

# ASSET PURCHASE AGREEMENT

THIS AGREEMENT, made this 21st day of July, 2016, by and between Hastings College, hereinafter referred to as ("Seller"), and Community Broadcasting, Inc., hereinafter referred to as ("Buyer").

## WITNESSETH:

WHEREAS, Seller is the Federal Communications Commission ("FCC") licensee of noncommercial radio station KFKX(FM) (Facility ID Number 78448) at Hastings, Nebraska (hereinafter "the Station" or "KFKX."), and

WHEREAS, subject to the terms and conditions set forth herein, Seller agrees to assign to Buyer and Buyer agrees to acquire from Seller, certain rights, title and interest in the Station as defined by this Agreement.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I SALE AND PURCHASE

Section 1.1 (Assets to be transferred). Subject to and in reliance upon the representations, warranties and agreements herein set forth, subject to the terms and conditions herein contained, and subject to the prior consent of the FCC, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date the license and any other authorization issue by the FCC, including the license for the Station's studio transmitter link, WPNI486 (collectively the "FCC Licenses") for the Station and those certain broadcast equipment assets that are listed on Exhibit 1.1 hereto.

Section 1.2 (Purchase Price). The purchase price to be paid for the Station and certain associated broadcast equipment assets is Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) (the "Purchase Price"). On the Closing Date, Buyer shall pay to Seller the Purchase Price less the Deposit (as defined below) by wire transfer or cashier's check drawn on a bank headquartered in the United States acceptable to Seller, payable to Seller.

Section 1.3 (Escrow Deposit). On the date hereof, Buyer will deposit the cash sum of Three Thousand Five Hundred Dollars (\$3,500.00) (the "Deposit") into the IOLTA (trust) account of Buyer's FCC counsel, the law firm of Fletcher, Heald & Hildreth, Inc., and subsequently provide Seller with written proof of such deposit. The Deposit shall be paid to Seller on the Closing Date and shall be credited against the Purchase Price at Closing. If Closing does not take place due to a material breach by Seller, and provided Buyer is not also in material breach, the Deposit shall be returned to Buyer; If Closing does not take place due to a material breach by the Buyer and Seller is not also in material breach the Deposit shall be paid to Seller. If the Agreement is terminated for any other reason the Deposit shall be returned to Buyer. The Escrow Agent will not make any distributions from the Deposit under the foregoing provisions except pursuant to the parties' joint written instructions. In the course of any court proceedings pertaining to the Deposit, Escrow Agent may deposit the Deposit with the clerk of a court in 17th Judicial Circuit of Virginia, Arlington, Virginia, pursuant to an action in the nature of interpleader. If at any time the Escrow Agent receives a final, non-

appealable order of a court of competent jurisdiction directing delivery of the Deposit, the Escrow Agent shall comply with such order. The parties agree to hold the escrow agent harmless from liability in the administration of its duties unless the escrow agent's actions can be shown to have been conducted fraudulently or in bad faith.

Section 1.4 (Closing). Closing shall take place at a mutually agreeable place and time, not more than five (5) business days subsequent to the date that FCC Consent has become final and no longer subject to review or reconsideration by the FCC or by any court, provided, however, that, in the event of any post-grant protest of the Application, parties shall have the option to jointly extend the Closing Date to a date not later than the tenth (10th) business day after the Commission's consent and approval has become a Final Order, as defined below. Buyer, in its sole discretion, shall have the right to waive finality of the FCC Consent. If a pre-finality Closing Date is established, Buyer and Seller will execute an unwind agreement containing terms mutually satisfactory to the parties. The date on which the Closing is to occur is referred to herein as the "Closing Date" or "Closing."

Section 1.5 (Final Order). "Final Order" means an Order of the FCC granting its consent and approval to the assignment of the FCC Licenses from Seller to Buyer, which has not been reversed, stayed or set aside and is no longer subject to rehearing, reconsideration or review by the FCC, or to a request for stay, an appeal or review by any court under the Communications Act of 1934, or the Rules and Regulations of the FCC.

Section 1.6 (Legal Notice). Upon the filing of the FCC Assignment Application (as defined below), Seller shall be responsible for, and shall take the necessary steps, to provide such Legal Notice concerning the filing as is required by the FCC Rules. If requested by Buyer, Seller shall provide Buyer with evidence of Seller's compliance with the Legal Notice requirements.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby warrants as follows:

Section 2.1 (Authorizations). Seller is the lawful holder of the FCC Licenses for the Station as referenced herein. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is no, pending or threatened, action by or before the FCC to revoke, suspend, cancel, rescind or modify the Station's FCC Licenses and there is not now issued or outstanding or pending or threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller or the Station's FCC Licenses. All actions necessary to be taken by or on behalf of Seller in connection with this transaction have been duly and validly taken, and this Agreement has been duly and validly authorized, executed, and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with and subject to its terms. Both parties acknowledge that the Station is currently dark and that on June 20, 2016 the Seller filed a Request for Special Temporary Authority for the Station to remain silent beginning June 30, 2016.

