

**ASSET PURCHASE AGREEMENT**  
**WTPA**

This **ASSET PURCHASE AGREEMENT** (this "Agreement"), is dated as of the \_\_\_\_ day of October, 2017 (the "Effective Date"), by and between **PATRICK H. SICKAFUS**, an individual with a business address of P.O. Box 1, Strausstown , Pennsylvania 19559 ("Seller") and **EDUCATIONAL MEDIA FOUNDATION**, a California non-profit religious corporation ("Buyer").

**WITNESSETH:**

**WHEREAS**, Seller is the licensee of commercial radio station WTPA(FM), Palmyra, PA (Channel 221A, 92.1 MHz; FIN# 12050) (the "Station") pursuant to 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, the assets, properties, interests and rights of Seller of whatsoever kind and nature, used in connection with the operation of the Station and which are specifically described below, but excluding the Excluded Assets described in subparagraph (d) below, (collectively, the "Assets");

(i) all of the licenses, permits and other authorizations issued by the FCC ("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, including those identified on Schedule 1(a)(i) hereto (collectively, the "Licenses");

(ii) the 199 foot broadcast tower ("Tower"), transmitter building and related improvements ("Tower Improvements") located on the Leased Premises (defined below) along with all of Seller's equipment, transmitters, antennas, cables, fixtures, spare parts and other tangible personal property of every kind and description that are used or held for use exclusively in the operation of the Station's transmission facilities at the Leased Premises, including those assets listed on Schedule 1(a)(ii) (collectively with the Tower and Tower Improvements, the "Tangible Personal Property"), together with such modifications, improvements and additions thereto and replacements thereof occurring between the date hereof and the Closing Date;

(iii) all of Seller's interest in the ground lease for the Station's Tower and Tower Improvements located at Dauphin County Pennsylvania ("Leased Premises") as further described on Schedule 1(a)(iii) (the "Real Property Lease"); and

(iv) all of Seller's interest in any tenant lease or license of the Tower or Tower Improvements (the "Tenant Leases") as listed and described on Schedule 1(a)(iv) (if any);

(v) all of Seller's rights in and to the Station's call sign, WTPA; and

(vi) all of Seller's logs, books, files, data, software, FCC and other governmental applications, Tangible Personal Property manuals and assignable warranties, and other records relating exclusively to operation of the Station, including without limitation all electronic data processing files and systems related uniquely to the Station, 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 and any surveys, title reports, environmental reports or similar document regarding the Leased Premises.

(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 and (iii) with respect to the Leased Premises, such other easements, rights of way, zoning, building and use restrictions and other exceptions of record that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Station or the use of the Assets (in the manner currently utilized by Seller)(collectively, "Permitted Liens").

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

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

(i) any and all cash, cash equivalents, cash deposits to secure contract obligations, 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 tangible personal property disposed of or consumed between the date hereof and Closing in the ordinary course of business;

(vii) Seller’s corporate records; and

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

## **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 Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) (the “Purchase Price”), which shall be paid by Buyer by wire transfer of same day federal funds to an account designated by Seller at least two (2) business days before the Closing Date.

(b) At a date not later than three (3) business days after the Effective Date, Buyer shall deliver to WashingtonFirst Bank (the “Escrow Agent”) the sum of Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) 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 agree to prorate all expenses arising out of the operation of the Station which are incurred, accrued or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include, but not be limited to, power and utilities

charges, real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, rent under the Real Property Lease and Tenant Leases 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) Assignment Application. At a date not later than ten (10) business days after the Effective Date, Buyer and Seller shall execute, file and 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) Main Studio Waive; Non-Commercial. Seller agrees to reasonably cooperate with Buyer in connection with the filing of an application by Buyer for the Station to become a non-commercial educational station and for a waiver of the FCC's "main studio" rules with such conversion and waiver to be effective on or after the Closing Date, 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. Seller shall be deemed to have cooperated with Buyer by prompt delivery of the signed statement required under Section 73.3517 of the FCC rules.

**4. Closing Date; Closing Place.** The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on a date fixed by Buyer (the "Closing Date"), which date shall be no sooner than ten (10) days following the date on which FCC Consent is granted and no later than ten (10) days following the date on which FCC Consent shall have become a Final Order (defined below), provided the other conditions to closing set forth in Section 8 have either been waived or satisfied. Buyer shall deliver to Seller at least five (5) days' prior written notice of the Closing Date. For purposes of this Agreement, "Final Order" means an FCC Consent (a) that is no longer subject to review, set aside, or rehearing by the FCC or any court, and (b) that has received no timely requests for stay, petition for rehearing or appeal. The Closing shall take place remotely by email, or in such other manner and at such other place as the parties may agree in writing.

