

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is dated as of the 21st day of October 2016 (the “Effective Date”), by and between **S AND H BROADCASTING, L.L.C.**, a Washington limited liability company (“Seller”), and **SUNNYLANDS BROADCASTING LLC**, Washington limited liability company, as lease holder under the Tower License (defined below) (“Sunnylands”), and **EDUCATIONAL MEDIA FOUNDATION**, a California non-profit, religious corporation (“Buyer”).

### **WITNESSETH:**

**WHEREAS**, Seller is the licensee of radio station KVGH(FM), North Shore, California (Channel 286A; 105.1 MHz; FIN# 2316) (the “Station”) pursuant to authorizations (the “FCC Authorizations”) issued by the Federal Communications Commission (the “FCC”); and

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

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

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

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

(i) Seller’s equipment, machinery, furniture, and other tangible personal property used in the conduct of the operations of the Station, as identified on Schedule 1(a)(i) hereto (collectively, the “Equipment”), together with such modifications, improvements and additions thereto and replacements thereof occurring between the date hereof and the Closing Date;

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

(iii) all of Seller’s right, title and interest in and to the Station’s tower license (the “Tower License”), as further identified and described, and subject to the limitations identified on Schedule 1(a)(iii) hereto and referred to herein; and

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

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

(c) Buyer is not agreeing to, and shall not, assume any liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement, except for the obligations arising after Closing under the Tower License or any other liabilities of Seller for which Buyer receives a credit under Section 2(c) (collectively, the "Assumed Liabilities"). All liabilities, except for the Assumed Liabilities, shall be retained by Seller. Without limiting the generality of the foregoing, it is understood and agreed that Buyer is not agreeing to, and shall not, assume (i) any liability or obligation of Seller to Seller's employees under any existing written or oral agreements with Seller, including any such liability or obligation in respect of wages, salaries, bonuses, accrued vacation or sick pay or any other matter, (ii) any liability arising out of any termination by Seller of the employment of any employee of the Station or any liability for any employee benefit plan or arrangement of Seller for Station employees, (iii) any liability or obligation of Seller arising under the Tower License at or prior to Closing, or (iv) any liability or obligation of Seller arising under any contracts (other than the Tower License) related to the Station.

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

(i) any and all cash, cash equivalents, cash deposits to secure contract obligations, all inter-company receivables from any affiliate of Seller and all other accounts receivable, bank deposits and securities held by Seller in respect of the Station at the Closing Date;

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

(iii) all prepaid expenses;

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

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

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

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

(viii) Seller's corporate records;

(ix) Seller's rights in and to the Station's call sign, KVGH

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

(xi) all equipment and other items located at the Station's studio facility.

## **2. Purchase Price.**

(a) Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date, Buyer shall pay to Seller the aggregate sum of One Million One Hundred Twenty-Five Thousand and 00/100 Dollars (\$1,125,000.00) (the "Purchase Price"), which shall be paid by Buyer by wire transfer of same day Federal funds to an account designated by Seller at least two (2) business days before the Closing Date.

(b) At a date not later than three (3) business days after Buyer receives notice that an escrow account has been established and opened with WashingtonFirst Bank (the "Escrow Agent"), Buyer shall deliver to Escrow Agent the sum of Fifty-Six Thousand Two Hundred Fifty and 00/100 Dollars (\$56,250.00) to be held as an earnest money deposit (the "Earnest Money Deposit") pursuant to an Escrow Agreement (the "Escrow Agreement") of even date herewith. The Earnest Money Deposit shall be paid to Seller as partial payment of the cash Purchase Price due at Closing to Seller, or shall otherwise be made available to Seller or released to Buyer in accordance with the provisions of this Agreement. Buyer shall be entitled to any interest earned on the Earnest Money Deposit.

(c) The parties shall prorate all expenses arising out of the operation of the Station which are incurred, accrued or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include, but not be limited to, power and utilities charges, FCC regulatory fees (if any), real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within sixty (60) days after the Closing Date.