Section 2.2 (Litigation). Seller is aware of no litigation, proceeding or investigation whatever, pending or threatened, against or relating to Seller, its business, or the Station to be transferred hereunder and Seller knows of no reason why the FCC would not find it qualified to assign the Station's FCC Licenses.

Section 2.3 (Title, Liens/Liabilities). Seller owns and will deliver good title to the Station's FCC Licenses and the associated broadcast equipment assets identified herein at Closing free and clear of all debts, liens and other encumbrances, or claims. The parties expressly agree that Buyer shall not assume any debts, accounts payable, or any other liabilities of Seller of any type or nature. Further, Buyer shall not assume any agreements, contracts, leases or any other commitments of Seller of any type or nature.

Section 2.4 (No Other Warranty). Seller makes no warranty other than as stated expressly herein.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller:

Section 3.1 (Authority). Buyer has the requisite power to enter into and complete the subject transactions. Neither the execution, delivery and performance by Buyer of this Agreement nor the consummation by Buyer of the subject transactions will: (a) conflict with or violate the certificate of incorporation, bylaws or operating agreement of Buyer; or (b) violate any judgment, decree, order, statute, rule or regulation applicable to Buyer. All corporate actions necessary to be taken by or on the part of Buyer in connection with the subject transactions have been duly and validly taken, and this Agreement has been duly and validly authorized, executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with and subject to its terms.

Section 3.2 (Buyer's Qualifications). Buyer is, to its knowledge, legally, financially, and otherwise qualified to obtain FCC approval to acquire and hold the Station's FCC Licenses and associated broadcast equipment, and to consummate the transaction contemplated herein according to its terms.

Section 3.3 (No Other Warranty). Buyer makes no warranty other than as stated expressly herein.

### **ARTICLE IV COVENANTS OF SELLER**

Seller covenants and agrees that from the date hereof until the completion of the Closing:

Section 4.1 Seller will promptly notify Buyer in writing upon: (a) becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement; or (b) receiving any notice from any governmental department, court, agency or commission of its intention (i) to institute an investigation into, or institute a suit or proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated. Between now and the date of Closing Seller shall not, without the

consent of Buyer, enter into any leases or contracts pertaining to the Station which will survive Closing.

Section 4.2 (Consummation of Agreement). Seller shall in a timely fashion use all reasonable efforts to cause the Assignment Application for the Station to be granted.

## **ARTICLE V COVENANTS OF BUYER**

Buyer covenants and agrees that from the date hereof until the completion of the Closing:

Section 5.1 (Consummation of Agreement). Buyer shall in a timely fashion use all reasonable efforts to cause the Assignment Application of the Station's FCC Licenses to be granted.

Section 5.2 (Notice of Proceedings). Buyer will promptly notify Seller in writing upon: (a) becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement; or (b) receiving any notice from any governmental department, court, agency or commission of its intention (i) to institute an investigation into, or institute a suit or proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

## **ARTICLE VI FCC ASSIGNMENT AND MODIFICATION APPLICATIONS**

Section 6.1 (Assignment Application). Both parties hereto agree to prepare, submit and prosecute the requisite application to the FCC for consent to the assignment of the Station's FCC Licenses (the "Assignment Application") as soon as practicable but in any event within ten (10) days after executing this Agreement. FCC grant of the Assignment Application is a condition to closing.

Section 6.2 (Modification Application). Seller hereby agrees upon request of Buyer to cooperate with and gives its consent to Buyer, at Buyer's sole cost and expense, filing (at any time after the filing of the Assignment Application) an application to make such changes to the Station as Buyer chooses, including moving the Station to a different tower.

## **ARTICLE VII CLOSING DOCUMENTS**

Section 7.1 (Seller's Deliveries). At the Closing, Seller shall deliver to Buyer an executed bill of sale and assignment of the Station's FCC Licenses and certain associated broadcast equipment, the station's public file and a certificate from an officer of Seller that its warranties remain accurate at Closing and that it has complied with all covenants and obligations required of Seller by this Agreement. Seller shall also execute such other assignments, bills of sale or other instruments as may be requested by Seller to effectuate this Agreement and the assignment of the Station's FCC Licenses and related assets from Seller to Buyer.