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

(a) Organization. Seller is an individual residing in the State of Pennsylvania. 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.

(b) Authorization; No Conflicts. The execution, delivery, and performance of this Agreement by Seller will not (i) 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, (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 Seller or any of the Assets, (iii) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (iv) require the consent or approval of any governmental authority or other third party, other than the FCC Consent.

(c) Licenses. Schedule 1(a)(i) 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). Seller is operating the Station in all material respects in accordance with the FCC Authorizations, and all applicable rules, regulations and policies of the FCC (collectively, the “Communications Laws”), including that the Station is now and on the Closing Date will be transmitting at no less than ninety percent (90%) of its authorized power. The Station is not transmitting or receiving any objectionable interference to or from any other station. There is not now pending or, to Seller’s knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations or Licenses, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller. All material reports and filings required to be filed with the FCC have been timely filed, and all such reports and filings are accurate and currently are in material compliance. All regulatory fees required to be paid to the FCC by Seller with respect to the Station have been timely paid, and no amounts currently due remain unpaid with the FCC by Seller with respect to the operation of the Station. Seller maintains a public inspection file for the Station and, such file complies with the Communications Laws.

(d) Tangible Personal Property. Schedule 1(a)(ii) hereto contains a complete and accurate list of the Tangible Personal Property that is necessary to conduct the operation of the Station in the manner in which it is currently operated (other than those assets which are Excluded Assets) and will be acquired by Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. The Tangible Personal Property has been maintained in a manner substantially consistent with generally accepted standards of good engineering practice; and is operating in full compliance, in all material respects, with the FCC Authorizations and rules and regulations of the FCC and FAA. Each item of Tangible Personal Property is in good operating condition, ordinary wear and tear excepted, is free from material defects or damage, and is functioning in the manner and purposes for which it was intended.

(e) Broadcast Tower. The Tower (a) was constructed or modified in compliance with applicable law (including the National Environmental Policy Act of 1969, as amended (NEPA); the Endangered Species Act, and the National Historic Preservation Act of 1966) and (b) is obstruction marked, lighted and properly registered with the FCC to the extent required by, and in accordance with, the Communications Laws and the rules and regulations of the FAA. Seller and the Assets are in compliance in all material respects with all rules and regulations of the FAA applicable to the Station. The operation of the Station does not expose workers or others to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in ANSI Standards C95.1-1992 or any subsequently adopted standards to the extent the same are required to be met under applicable law. The Tower and all guy anchors, guy wires, cables, driveways, parking lots, ground systems, transmitting equipment, buildings and other Tower Improvements relating to the Station's transmission operations are located entirely on and wholly within the lot limits and metes and bounds of the Leased Premises and do not encroach on any adjoining premises. The buildings, towers, guys and other fixtures situated on the Leased Premises including the Tower and Tower Improvements are free of structural defects and are suitable for their intended uses, are in 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. The Tower and Tower Improvements located on the Leased Premises are in compliance with applicable zoning, wetlands, NEPA, FCC, FAA, the National Historic Preservation Act and any related or similar state laws, land use laws and applicable title covenants, conditions, restrictions and reservations in all respects, now and at the time of development of the Leased Premises as a broadcasting facility.

(f) Real Property Lease. Schedule 1(a)(iii) contains a description of the Real Property Lease (along with any amendments thereto). The Real Property Lease is in full force and effect and Seller is not aware of any default thereunder by Seller or the landlord thereunder. The Real Property Lease is in effect and binding upon Seller and the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). A complete and correct copy of the Real Property Lease, together with all amendments thereto, has been delivered to Buyer by Seller.

(g) Tenant Lease. Schedule 1(a)(iv) contains a description of each Tenant Lease (along with any amendments thereto). Each Tenant Lease is in full force and effect and Seller is not aware of any default thereunder by Seller or the tenant thereunder. Each Tenant Lease is in effect and binding upon Seller and the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). A complete and correct copy of each Tenant Lease, together with all amendments thereto, has been delivered to Buyer by Seller.