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

(a) At a date not later than five (5) business days after the Effective Date, Buyer and Seller shall execute, file and vigorously prosecute an application with the FCC (the "Assignment Application") requesting its consent to the assignment, from Seller to Buyer, of all

FCC Authorizations pertaining to the Station (the “FCC Consent”). Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay, and to promptly consummate this Agreement in full.

(b) Seller agrees to reasonably cooperate with Buyer in connection with the filing of an application by Buyer for a waiver of the FCC’s “main studio” rules to be effective on or after the Closing Date and for the Station to become a non-commercial educational station (if necessary, as determined in the sole and exclusive discretion of Buyer), so long as any such application may be filed on a basis that is contingent and effective only upon a prior Closing, and does not adversely affect any operations of Seller or its affiliates. The grant of any such application and waiver shall not be a condition to Closing hereunder. Any such application shall be made and prosecution thereof shall be conducted solely at Buyer’s expense.

**4. Closing Date; Closing Place.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall occur on a date (the “Closing Date”) fixed by Buyer upon at least five (5) business days prior written notice to the Seller on a date which shall be after the FCC Consent has been granted and no later than ten (10) days following the date on which the FCC Consent is granted by the FCC; **provided, however**, that in the event an objection to any FCC Consent is filed, EMF may condition its agreement to a Closing Date on the FCC Consents becoming a Final Order (as hereinafter defined) and the other conditions to closing set forth in Section 8 have either been waived or satisfied. For purposes of this Agreement, the term “Final Order” means an FCC Consent (a) that is no longer subject to review, set aside, or rehearing by the FCC or any court, and (b) that has received no timely requests for stay, petition for rehearing or appeal. The Closing shall take place remotely by facsimile and/or email, or in such other manner and at such other place as Buyer and Seller may agree in writing.

**5. Representations and Warranties of Seller and Sunnylands.**

(a) Seller hereby represents and warrants to Buyer:

(i) Seller is duly formed, validly existing and in good standing under the laws of Seller’s State of formation. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors’ rights or the application of principles of equity;

(ii) The execution, delivery, and performance of this Agreement by Seller will not (1) constitute a violation of or conflict with Seller’s organizational documents, (2) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation relating to the business of the Station and to which Seller or any of the Assets may be subject, except for such defaults (or rights of termination,

cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (3) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller or any of the Assets, (4) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (5) require the consent or approval of any governmental authority or other third party, other than the FCC Consent or the licensor under the Tower License;

(iii) Schedule 1(a)(i) hereto contains a complete and accurate list of the Equipment that is necessary to conduct the operation of the Station in the manner in which it is currently operated (other than those assets which are Excluded Assets) and will be acquired by Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Equipment. Each item of Equipment (1) is in good condition and repair, ordinary wear and tear excepted, (2) has been maintained in a manner consistent with generally accepted standards of good engineering practice, and (3) is operating in substantial compliance with all Licenses, including, but not limited to, the FCC Authorizations and rules and regulations of all relevant federal and state governments, agencies, or departments, including, but not limited to, the FCC and FAA;

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

(v) Schedule 1(a)(ii) contains a true and complete list of the FCC Authorizations and all other Licenses that are required for the lawful conduct of the business and operations of the Station in the manner and to the full extent it is presently operated. Seller lawfully holds each of the FCC Authorizations and Licenses listed on Schedule 1(a)(ii). There is not now pending or, to Seller’s knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations or Licenses, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller. Except as set forth in Schedule 1(a)(ii), all material reports and filings required to be filed with the FCC by Seller with respect to the operation of the Station have been timely filed, and all such reports and filings are accurate and currently are in material compliance. Seller maintains a public inspection file for the Station and, such file complies with the Communications Laws;

(vi) The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Equipment and Licenses to Buyer, will transfer good and marketable

title to the Assets free and clear of all Liens, other than the Assumed Liabilities and Permitted Liens;

