC Licenses, or fail to prosecute with due diligence any pending applications to the FCC.

8.2. Contracts. Between the date of this Agreement and the Closing Date, Seller shall not enter into any contract or commitment relating to the Station or the Acquired Assets or incur any other obligation with respect to the Station or the Acquired Assets without obtaining Buyer's prior written consent.

8.3. Lien Search. Unless waived by Buyer, Seller shall deliver to Buyer lien search reports (the "Lien Search"), in form and substance satisfactory to Buyer and dated no earlier than 30 days prior to the Closing, reflecting the results of UCC, tax and judgment lien searches conducted at Secretary of State office of the State of New York, and in the County Clerk's Office of each county in which the Acquired Assets are located, demonstrating that the Acquired Assets

are free and clear of all Liens, except Permitted Liens that are to be released on or before the Closing Date.

8.4 Maintenance of Tower Lease. Between the date of this Agreement and the Closing Date, Seller shall use its best efforts to maintain in full force and effect the tower lease utilized for WABY.

## 9.

### CONDITIONS

9.1. Conditions Precedent to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Buyer shall have waived in writing satisfaction of such condition (other than the FCC Consent, which cannot be waived):

(a) The representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date.

(b) Seller shall have performed and complied in all material respects with all covenants, agreements, representations, warranties and undertakings required by this Agreement to be performed or complied with prior to the Closing.

(c) Seller shall have delivered to Buyer all of the documents required by Section 10.1 hereof.

(d) The FCC Consent shall have become a Final Order, unless Buyer has elected to proceed to Closing prior to the FCC Consent becoming a Final Order in accordance with Section 5.1 of this Agreement.

(e) Any Consents required for assignment of the Contracts to be assumed by Buyer shall have been obtained.

(f) WABY's operations shall be operating in accordance with the FCC Licenses, or WABY is capable of operating in accordance with the FCC Licenses but is not so operating at Closing because it is unable to do so because the currently effective (as of the Execution Date) tower lease is no longer in effect (but not as a result of Seller's failure to use its best efforts to maintain the tower lease in full force and effect between the Execution Date and the Closing Date).

9.2. Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Seller shall have waived in writing satisfaction of such condition (except for FCC Consent, which cannot be waived):

(a) The representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date.

(b) Buyer shall have performed and complied in all material respects with all covenants, agreements, representations, warranties and undertakings required by this Agreement to be performed or complied with by it prior to the Closing.

(c) Buyer shall have delivered to Seller all of the documents required by Section 10.2 hereof.

(d) The FCC Consent shall have been granted.

## **10.**

### **CLOSING DELIVERIES**

10.1. Seller's Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Buyer the following, unless specifically waived by Buyer:

(a) A bill of sale ("Bill of Sale"), assignment and assumption of FCC Licenses ("Assignment and Assumption of FCC Licenses"), assignment and assumption of Contracts ("Assignment and Assumption of Contracts"), and such other assignments and instruments of conveyance, transfer and assignment, as shall be effective to vest in Buyer or its permitted assignee, good and marketable title in and to the Acquired Assets (such documents, collectively, the "Conveyance Documents");

(b) Consents to assignment for the Contracts and such other Contracts for which consent to assignment has been obtained, all without material impairment;

(c) A certificate, executed by an authorized representative of Seller in such detail as Buyer may reasonably request, certifying to the fulfillment or satisfaction of the conditions set forth in Section 9.1. The delivery of such certificate shall constitute a representation and warranty of Seller as to the statements set forth therein;

(d) Updated Schedules reflecting any changes necessary to render the information contained therein true and accurate on the Closing Date;

(e) Payoff letters from any party holding a Lien to be released at the Closing, and releases or UCC-3 termination statements sufficient to terminate Liens; and

(f) Originals or copies of all records required to be maintained by the FCC with respect to the Station.

10.2. Buyer's Deliveries. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following, unless specifically waived by Seller:

(a) The Purchase Price in accordance with Section 3 hereof;

(b) The Conveyance Documents in which Buyer assumes an obligation; and

(c) A certificate, executed by an officer of Buyer, in such detail as Seller shall reasonably request, certifying to the fulfillment or satisfaction by Buyer of the conditions set forth in Section 9.2. The delivery of such certificate shall constitute a representation and warranty of Buyer as to the statements set forth therein.

## 11.

### TRANSFER TAXES, FEES AND EXPENSES

11.1. Expenses. Except as set forth in Sections 11.2 and 11.3 hereof, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement and the transactions contemplated thereby. Each party represents to the other that it has not retained and does not owe any fee to any broker in connection with the transactions contemplated herein.