(h) Leased Premises. The Leased Premises includes (or Seller has easements for) sufficient vehicular access to the Tower and other facilities location on the Leased Premises without need to obtain any additional access rights and (ii) are served by all utilities which are required for adequate operation of the Station's transmission site. No part of the Leased Premises is subject to any pending or, to Seller's knowledge, threatened suit for condemnation or other taking by any public authority. The Tower and Tower Improvements included in the Leased Premises are in good operating condition and are not in need of material repair (ordinary wear and tear excepted) and free from material defect or damage and comply in all material

respects with applicable zoning, health and safety laws and codes. Seller has delivered to Buyer true and complete copies of all title insurance policies, title insurance commitments and surveys in its possession that are applicable to the Leased Premises. Seller's present use of the Leased Premises is in compliance with all applicable zoning codes or other laws. All permanent certificates of occupancy and other consents and approvals required to be obtained by Seller for use of the Leased Premises as a tower site from any governmental authority, association or board with jurisdiction over the Tower, the Tower Improvements or the Leased Premises have been issued and are in full force and effect. Except for the Tenant Leases, there are no leases, licenses, subleases, sublicenses or other contracts between Seller, on the one hand, and a third party, on the other hand pursuant to which Seller rents, licenses, subleases or sublicenses to such third party use of the Leased Premises, including space on the Tower.

(i) Environmental. Seller has not, in connection with its business or assets, generated, used, transported, treated, stored, released or disposed of, or to its knowledge, suffered or knowingly permitted anyone else to generate, use transport, treat, store, release or dispose of any Hazardous Substance (as defined below) on the Leased Premises in violation of any applicable environmental law; (b) there has not been any generation, use, transportation, treatment, storage, release or disposal of any Hazardous Substance on the Leased Premises or which has created or might reasonably be expected to create any material liability under any applicable environmental law or which would require reporting to or notification of any governmental entity; (c) to the knowledge of Seller, no asbestos or polychlorinated biphenyl or underground storage tank is contained in or located on the Leased Premises or; and (d) any Hazardous Substance handled or dealt with in any way on the Leased Premises has been and is being handled or dealt with in all material respects in compliance with all applicable environmental laws. Seller and the Station are in compliance in all material respects with all environmental, health and safety laws applicable to the Leased Premises and the Assets. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller or the Station that asserts that Seller or the Station has violated any environmental, health or safety laws applicable to the Leased Premises or Assets. "Hazardous Substance" means substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances," or any other formulation of any applicable environmental law intended to define, list or classify substances by reason of deleterious properties such as ignitibility, corrosiveness, reactivity, radioactivity, carcinogenicity, reproductive toxicity and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy. Seller has delivered to Buyer true and complete copies of all environmental reports and assessments in its possession that are applicable to the Leased Premises.

(j) Compliance with Law; Proceedings. Seller has complied and currently is in material compliance with all applicable laws, statutes, rules, regulations, codes and ordinances related to the operation of the Station or the ownership of the Assets. 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 Seller's knowledge, threatened against Seller. Seller has complied in all material respects with all applicable laws, regulations, orders or decrees. The present uses by

Seller of the Assets do not violate any such laws, regulations, orders or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing. Except for administrative rulemaking or other proceedings of general applicability to the radio broadcast industry: (i) there is no proceeding or investigation of any nature pending or, to Seller's knowledge, threatened against Seller (in relation to the Station), any of the Station or the FCC Authorizations or affecting the same; and (ii) no writ, decree, or similar instrument has been rendered or is pending against Seller which would materially and adversely affect the Assets or Seller's ability to perform under this Agreement.

(k) Title; Assets. The instruments to be executed by Seller and delivered to Buyer at Closing, conveying the Assets to Buyer, will transfer good and marketable title to the Assets, free and clear of all Liens other than Permitted Liens. The Assets include all assets that are owned or leased by Seller and used or held for use exclusively in the operation of the Station in all material respects as currently operated, except for the Excluded Assets.

(l) Employees. 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.

(m) Broker. Except for Eddie Esserman, 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. Seller will pay all brokerage commissions owed to Eddie Esserman.

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

(o) Taxes. 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 consistent with its tax exempt status, 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.

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

(a) Organization Buyer is a non-profit, religious corporation duly organized, validly existing and in good standing under the laws of the State of California, and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

(b) Authorization; No Conflicts. Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions



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

(c) Qualification. Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Laws. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Authorizations or as the owner and operator of the Station. No waiver of or exemption from any FCC rule or policy is necessary to be obtained by Buyer in order for the FCC Consent to be granted.

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

## **7. Covenants**

(a) Seller Covenants. 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 Leased Premises and Tangible Personal Property in accordance with standards of good engineering practice.