(vii) Buyer shall have no obligation to offer employment to any employee of Seller or the Station, and shall have no liability with respect to any such employee or for benefits of any kind or nature. Notwithstanding anything contained herein to the contrary, this Section shall survive the expiration or earlier termination of this Agreement, until the expiration of any applicable statute of limitations relating to any claim that could result from Seller's breach of this Section;

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

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

(x) There is now, and through the Closing there shall be, in full force and effect with reputable insurance companies fire and property insurance with respect to all Equipment in commercially reasonable amounts sufficient to repair or replace the applicable Equipment;

(xi) Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid prior to the Closing Date. No event has occurred which imposes on Buyer any liability for any taxes, penalties or interest due or to become due from Seller from any taxing authority. Notwithstanding anything contained herein to the contrary, this Section shall survive the expiration or earlier termination of this Agreement, until the expiration of any applicable statute of limitations relating to any claim against either Buyer or Seller that could result from Seller's breach of this Section; and

(xii) No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer.

(b) Sunnylands hereby represents and warrants to Buyer:

(i) Sunnylands is duly formed, validly existing and in good standing under the laws of Sunnylands's State of formation. Sunnylands has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Sunnylands and no other proceedings on the part of Sunnylands are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Sunnylands and constitutes the legal, valid and binding obligation of Sunnylands, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity;

(ii) The execution, delivery, and performance of this Agreement by Sunnylands will not (1) constitute a violation of or conflict with Sunnylands's organizational documents, (2) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation relating to the business of the Station and to which Sunnylands or any of the Assets may be subject, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (3) 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 Sunnylands or any of the Assets, (4) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (5) require the consent or approval of any governmental authority or other third party, other than the FCC Consent or the licensor under the Tower License;

(iii) Sunnylands has a valid interest in the Tower License as described on Schedule 1(a)(iii), free and clear of all Liens, and no party is in material breach or default with respect to the same. The Tower License is in effect and is binding upon Sunnylands and, to Sunnylands's knowledge, the other party thereto, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity. A complete and correct copy of the Tower License, together with all amendments thereto, has been delivered to Buyer by Sunnylands;

(iv) The instruments to be executed by Sunnylands and delivered to Buyer at the Closing, conveying the Tower License to Buyer, will transfer good and marketable title to the Tower License free and clear of all Liens, other than the Assumed Liabilities and Permitted Liens;

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

(vi) Sunnylands is not subject to any order, writ, injunction, judgment, arbitration decision or decree having binding effect and affecting the business of the Station or the Assets or which restrains or enjoins the transactions contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or to the best of Sunnylands's knowledge, threatened against Sunnylands. To the best of Sunnylands's knowledge, with respect

to the Station, Sunnylands has complied in all material respects with all applicable laws, regulations, orders or decrees. The present uses by Sunnylands of the Equipment and Licenses do not violate any such laws, regulations, orders or decrees in any material respect, and Sunnylands has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing;

(vii) No representation or warranty made by Sunnylands in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer

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

(a) Buyer is a non-profit, religious corporation duly organized, validly existing and in good standing under the laws of the State of California. Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity;

(b) The execution, delivery, and performance of this Agreement by Buyer will not (i) constitute a violation of or conflict with Buyer's organizational documents, (ii) 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 (iii) require the consent or approval of any governmental authority or other third party, other than the FCC Consent;

(c) Buyer is legally, financially and technically qualified to acquire and become the FCC licensee of the Station and to operate the Station in the manner contemplated hereby;

(d) There is no litigation, proceeding or governmental investigation pending or to the knowledge of Buyer, threatened, in any court, arbitration board, administrative agency, or tribunal against or relating to Buyer including without limitation, any voluntary or involuntary petition under Federal bankruptcy law or any state receivership or similar proceedings, that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement; and

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



## 7. Covenants.

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

(i) On the Closing Date: (1) there shall be no underground storage tanks located at either of the broadcast tower (the "Tower"), the real property referenced under the Tower License, or any of the necessary means of ingress and egress to and from the Tower or the new Tower site facility or building used in connection under the Tower or the Tower License (collectively, the "New Tower Site Property"); (2) there shall be no Hazardous Materials stored upon the New Tower Site Property that, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any Environmental Laws;