11.2. Transfer Taxes and Similar Charges. Any recording, excise, sales or use taxes imposed by reason of the transfer of the Acquired Assets in accordance with this Agreement shall be paid by the party or parties who customarily pay such taxes or charges in the state of New York.

11.3. Governmental Filing or Grant Fees. Any filing or grant fees imposed by any governmental authority, the consent of which is required to the transactions to be completed as of the Closing, specifically including any filing fees required in connection with the FCC application, shall be borne equally by Buyer and Seller.

## 12.

### INDEMNIFICATION

12.1. Survival of Representations and Warranties. All representations and warranties made in this Agreement shall survive the Closing for a period of twelve months from the Closing Date. The right of any party to recover Damages (as defined in Section 12.2 hereof) on any claim shall not be affected by the termination of any representations and warranties as set forth above provided that notice of the existence of such claim has been given by the Indemnified Party (as hereinafter defined) to the Indemnifying Party (as hereinafter defined) prior to such termination.

12.2. Indemnification of Buyer by Seller. Seller shall indemnify and hold Buyer and its attorneys, affiliates, representatives, agents, members, officers, directors, successors or assigns harmless from and against any liability, loss, cost, expense, judgment, order, settlement, obligation, deficiency, claim, suit, proceeding (whether formal or informal), investigation, lien or other damage, including, without limitation, attorney's fees and expenses (all of the foregoing items for purposes of this Agreement are referred to as "Damages"), resulting from, arising out of or incurred with respect to:

(a) A breach of any representation or warranty of Seller contained herein, subject to notice of a claim being given before the expiration of the applicable period specified in

Section 12.1 hereof with respect to the representations or warranties by Seller contained herein;

(b) The Retained Liabilities; or

(c) Any and all claims, liabilities or obligations of any nature, absolute or contingent, relating to the business or operation of the Station and the Acquired Assets prior to the Closing Date.

The term “Damages” as used in this Agreement is not limited to matters asserted by third-parties against a party, but includes Damages incurred or sustained by a party in the absence of third-party claims.

12.3. Indemnification of Seller by Buyer. Buyer shall indemnify and hold Seller and its attorneys, affiliates, representatives, agents, members, officers, directors, successors or assigns, harmless from and against any Damages resulting from, arising out of, or incurred with respect to:

(a) A breach of any representation, warranty, covenant or agreement by Buyer contained herein, subject to notice of a claim being given before the expiration of the applicable period specified in Section 12.1 hereof with respect to the representations and warranties made by Buyer herein;

(b) Any and all claims, liabilities or obligations of any nature, absolute or contingent, relating to the business and operation of the Station and the Acquired Assets as conducted by Buyer on and after the Closing Date; or

(c) The Assumed Obligations.

12.4. Sole Remedy. Notwithstanding anything herein to the contrary, the foregoing indemnification provisions in this Article 12 are the sole and exclusive remedy with respect to Damages after the Closing with respect to the transaction contemplated by this Agreement.

### 13.

#### TERMINATION RIGHTS

13.1. Termination. This Agreement may be terminated by written notice given by any party (provided such party is not in material breach of any of its obligations, representations, warranties or duties hereunder) to the other party hereto, at any time prior to the Closing Date as follows, and in no other manner:

(a) by mutual written consent of the parties;

(b) by either Buyer, on the one hand, or Seller, on the other hand, if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by

this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(c) by Buyer, if Seller fails to perform or breaches any of its material obligations, representations, warranties or duties under this Agreement and Seller has not cured such failure to perform or breach within thirty (30) days after receipt by Seller of written notice from Buyer;

(d) by Seller, if Buyer fails to perform or breaches any of its material obligations, representations, warranties or duties under this Agreement, and Buyer has not cured such failure to perform or breach within thirty (30) days after receipt by Buyer of written notice from Seller;

(e) by any party, if the FCC denies the FCC Application in an order which has become a Final Order;

(f) by any party, if the Closing has not occurred within nine months after the date on which the FCC Application is filed; or

(g) automatically, if the LMA is terminated other than in connection with the Closing.

#### 14.

##### MISCELLANEOUS PROVISIONS

14.1. 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 obligations 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 transactions contemplated hereby, Buyer shall be entitled, in addition to any other rights and remedies on account of such failure, to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transactions 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, reasonable attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

14.2. Risk of Loss. The risk of loss or damage to any of the Acquired Assets prior to the Closing Date shall be upon Seller.