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

(iv) Seller shall not, without the prior written consent of Buyer, sell, lease, license, transfer or agree to sell, lease, license or transfer any of the Assets (including use of the Tower or Leased Premises) other than to Buyer.

(v) Seller shall afford, and shall cause its respective officers, directors, employees and agents to afford, to Buyer, its prospective financing sources and its and their respective officers, employees, advisors and agents reasonable access during regular business

hours to Seller's officers, employees, independent contractors, agents, properties, records and contracts relating to the Assets, and shall furnish Buyer all operating and other data and information with respect to the Assets as Buyer, through its respective officers, employees, advisors or agents, may reasonably request.

(vi) Seller shall operate the Station in material compliance with all federal, state and local laws, rules and regulations.

(vii) Seller not amend, terminate or fail to renew the Real Property Lease or any Tenant Lease.

(b) Leased Premises. Within sixty (60) days after the Effective Date, Buyer may, at its expense, obtain customary leasehold title commitments, Phase I site assessments, and surveys with respect to the Leased Premises. Seller shall cooperate with any reasonable requests by the title company or environmental consultant and shall provide access for such surveys or site assessments upon reasonable prior notice. Buyer shall notify Seller of any Lien or encroachment disclosed on the survey or title commitment for the Leased Premises that is not a Permitted Lien promptly after Buyer becomes aware of such fact. To the extent the Phase I assessment identifies a potential environmental hazard on the Leased Premises, Buyer may conduct a Phase II assessment, at Buyer's sole cost and expense, upon the prior written consent of Seller. If Seller does not grant such consent on a timely basis as determined above, Buyer shall have the right to terminate this Agreement without penalty. If the Phase I or Phase II assessments reveal an environmental condition, then Seller shall either (i) remediate such environmental condition to Buyer's reasonable satisfaction, or if Seller will not remediate the condition, Buyer may terminate this Agreement and the Earnest Money Deposit shall be returned to Buyer. Buyer shall have the right to obtain at Closing, at Buyer's sole cost and expense, a standard form of leasehold title insurance policy ("Title Policy") insuring the Buyer's good, marketable and indefeasible leasehold interest in such Leased Premises, subject only to Permitted Liens. The premiums for such policies and commitments, including the attorneys' fees for examination of the abstract and survey (if required by the company issuing the title insurance policy) shall be paid one hundred percent (100%) by Buyer. The parties acknowledge and agree that it is Buyer's intention that all standard exceptions which can be deleted by the use of customary and reasonable owner's or seller's affidavits or gap indemnities be deleted from the Title Commitment prior to issuance of the Title Policy, and Seller shall reasonably cooperate with Buyer in executing and delivering customary and reasonable owner's or seller's affidavits to the Title Company.

(c) Other Covenants. Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable best 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 or Seller's waiver of each of the following express conditions precedent:

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

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

(iii) The FCC Consent shall have been granted;

(iv) Buyer shall have delivered to Seller, on the Closing Date, the Purchase Price;

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

(vi) 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 or Buyer's waiver of each of the following express conditions precedent:

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

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

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

(iv) The Final Order shall be effective;

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

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

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

## **9. Closing Deliveries.**

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

(i) a Bill of Sale vesting in Buyer good and marketable title in and to the Assets other than the Licenses, Real Property Lease and Tenant Leases (which will be conveyed via separate instruments), executed by Seller (a “Bill of Sale”);

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

(iii) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Seller pursuant to the Real Property Lease (a “Real Property Lease Assignment”), executed by Seller;

(iv) if required under the Real Property Lease, written consent of such landlord to the assignment of the Real Property Lease from Seller to Buyer;

(v) an Assignment and Assumption Agreement transferring to Buyer the rights and obligations of Seller pursuant to the Tenant Leases (a “Tenant Lease Assignment”), executed by Seller;

(vi) if required under any Tenant Lease, written consent of such tenant to the assignment of the Tenant Lease from Seller to Buyer;

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

(viii) a joint notice to the Escrow Agent for the release of the Earnest Money Deposit, executed by Seller;

(ix) a closing statement, executed by Seller;

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

(xi) a copy of a recent utility bill for electricity at the Leased Premises;

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

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

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

(i) the Purchase Price;

(ii) an FCC Assignment, executed by Buyer;

(iii) the Real Property Lease Assignment, executed by Buyer;

(iv) the Tenant Lease Assignment, executed by Buyer;

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

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

(vii) a closing statement, executed by Buyer; and

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

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

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

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

(c) If either 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 for the cost of defending such matter following the Indemnifying Party's election to assume the defense of such matter (unless legal counsel advises that conflicting interests prohibit common representation of the parties), (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. An Indemnifying Party may not settle a third-party claim without the consent of the Indemnatee unless the Indemnatee receives a complete release from the claim and is not required to make any payment with respect to the claim.