(ii) On the Closing Date: (1) there shall be full legal and practical access to the New Tower Site Property and all utilities necessary for Buyer's use of the New Tower Site Property as a radio tower facility shall be installed and in a good working order, and are subject to valid easements, where necessary; the buildings, towers, guys and other fixtures situated on the New Tower Site Property shall be free of structural defects and shall be suitable for their intended uses, be in a good state of maintenance and repair, ordinary wear and tear excepted and comply in all material respects with applicable zoning, health and safety laws and codes;

(iii) Sunnylands shall not amend, terminate or fail to renew the Tower License;

(iv) Sunnylands shall not, without the prior written consent of Buyer, sell, lease, transfer or agree to sell, lease or transfer the Tower License; and

(v) To Buyer's satisfaction, Seller and Sunnylands shall take all steps necessary and reasonably advisable to complete the move of the Station from its location on the Effective Date to the New Tower Site Property, in a timely manner, as time is of the essence in regards to this subsection; **except, however**, Buyer shall be responsible for the installation of the satellite dish necessary to operate the Station at the New Tower Site Property.

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

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

(ii) Seller shall continue to operate and maintain the Station in accordance with the terms of the Licenses and in material compliance with all applicable laws, rules, and regulations. Seller shall deliver to Buyer, promptly after filing, copies of any reports, applications or responses to the FCC or any communications from the FCC or any other party directed to the FCC related to the Station which are filed between the Effective Date and the Closing Date. Except as otherwise required or permitted herein, Seller shall not file any application to modify the Station's facilities except such modifications as are required by the

public interest as determined in the sole discretion of Seller, exercised in good faith after consultation with Buyer, and Seller shall take all actions necessary to keep the Licenses valid and in full force and effect.

(iii) Notwithstanding anything to the contrary contained herein, to Buyer's satisfaction, Seller and Sunnylands shall take all steps necessary and reasonably advisable to complete the move of the Station from its location on the Effective Date to the New Tower Site Property, in a timely manner, as time is of the essence in regards to this subsection; **except, however,** Buyer shall be responsible for the installation of the satellite dish necessary to operate the Station at the New Tower Site Property;

(iv) On the Closing Date: (1) there shall be no underground storage tanks located at the New Tower Site Property; (2) there shall be no Hazardous Materials stored upon the New Tower Site Property that, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any Environmental Laws;

(v) On the Closing Date: (1) there shall be full legal and practical access to the New Tower Site Property and all utilities necessary for Buyer's use of the New Tower Site Property as a radio tower facility shall be installed and in a good working order, and shall be subject to valid easements, where necessary; (2) the buildings, towers, guys and other fixtures situated on the New Tower Site Property shall be free of structural defects and shall be suitable for their intended uses, be in a good state of maintenance and repair, ordinary wear and tear excepted and comply in all material respects with applicable zoning, health and safety laws and codes;

(vi) Seller shall maintain insurance on all of the Equipment in such amounts as necessary to repair or rebuild the applicable Equipment;

(vii) Seller shall not, without the prior written consent of Buyer, sell, lease, transfer or agree to sell, lease or transfer the Licenses or any of the Equipment;

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

(ix) On the Closing Date: (1) Seller shall be operating or have the exercisable ability to operate the Station in all material respects in accordance with the FCC Authorizations, and all applicable rules, regulations and policies of the FCC (collectively, the "Communications Laws"), including, without limitation, that the Station will be transmitting at no less than ninety percent (90%) of its authorized power; and (2) the Station will not be transmitting or receiving any objectionable interference to or from any other station, and the Station will not be short-spaced to any other station;

(x) On or before the Closing Date, Seller shall furnish to Buyer revised Schedules to this Agreement as may be necessary to render such Schedules accurate and complete as of the Closing Date. Seller shall give detailed written notice to Buyer promptly upon the occurrence of or becoming aware of the impending or threatened occurrence of, any event which would cause or constitute a breach or would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of Seller's representations or warranties contained in this Agreement or in any Schedule. Seller shall promptly disclose to Buyer any significant problems or developments with respect to the Assets. No revision by Seller of the Schedules and any notice to Buyer made in accordance with this provision will in any way diminish or obviate any representation or warranty of Seller made in this Agreement, the Schedules, or any document delivered pursuant to this Agreement; and

(xi) Seller shall be in material compliance with all federal, state and local laws, rules and regulations.

