

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of December 2, 2008 (this "Agreement"), by and between EDUCATIONAL MEDIA FOUNDATION, a California non-profit corporation ("Seller"), and FIFTH AVENUE BROADCASTING COMPANY, INC., a Kentucky corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller is the licensee of FM translator station W231BS, Huntington, West Virginia (Channel 231, 94.1MHz) (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 of the assets to be owned or leased by Seller and used 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. **Sale of Assets.**

(a) On the Closing Date (as hereinafter defined), Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase and assume from Seller, the following assets used in connection with the operation of the Station (the "Assets") (but excluding the Excluded Assets described in subparagraph (b) below):

(i) Licenses, permits and other authorizations, including the FCC Authorizations (collectively, the "Licenses"), issued by the FCC to Seller in connection with the operations of the Station, as set forth on Schedule 1 hereto; and

(ii) All documents required by the FCC to be maintained by Seller relating to the Station and its operation.

(b) 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) Cash on hand and in banks (or their equivalents), and accounts receivable arising out of the operation of the Station prior to Closing;

(ii) All rights of Seller under all contracts, leases, and agreements, including the Station's current site lease, contracts of insurance and insurance proceeds of settlement and insurance claims made by Seller relating to property or equipment repaired, replaced, restored by Seller prior to the Closing Date;

(iii) All pension, profit-sharing, retirement, stock purchase or savings plans or trusts and any assets thereof and all other employee benefit plans;

(iv) All deposits and all prepaid expenses and taxes; and

(v) Seller's corporate records.

(vi) All tangible and intangible personal property not specifically identified in Schedule 1 herein and used in the transmission operations of the Station and also all tangible and intangible personal and real property used or useful in connection with Seller's broadcast properties other than the Station.

2. **Consideration.**

(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 (defined below) Buyer shall pay to Seller the aggregate sum of Sixty Thousand Dollars (\$60,000) (the "Purchase Price"). The Purchase Price shall be payable to Seller at Closing (defined below) by wire transfer of immediately available funds.

(b) Within five (5) days of the execution of this Agreement, Buyer shall deliver the sum of Ten Thousand Dollars (\$10,000.00) to Fletcher, Heald & Hildreth, P.L.C. (the "Escrow Agent") as an earnest money deposit ("Earnest Money Deposit") in an interest-bearing escrow account in accordance with the terms of an agreement attached as Exhibit A hereto ("Escrow Agreement"). Except as set forth in Section 11 hereinbelow, the Earnest Money Deposit shall be paid on the Closing Date to Seller as partial payment of the Purchase Price, with any accrued interest thereon being paid to Buyer.

3. **FCC Consent; Assignment Application.** 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"), at a date not later than five (5) business days after the execution of this Agreement. 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. The Assignment Application filing fee will be shared equally between Buyer and Seller.

4. **Closing Date; Closing Place.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur no later than ten (10) days following the date on which the FCC Consent shall have become a Final Order (as hereinafter defined) (the "Closing Date") 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 action by the FCC consenting to an application that is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall be held by mail, facsimile, or electronic mail, as the Parties may agree.

5. **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer:

(a) Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in the State of West Virginia. Seller has the power and authority to execute and deliver this Agreement and 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.

(b) Seller acknowledges and agrees that Seller shall retain ownership of and be solely responsible for dismantling or otherwise removing from the Station's current transmitter site any of Seller's equipment and other tangible personal property used in the transmission operations of the Station.

(c) Schedule 1 hereto contains a true and complete list of the FCC Authorizations that are required by the FCC to operate the Station. The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations listed on Schedule 1, none of which is subject to any restrictions, conditions, outstanding judgments or FCC orders relating to the Station that would limit in any material respect the operation of the Station. There are no complaints, investigations or proceedings pending, or to the knowledge of Seller, threatened before the FCC relating to the Station's operation other than those affecting the general broadcasting industry.

(c) 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.

(d) 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 to the best of Seller's knowledge.

6. **Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Seller:

(a) Buyer is a corporation, validly existing and in good standing under the laws of the State of Kentucky and is qualified to do business in the State of West Virginia, and has the requisite power and authority to own, lease and operate its properties and to carry on the business of the Station.

(b) 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) Buyer is legally, financially and technically qualified to acquire and become the licensee of, acquire, own and operate the Station under the Communications Act of 1934, as amended (the "Communications Act") and the rules, regulations and policies of the FCC. 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 any FCC rule or policy with respect to Buyer, its business or operations, is necessary for the FCC Consent to be obtained. Buyer has and will have available on the Closing Date sufficient funds to enable it to consummate the transactions contemplated hereby.

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

(e) No representation or warranty made by Buyer 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 Seller to the best of Buyer's knowledge.

7. **Covenants.** Seller covenants with Buyer that, between the date hereof and the Closing Date, Seller shall act in accordance with the following:

(a) Seller shall take all actions necessary to keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect.

(b) Seller shall comply in all material respects with all federal, state and local laws, rules and regulations applicable to the Station.

(c) If any event should occur which would prevent the consummation of the transactions contemplated hereunder, Seller shall use its best efforts to cure the event as expeditiously as possible.