(d) 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 those with respect to title to the Assets, which shall survive indefinitely, and (iii) 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 designated for hearing or denied by Final Order or a judicial appeal is taken from an FCC decision disposing of the Assignment Application; (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 nine (9) months of the date the Assignment Application is filed.

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").

THE DELIVERY OF THE LIQUIDATED DAMAGES AMOUNT TO SELLER SHALL BE CONSIDERED LIQUIDATED DAMAGES AND NOT A PENALTY, AND SHALL BE THE RECIPIENT'S SOLE REMEDY AT LAW OR IN EQUITY FOR A BREACH HEREUNDER IF CLOSING DOES NOT OCCUR. BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY A BREACH OF THIS AGREEMENT, THE DIFFICULTY OF PROOF OF LOSS, THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY, AND THE VALUE OF THE TRANSACTION TO BE CONSUMMATED HEREUNDER.

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

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

(c) Upon a termination of this Agreement for any reason other than as a result of a breach by Buyer of any of Buyer's material obligations under this Agreement, Buyer shall be entitled to the release of the 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.

**13. Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or 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, CEO

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

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

If to Seller, to:

Patrick H. Sickafus  
P.O. Box 1  
Strausstown, PA 19559

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

John Neely, Esq.  
Miller and Neely, PC  
3750 University Blvd., W – Suite 203  
Kensington, MD 20895

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

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

**16. Counterparts.** This Agreement may be executed in 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 (including a PDF), with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms



thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

**17. Expenses.** Except as otherwise set forth in this 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 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.

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

**19. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily 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.

**20. Entire Agreement.** This Agreement and the exhibits attached hereto supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

**21. Schedules and Exhibits.** Unless otherwise specified herein, each schedule and exhibit referred to in this Agreement is attached hereto, and each such schedule and exhibit is hereby incorporated into this Agreement as if it were an integral part thereof.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**SELLER:**

**PATRICK H. SICKAFUS**

\_\_\_\_\_

**BUYER:**

**EDUCATIONAL MEDIA FOUNDATION**

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

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

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

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

SCHEDULE 1(a)(i)

Licenses  
Station WTPA(FM), Palmyra, Pennsylvania  
Facility ID Number 12050  
*Patrick H. Sickafus*

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
Broadcast Renewal	WTPA(FM)	BRH-20140325AAO	7/25/2014	8/1/2022
Broadcast License	WTPA(FM)	BLH-20061030ANC	12/20/2006	8/1/2022

*Broadcast Auxiliary Station*

Type of Authorization	Call Sign	Grant Date	Expiration Date
Aural Studio Transmitter Link	WPNH662	9/23/1997	8/1/2022
Remote Pickup	KA21486	12/8/1978	8/1/2022
Remote Pickup	KA59070	10/23/1998	8/1/2022

SCHEDULE 1(a)(ii)  
Tangible Personal Property

ERI 199' self-supporting tower  
400' 1 5/8" Andrew Transmission Line  
2 ERI LPX 2 bay antennas with radomes  
Harris Z-6 3 KW HD transmitter  
Continental R14D 2.5 kw transmitter  
Dielectric powered coax transfer switch  
Dielectric Dual Switch controller  
Burk Remote Control ARC 16  
Mosley STL  
Mosley Starlink Receiver  
Harris HDE 100 Exporter – Reported INOP  
Belar Modulation Monitor  
LEA Surge Arrestor  
Omnia 6 Processor  
5 kW dummy load  
Dielectric automatic dehydrator  
Documents and Manuals  
2 2.5 ton Bard HVAC Wall Mount units  
10 x 20 x 10 Block Building

SCHEDULE 1(a)(iii)

Real Property Lease

Agreement for the Lease of Real Estate dated as of September 12, 2005 between Jeffrey A. Neely and Sally A. Neely (a/k/a Sally A. Eutzy) as lessor and Patrick H. Sickafus (as ultimate assignee of Cumulus Broadcasting, LLC) as lessee for approximately 100 square feet of property located at East Hanover Township, Dauphin County, PA and centered on the following coordinates: 40-23-29N; 76-43-30W (NAD27)

\*Lease may be assigned upon 30 days prior written notice to lessor.

SCHEDULE 1(a)(iv)

Tenant Leases

None