Section 7.2 (Buyer's Deliveries). At the Closing, Buyer shall deliver to Seller:

The Purchase Price, which shall be paid in the manner specified in Section 1.2. Buyer shall also execute any documents or instruments as may be reasonably required to effectuate this Agreement and the assignment of the Station's FCC Licenses and related assets from Seller to Buyer, including but not limited to countersigned Bill of Sale and a certificate from an officer of Buyer that its warranties remain accurate at Closing and that it has complied with all covenants and obligations required of Buyer by this Agreement.

## ARTICLE VIII REMEDIES

Section 8.1 (Default by Buyer). If the transactions contemplated by this Agreement are not consummated as a result of Buyer's wrongful failure to close hereunder, and Seller is not also in breach under this Agreement, then Seller shall be entitled to payment of the Deposit as liquidated damages in full settlement of any damages of any nature or kind that Seller may suffer or allege to suffer as the result thereof. It is understood and agreed that the amount of liquidated damages represents Buyer's and Seller's reasonable estimate of actual damages and does not constitute a penalty. Recovery of liquidated damages under this Section shall be the sole and exclusive remedy of Seller against Buyer for failing to consummate this Agreement and shall be applicable regardless of the actual amount of damages sustained.

Section 8.2 (Default by Seller). The parties acknowledge that the FCC authorization to be transferred hereby is of special, unique and extraordinary character. Accordingly, Buyer shall have the absolute right to enforce specific performance of the provisions contained herein and the voluntary assignment of the Station's FCC Licenses as contemplated in this Agreement. Specific performance shall be Buyer's sole remedy in the event of Seller's material default for failure to close as contemplated herein. As a condition to seeking specific performance, Buyer shall not be required to tender the consideration specified in this Agreement, but shall be ready, willing and able to do so. Seller recognizes that in the event Seller defaults in the performance of its obligations under this Agreement monetary damages alone will not be adequate and consents to Buyer's right to specific performance. The prevailing party shall be entitled to reasonable attorney's fees incurred in enforcing its rights under this Section 8.2.

## ARTICLE IX MISCELLANEOUS

Section 9.1 (Notices). All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) if sent by telecopy or facsimile machine to the number shown below, on the date of such confirmed facsimile or telecopy transmission, provided a copy is also sent by commercial overnight delivery service, prepaid, or by deposit in accordance with this Section of a change of address or change of telecopy number:

If to Seller:	Gary C. Johnson Executive V.P. for Academic Affairs and Provost Hastings College 710 N. Turner Avenue Hastings, NE 68901
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Copy to: Cary Tepper, Esq.  
Tepper Law Firm, LLC  
4900 Auburn Avenue  
Suite 100  
Bethesda, MD 20814-2632

If to Buyer: Richard P. Bott, II  
Vice President  
Community Broadcasting, Inc.  
10550 Barkley  
Suite 100  
Overland Park, KS 66212

Copy to: Kathleen Victory, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
Arlington, VA 22209

Section 9.2 (Strict Compliance). No failure of a party to exercise any right or to insist upon strict compliance by the other Party with any obligations and no custom or practice of the Parties at variance with this Agreement shall constitute a waiver of the right of a Party to demand exact compliance. Waiver by one party of any particular default by the other Party shall not affect or impair a Party's rights with respect to any subsequent default of the same or of a different nature, nor shall any delay or omission of a Party to exercise any rights arising from such default affect or impair the rights of that Party as to such default or any subsequent default.

Section 9.3 (Termination). This Agreement may be terminated at any time prior to Closing: (a) by the mutual consent of Seller and Buyer; (b) by Buyer or Seller, if the FCC has denied the approvals contemplated by this Agreement in an order which has become final (i.e., not reversed, stayed or set aside and no longer subject to rehearing, reconsideration or review by the FCC, or to a request for stay, an appeal or review by any court under the Communications Act of 1934, or the Rules and Regulations of the FCC); (c) by Buyer or Seller, if the FCC has failed to grant its written consent to assignment of Station's FCC Licenses within six (6) months of the date of filing of the application for assignment thereof, by giving the other party two (2) weeks prior written notice of such intent, by certified mail or overnight delivery service in which a written receipt of delivery is obtained; provided that the FCC has not granted its consent to the Station's license assignment during that two-week interim period, and provided further that the party seeking cancellation is not in material breach of this Agreement, and provided further that the FCC's failure to approve the Assignment Application is not caused by an action or inaction of either party hereto. If the FCC's failure to approve the Assignment Application is due to actions or inactions of both parties, either party may terminate this Agreement. Any party in material breach or material default shall be provided written notice of such material breach or default and afforded ten (10) days to cure such material default or breach.