(d) Seller shall provide to Buyer, as of the date of this Agreement, a signed permission letter in the form attached hereto as Exhibit B (the "Permission Letter") to permit Buyer in its own name (i) to file with the FCC a minor change application for the Station to relocate to a site to be designated by Buyer ("Minor Change Application") and/or (ii) a request for Special Temporary Authority ("STA Request") to permit the rebroadcast of an AM station on the Station. Buyer agrees to file the Minor Change Application within 3 weeks of execution

of this Agreement. It is specifically understood and agreed by Buyer that, in the event Buyer files the Minor Change Application and/or the STA Request in its own name at the time of the filing of the Assignment Application, the FCC's grant of such Minor Change Application and/or STA Request shall be contingent upon FCC approval of the Assignment Application and the consummation of the transactions contemplated by this Agreement, shall not materially delay or impede the Closing and shall be made at Buyer's expense.

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, unless waived in writing by Seller:

(i) Buyer shall have performed and complied in all material respects with all of the material 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 contemplated by this Agreement shall have become a Final Order; and

(iv) Buyer shall have delivered to Seller, on the Closing Date, the documents required to be delivered pursuant to Section 9(b).

(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 of the material agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

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

(iii) The FCC Consent contemplated by this Agreement shall have been granted and shall have become a Final Order;

(iv) The FCC Authorizations shall be in full force and effect and there shall be no proceedings pending before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations; and

(v) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 9(a).

9. Closing Deliveries.

(a) At the Closing, Seller will deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel:

- (i) An Assignment and Assumption of the Station's FCC Licenses;
- (ii) A certificate, dated the Closing Date, executed by the President of Seller, certifying the fulfillment of the conditions set forth in Section 8(b)(i) and (ii) hereof; and
- (iii) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Buyer shall reasonably request, each in form and substance satisfactory to Buyer and its counsel.

(b) Prior to or at the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

- (i) The payments to be made pursuant to Section 2(a) hereof;
- (ii) An Assignment and Assumption of the Station's FCC Licenses;
- (iii) A certificate, dated the Closing Date, executed by the President of Buyer, certifying the fulfillment of the conditions set forth in Section 8(a)(i) and (ii) hereof; and
- (iv) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Seller shall reasonably request, each in form and substance satisfactory to Seller and their counsel.

10. Indemnification.

The several representations and warranties of Seller and Buyer contained in or made pursuant to this Agreement shall expire on the date that is eight (8) months after the Closing Date. Each party agrees to indemnify the other for any post-closing breach of such representations, warranties and covenants. Seller will indemnify Buyer from and against any claim existing from operation of the Station prior to Closing. Buyer will indemnify Seller from and against any claim existing from operation of the Station after Closing.

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; (ii) if the Assignment Application is denied by the FCC and such denial shall have become a 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) by Seller or Buyer, if the Closing has not occurred within eight (8)

months of execution of this Agreement and the failure to close has not been due to the fault of the terminating party.

(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 may seek all rights and remedies that it may have in equity or at law, including retention of the Earnest Money Deposit.

(c) Upon termination of this Agreement by Buyer due a breach by Seller of any of its material obligations under this Agreement, Buyer may seek all rights and remedies that it may have in equity or at law, including the return of the Earnest Money Deposit, or an action of specific performance, Seller hereby acknowledging that the Assets are of a special, unique and extraordinary character, and that monetary damages would not be sufficient to compensate Buyer under such circumstances.

12. 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 Seller, to:

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

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

David D. Oxenford, Esq.
Davis Wright Tremaine LLP
1919 Pennsylvania Ave, NW Suite 200
Washington, D.C. 20006

If to Buyer, to:

Fifth Avenue Broadcasting Company, Inc.
401 11th Street
Suite 200
Huntington, WV 25701
Attn: Richard Michael Kirtner, President

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

Susan A. Marshall, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209

13. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia, without giving effect to the choice of law principles thereof.

14. **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.

15. **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 transmission or electronic mail, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

16. **Expenses/Attorneys' Fees.** Except as otherwise set forth in this Section and the FCC Application filing fee in Section 3, 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. In the event of a dispute relating to this Agreement involving the interpretation or enforcement of the terms of the Agreement resulting in litigation brought by either party, the prevailing party in such litigation shall be entitled, in addition to other relief ordered by the court, to reasonable attorneys' fees and costs.

17. **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.

18. **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.

[Signatures on next page]

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

Seller:

EDUCATIONAL MEDIA FOUNDATION

By:



Mike Novak, President/CEO

Buyer:

FIFTH AVENUE BROADCASTING COMPANY, INC.

By:

Richard Michael Kirtner, President

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

Seller:

EDUCATIONAL MEDIA FOUNDATION

By: _____
Mike Novak, President/CEO

Buyer:

FIFTH AVENUE BROADCASTING COMPANY, INC.

By:  _____
Richard Michael Kirtner, President

SCHEDULE 1

FCC Authorizations
Current FCC Authorizations
For

W231BS, Huntington, West Virginia

Facility ID Number 147849

Educational Media Foundation

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
FM Translator Broadcast License	W231BS	BLFT- 20070905ACE	09/21/2007	10/01/2011