(xii) Within ten (10) days of Seller applying for an FCC authorization for the Station's license to cover KVGH(FM), Bermuda Dunes, CA, Seller shall notify Seller of such grant, and Seller shall permit Buyer thirty (30) days to (1) drive and test the strength of the Station's signal at the New Tower Site Property and (2) determine, in Buyer's sole discretion whether the New Tower Site Property has been built to Buyer's satisfaction, and Seller shall immediately remedy any issues with the New Tower Site Property identified by Buyer.

(c) Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to satisfy any condition to the parties' obligations hereunder in its power to satisfy and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement.

## **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 be granted, without objection;

(iv) Buyer shall have delivered to Seller the documents required to be delivered pursuant to Section 9(b); and

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

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

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

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

(iii) Seller and Sunnylands shall have (1) fully built the New Tower Site Property for the operation of KVGH(FM), to the satisfaction of Buyer pursuant to Section 7(b)(xii) of this Agreement, and (2) received from the FCC a license to cover for KVGH(FM), Bermuda Dunes, CA;

(iv) None of the events or conditions referenced in Section 19 below shall have occurred and not been remedied as set forth in Section 19;

(v) The FCC Consent shall be granted, without objection;

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

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

(viii) Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated herein; and

(ix) There shall not be any Liens on the Assets, other than the Assumed Liabilities, Permitted Liens, or any financing statements of record, and Seller shall obtain.

## **9. Closing Deliveries.**

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

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

(ii) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Seller pursuant to the FCC Authorizations (an "FCC Assignment"), executed by Seller;

(iii) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Sunnylands pursuant to the Tower License (a “Tower License Assignment”), executed by Sunnylands;

(iv) written consent to the assignment of the Tower License from Sunnylands to Buyer, executed by the licensor thereunder;

(v) certified copies of the resolutions or the written consent of the persons (e.g., board, members, managers) authorized to bind Seller, authorize and approve the execution and delivery of this Agreement, and authorize the consummation of the transactions contemplated herein;

(vi) certified copies of the resolutions or the written consent of the persons (e.g., board, members, managers) authorized to bind Sunnylands, authorize and approve the execution and delivery of this Agreement, and authorize the consummation of the transactions contemplated herein

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

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

(ix) joint instructions to the Escrow Agent for the release of the Escrow Deposit, executed by Seller;

(x) a closing statement, executed by Seller;

(xi) an IRS Form W-9, completed and executed by Seller;

(xii) an IRS Form W-9, completed and executed by Sunnylands; and

(xiii) such other documents, instruments, and agreements as Buyer may reasonably deem necessary to consummate the transactions contemplated by this Agreement.

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

(i) the Purchase Price;

(ii) an FCC Assignment, executed by Buyer;

(iii) a Bill of Sale, executed by Buyer;

(iv) a Tower License Assignment, executed by Buyer;

(v) joint instructions to the Escrow Agent for the release of the Escrow Deposit, executed by Buyer;

(vi) a closing statement, executed by Buyer;

(vii) a certificate, dated the Closing Date, executed by an officer of Buyer, certifying the fulfillment of Buyer's conditions precedent under this Agreement; and

(viii) such other documents, instruments, and agreements as Seller may reasonably deem necessary to consummate the transactions contemplated by this Agreement.

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

(a) Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) either the breach by Seller of any of its representations or warranties or the failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement; or (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station prior to the Closing and subsequent to the Closing with regards to any leases entered into by Seller and not assumed by Buyer.