Section 9.4 (Entire Agreement). This Agreement, together with all Exhibits and Schedules attached hereto, constitutes the full and entire understanding and agreement between the parties with regard to the

subject matter hereof, and cancels and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter hereof. The express terms hereof control any course of performance and/or usage of trade inconsistent with any of the terms hereof.

Section 9.5 (Counterparts). This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

Section 9.6 (Brokers). The Seller is responsible for paying the brokerage fee due to Mark Jorgenson with regard to this transaction. The Buyer is responsible for paying the brokerage fee to Bill Lytle with regard to this transaction.

Section 9.7 (Transmitting Site Lease). Both parties acknowledge and agree that the current lease for the Station's transmitter site lease is not included in the sale. It shall be Buyer's responsibility, in its sole discretion, to negotiate an extension of the transmitter site lease for the Station as said lease agreement has expired or to move the Station (after Closing) to a new tower. Seller has heretofore provided Buyer with a copy of the most recent transmitter site lease for the Station, as well as contact information for the site owner or site manager. In the event that Buyer elects to move the station to a new tower, the parties shall cooperate to timely remove from the tower any equipment that is included in the sale. The cost of removal shall be the responsibility of Buyer.

Section 9.8 (Assignment & Governing Law). Neither party may assign any right under this Agreement nor delegate any duty under this Agreement unless the other Party has consented to any such assignment or delegation in writing, which consent shall not be unreasonably denied, provided however, in the event of such assignment the assigning party shall remain fully liable for its obligations hereunder. This document shall be binding on the heirs, successors and assigns of the parties hereto and shall be construed exclusively by the laws of the State of Nebraska. Any dispute arising from this Agreement shall be resolved only in the courts of or in the State of Nebraska, without giving effect to principles of conflicts of laws.

Section 9.9 (Jointly Drafted). This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, shall not be construed against either party.

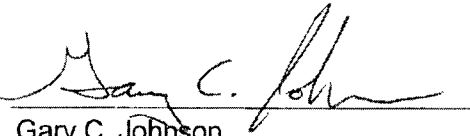
Section 9.10 (Section 73.1150 Statement). Both the Seller and Buyer agree that the Seller has retained no rights of reversion of the Station's FCC Licenses, no right to the reassignment of the Station's FCC Licenses in the future, and has not reserved the right to use the facilities of the Station in the future for any reason whatsoever.

Section 9.11 (No Inconsistent Actions). Neither the Seller nor the Buyer shall take any action which is materially inconsistent with its obligations under this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date written above.

Seller:

HASTINGS COLLEGE

By:   
Gary C. Johnson  
Executive V.P. for Academic Affairs and  
Provost

Buyer:

COMMUNITY BROADCASTING, INC.

By: \_\_\_\_\_  
Richard P. Bott, II  
Vice-President

ESCROW AGENT (as to Section 1.2(a) only):

FLETCHER, HEALD & HILDRETH, PLC

By: \_\_\_\_\_  
Kathleen Victory Member



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HASTINGS COLLEGE

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

Gary C. Johnson

Executive V.P. for Academic Affairs and  
Provost

Buyer:

COMMUNITY BROADCASTING, INC.

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



Richard P. Bott, II

Vice-President

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Kathleen Victory Member

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

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Executive V.P. for Academic Affairs and  
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Buyer:

COMMUNITY BROADCASTING, INC.

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

Richard P. Bott, II  
Vice-President

ESCROW AGENT (as to Section 1.2(a) only):

FLETCHER, HEALD & HILDRETH, PLC

By: Kathleen Victory  
Kathleen Victory Member

**Exhibit 1.1**  
**FCC Licenses**

Primary Station License: KFKX(FM) - BLED- 20080721AAZ, as renewed by BRED: 20130129ABS  
(expires 6/1/2021)

Special Temporary Authority to remain silent: BLSTA: 20160620AAM (*pending*)

Auxiliary License: Studio Transmitter Link: WPNI486

**Broadcast Equipment Asset List**

One Kathrein-Scala PR950 Paraflector Microwave antenna

50 feet of RG-8u Coaxial cable

One Armstrong XLinkR Microwave STL Receiver

One Broadcast Tools WVRC-4 transmitter controller – IP

One Internet firewall/route

One PTEK FM300ES FM Transmitter

250 feet of Andrew HJ5-50 Helix transmission line

2 Type N connectors for transmission line

One SWR Systems FM-3E antenna system

One Sage Digital ENDEC