14.3. Assignment. This Agreement and Seller's or Buyer's rights or obligations hereunder shall not be assigned without the prior written consent of the non-assigning party; provided, however, that either party shall be permitted to assign its rights and obligations hereunder without the consent of the other party, on ten (10) days' prior written notice to the other party, to an affiliate or subsidiary of such party, provided, that such party shall remain liable for performance by such assignee of the terms of this Agreement. This Agreement shall be

binding upon and inure only to the benefit of the parties hereto and their respective successors and assigns.

14.4. Governing Law. This Agreement and the rights of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York.

14.5. Integration; Amendment. This Agreement, the Schedules attached hereto and the ancillary documents provided for herein, constitute the entire agreement and understanding of the parties hereto relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

14.6. Waivers. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14.7. Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

14.8. Notices. Any and all notices or other communications required or desired to be given hereunder by any party shall be in writing. A notice shall be validly given or made to another party if either delivered personally or deposited in the United States mail, certified, postage prepaid, or transmitted via email with acknowledgement of receipt, or if sent by overnight courier service, and if addressed to the applicable party or parties as set forth below.

If to Seller:

Joseph A. Reilly  
Empire Broadcasting Corporation.  
P.O. Box 1507  
Clifton Park, NY 12065

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

Lawrence M. Miller, Esq.  
Garvey Schubert Barer, P.C.  
1000 Potomac Street, NW - Suite 200  
Washington, DC 20007-3501  
lmiller@gsblaw.com

If to Buyer:

Ricki Lee Shorthose  
Aaron Ishmael  
Saratoga Radio LLC  
PO BOX 3100  
Saratoga Springs, NY 12866

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

Tim Nelson, Esq.  
Brooks Pierce, LLP  
1700 Wells Fargo Capitol Center  
150 Fayetteville Street, Raleigh, NC 27601  
tnelson@brookspierce.com

Any party hereto may change its address for the purpose of receiving notices, demands and other communications as herein provided, by a written notice given in the aforesaid manner to the other parties hereto.

14.9. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same instrument. This Agreement shall be effective and legally binding upon acknowledged delivery of facsimile or electronic signatures.

14.10. Announcements. Prior to Closing, neither party shall, without the written consent of the other, issue any press release or make any public announcement concerning the transactions contemplated by this Agreement, except to the extent such party is so obligated by law, in which case such party shall give advance notice to the other.

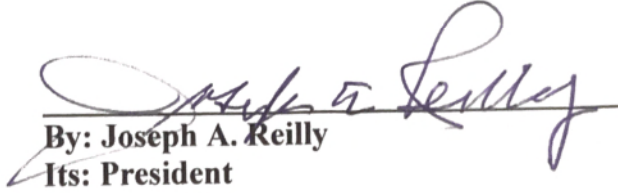
14.11 Control of Station; Effect of LMA. Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the Station prior to the Closing. Such operation, including complete control and supervision of all programming (except to the limited extent permitted by the LMA), shall be the sole responsibility of Seller. Effective on the Closing Date and thereafter, Seller shall have no control over, nor right to intervene or participate in, the operation of the Station.

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



**SELLER:**

**EMPIRE BROADCASTING CORPORATION**



**By: Joseph A. Reilly**  
**Its: President**

**BUYER:**

**SARATOGA RADIO LLC**

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**By: Ricki Lee Shorthose**  
**Its: Manager**

**SELLER:**

**EMPIRE BROADCASTING CORPORATION**

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**By: Joseph A. Reilly**  
**Its: President**

**BUYER:**

**SARATOGA RADIO LLC**



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**By: Ricki Lee Shorthose**  
**Its: Manager**

## **SCHEDULE 1.1(a)**

### **Authorizations (including FCC Licenses)**

FCC license for WABY(AM), Facility Identification #72620, File No. BL-20080319AEC

FCC most recent license renewal for WABY(AM), File No. BR-20140130ABA

FCC Construction Permit for FM radio translator W231DU, 94.1 MHz, Clifton Park, New York, Facility ID No. 201714, File No. BNPFT-20171220AAN, expiring February 26, 2021. When built, W231DU will rebroadcast WABY(AM).

## **SCHEDULE 1.1(b)**

### **Tangible Personal Property**

Nautel Amphet 400 watt AM transmitter

Since Systems Remote Control

Orban Optimod 9100

Belar Modulator Monitor

Radio Systems RS12 Console

Zetta Dell Server

1 Barix box

Broadcast Tools Switcher

**SCHEDULE 1.1(c)**

**Contracts**

None.

## **SCHEDULE 1.3**

### **Consents**

None.