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

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

(d) If any party hereto (the "Indemnatee") receives notice or otherwise obtains knowledge of any matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnatee under this Section 10(c), then the Indemnatee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnatee in connection therewith. The Indemnifying Party shall have the right, at its option, to assume the complete defense of such matter at its own expense and with its own counsel, provided

such counsel is reasonably satisfactory to the Indemnatee. If the Indemnifying Party elects to assume the defense of such matter, then (i) notwithstanding anything to the contrary contained herein, the Indemnifying Party shall not be required to pay or otherwise indemnify the Indemnatee against the cost otherwise associated with Indemnatee's defense of such matter for the period following the Indemnifying Party's election to assume the defense of such matter, but shall be responsible for payment of any Damages or liability that may be assessed against the Indemnatee, (ii) the Indemnatee shall fully cooperate as reasonably requested by the Indemnifying Party in the defense or settlement of such matter, (iii) the Indemnifying Party shall keep the Indemnatee informed of all material developments and events relating to such matter, and (iv) the Indemnatee shall have the right to participate, at its own expense, in the defense of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(e) The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (i) as otherwise expressly stated herein and (ii) that if within such applicable period, the Indemnified Party gives the Indemnifying Party written notice of a claim for breach thereof, describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

## **11. Termination.**

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

(b) Upon a termination of this Agreement by Seller due to a breach by Buyer of any of its material obligations under this Agreement, Seller's sole remedy shall be payment by Buyer to Seller, as liquidated damages and not as a penalty, of an amount equal to the Earnest Money Deposit ("Liquidated Damages"). If Seller is entitled to the Liquidated Damages, Buyer shall take all actions as are reasonably necessary or convenient in order to cause the Escrow Agent to promptly deliver the Earnest Money Deposit to Seller and shall refrain from any action which would cause any delay in the making of such payment to Seller.

(c) THE DELIVERY OF THE LIQUIDATED DAMAGES AMOUNT TO SELLER SHALL BE CONSIDERED LIQUIDATED DAMAGES AND NOT A PENALTY, AND SHALL BE THE SELLER'S SOLE REMEDY AT LAW OR IN EQUITY FOR A

BREACH HEREUNDER IF CLOSING DOES NOT OCCUR. BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY A BREACH OF THIS AGREEMENT, THE DIFFICULTY OF PROOF OF LOSS, THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY, AND THE VALUE OF THE TRANSACTION TO BE CONSUMMATED HEREUNDER.

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

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

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

**13. Confidentiality.**

(a) Neither party (the "Receiving Party") shall disclose the Confidential Information of the other (the "Disclosing Party") to any third party. The Receiving Party shall also limit access to the Confidential Information of the Disclosing Party within its own organization only to those employees who need to know such Confidential Information in order to implement this Agreement and who are expressly obligated to maintain such Confidential Information in confidence and in accordance with the restrictions set forth herein. These obligations shall not apply to any Confidential Information received by the Receiving Party which the Receiving Party can reasonably demonstrate (i) was in the public domain at the time of receipt by the Receiving Party; (ii) entered the public domain after receipt by the Receiving Party, but through no fault of the Receiving Party; (iii) was known by the Receiving Party prior to its receipt; (iv) is lawfully disclosed to the Receiving Party by a third party that was not under an obligation of confidence to the Disclosing Party; or (v) which the Receiving Party is compelled to disclose by law or legal process, provided the Disclosing Party is given prompt written notice of any such requirement and



an opportunity to contest such disclosure. This confidentiality provision shall survive the expiration or earlier termination of this Agreement, until all Confidential Information disclosed hereunder becomes publically known or made generally available through no action or inaction of the Receiving Party. The parties acknowledge that a copy of this Agreement, redacted where appropriate, will be included in the Assignment Application.

(b) “Confidential Information” means the confidential information of the Disclosing Party, which has not been released to the public by the Disclosing Party, including, but not limited to, this Agreement, technical information, designs, procedures, processes, configurations, formulas, discoveries, inventions, improvements, concepts, ideas, techniques, know-how, pricing and sales information, or any other non-public information, whether disclosed through written, oral or visual means.

(c) In the event that either party determines in good faith that a press release or other public announcement is desirable under any circumstances, the parties shall consult with each other to determine the appropriate timing, form and content of such release or announcement. Notwithstanding anything contained herein to the contrary, prior to either party distributing any press release or announcement regarding this Agreement or any of the transactions contemplated hereby, such party shall obtain the other party’s written consent to distribute such press release or announcement.

**14. Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Buyer, to:

Educational Media Foundation  
5700 West Oaks Boulevard  
Rocklin, CA 95765  
Attn: Mike Novak, President

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

David Oxenford, Esq.  
Wilkinson, Barker, Knauer LLP  
1800 M Street, NW  
Suite 800N  
Washington, DC 20036

If to Seller, to:

Gregory J Smith  
S&H Broadcasting LLC  
PO Box 53248  
Bellevue, WA. 98015-3248  
Fax: 425-671-0888  
[gsmith0605@msn.com](mailto:gsmith0605@msn.com)

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

William Neal  
Stokes Lawrence, PS.  
1420 5th Avenue, Ste 3000  
Seattle, WA. 98101-2593  
Fax: 206-464-1496

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

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

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

**18. Expenses.** Except as otherwise set forth in this Section, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The FCC filing fees relating to the Assignment Application and fees owed to the Escrow Agent shall be shared equally between Buyer and Seller. All federal, state, local and other transfer and sales taxes applicable to, imposed

upon or arising out of the transfer to Buyer of the Assets as contemplated hereby shall be paid by the party responsible for such amounts under applicable law.

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

**20. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily or involuntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**21. Entire Agreement; Amendment.** This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter. This Agreement may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding, unless in writing and signed by both parties.

**22. Schedules and Exhibits.** Unless otherwise specified herein, each Schedule or Exhibit referred to in this Agreement is attached hereto, and each such Schedule and Exhibit (if any) is hereby incorporated herein by this reference.

**[SIGNATURE PAGE FOLLOWS.]**

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

**BUYER:**

**EDUCATIONAL MEDIA FOUNDATION**

By: 

Name: Mike Novak

Title: President & CEO

Date: 

**SELLER:**

**S AND H BROADCASTING, L.L.C.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUNNYLANDS BROADCASTING LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

**BUYER:**

**EDUCATIONAL MEDIA FOUNDATION**

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

Name: Mike Novak

Title: President & CEO

Date: \_\_\_\_\_

**SELLER:**

**S AND H BROADCASTING, L.L.C.**

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

Name: Gregory J. Smith

Title: MANAGER / MEMBER

Date: 10/21/16

**SUNNYLANDS BROADCASTING LLC**

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

Name: Gregory J. Smith

Title: MANAGER / MEMBER

Date: 10/21/16

SCHEDULE 1(a)(i)

Equipment

- FM Transmitter; Nautel VS 2.5 FM transmitter
- PSI Broadcast Antenna Model PSIFML-3C-50ws-DA
- 180' of HJ7-50A 1 5/8" Coax Cable
- Andrew 40525B-4 Low Pressure Dehydrator
- Middle Atlantic MRK-4031 Equipment Rack
- Misc. parts and connectors

SCHEDULE 1(a)(ii)

FCC Licenses

Type of Authorization	Call Sign	FCC File No.	Grant Date	Expiration Date
Mod. to CP	KVGH	BMPH-20160913ABG	09/14/2016	
Construction Permit*	KVGH	BPH-20150622AFT	04/28/2016	04/27/2019
License to Cover*	KVGH	BLH-20150522AGE	06/04/2015	12/01/2021

\*Includes the FCC grant/modification of a license to cover for the Station, with Bermuda Dunes, CA as the city of license.

SCHEDULE 1(a)(iii)

Tower License

Communications License Agreement, dated October 1, 2016, by and between Sunnylands Broadcasting LLC and InSite Towers, LLC