

**EXHIBIT A**

**ESCROW AGREEMENT**

## **ESCROW AGREEMENT**

This ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this 2<sup>nd</sup> day of December, 2008, by and between Educational Media Foundation, a California non-profit corporation ("Seller"), and Fifth Avenue Broadcasting Company, Inc., a Kentucky corporation, and Fletcher, Heald & Hildreth, P.L.C., as escrow agent (the "Escrow Agent") (individually, a "Party" and collectively, the "Parties").

### **WITNESSETH**

WHEREAS, Seller and Buyer have entered into an asset purchase agreement, dated December 2, 2008 (the "Purchase Agreement"), for the sale and purchase of FM translator Station W231BS, Huntington, West Virginia (Facility ID No. 147849) (the "Station").

WHEREAS, the Parties desire the Escrow Agent to hold and the Escrow Agent is willing to hold certain deposit monies in escrow as contemplated by the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **ESCROW DEPOSIT.** The Escrow Agent hereby acknowledges that Buyer has deposited with the Escrow Agent the sum of Ten Thousand Dollars (\$10,000.00) (the "Earnest Money Deposit") as contemplated by Section 2(b) of the Purchase Agreement. The Earnest Money Deposit shall be invested in an insured interest bearing account and the Earnest Money Deposit, together with all accrued interest thereon (collectively, the "Escrowed Funds"), shall be held and released by the Escrow Agent in accordance with the terms of this Escrow Agreement.

### **2. RELEASE FROM ESCROW.**

2.1 The Escrow Agent shall retain the Escrowed Funds, which shall be released to Seller only upon receipt of (i) joint written instructions executed by each of Seller and Buyer, as so directed, or (ii) a Final Order of a court of competent jurisdiction in accordance with the terms and provisions of the Final Order. An order shall be deemed a "Final Order" when, by lapse of time or otherwise, it is no longer subject to review, reconsideration, appeal or stay, as additionally defined in Section 4 of the Purchase Agreement. The Escrow Agent shall in no event be required to resolve any controversy concerning the Escrowed Funds or take any action concerning any such controversy. Upon termination of the escrow provided for herein, Buyer and Seller agree to execute and deliver to the Escrow Agent such further documents as the Escrow Agent may jointly reasonably request to evidence the termination of this Escrow Agreement and to cause the Escrow Agent to release the Escrowed Funds.

2.2 Notwithstanding any other provision of this Escrow Agreement to the contrary, Buyer and Seller agree to execute and deliver to the Escrow Agent written instructions as contemplated by Section 2.1 above so as to effectuate fully the provisions of the Purchase Agreement concerning the disposition of the Escrowed Funds upon the consummation of the

transaction as contemplated by the Purchase Agreement or upon the occurrence of certain other events specified in the Purchase Agreement.

### 3. ESCROW AGENT'S OBLIGATIONS

3.1. Resignation and Removal. The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving notice of such resignation to Seller and Buyer specifying a date not less than thirty (30) days after the giving of such notice when such resignation shall take effect. Promptly after such notice, a successor escrow agent shall be appointed by mutual agreement of Seller and Buyer, such successor to become the escrow agent hereunder upon the resignation date specified in such notice. If Seller and Buyer are unable to agree upon a successor escrow agent within twenty (20) days after such notice, the resigning Escrow Agent may petition a court of competent jurisdiction for the appointment of a successor agent and such resulting appointment shall be binding on all of the Parties. The Escrow Agent shall continue to serve as an escrow agent until its successor has assumed in writing the Escrow Agent's obligations hereunder and receives the Escrowed Funds. Seller and Buyer may agree at any time to substitute a successor escrow agent by giving notice thereof to the Escrow Agent then acting.

#### 3.2. Performance.

(a) The duties and responsibilities of the Escrow Agent are limited to those specifically set forth herein. The Escrow Agent shall not be liable for any mistake of fact or error of judgment made in good faith or for any acts or omissions by them of any kind other than willful misconduct or gross negligence. The Escrow Agent shall be entitled to rely, and shall be protected in doing so, upon (i) any written notice, instrument or signature believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so, and (ii) the advice of counsel (which may be of the Escrow Agent's own choosing). The Escrow Agent shall have no responsibility for the contents of any writing submitted to it hereunder and shall be entitled in good faith to rely without any liability upon the contents thereof. Moreover, the Escrow Agent shall have no responsibility to maximize the interest earned on the Escrow Deposit, nor will the Escrow Agent be liable for any failure of the institution in which the Escrowed Funds are being held.

(b) In the event of any dispute relating to the right of possession or the disposition of the Escrowed Funds, the Escrow Agent will retain dominion and control over the Escrowed Funds until such dispute shall either have been settled by mutual agreement of Buyer and Seller with notice thereof to the Escrow Agent or pursuant to a Final Order of a court of competent jurisdiction, whereupon the Escrowed Funds will be paid over in accordance with such mutual agreement of the Parties or such Final Order. If a dispute relating to the right of possession or the disposition of the Escrowed Funds is taken to a court of competent jurisdiction, the Escrow Agent reserves the right to institute an interpleader action as set forth in Section 3.4, below. It is contemplated that the Escrow Agent will not incur any cost or expense in the performance of its duties hereunder; and, in the event of a dispute, the Escrow Agent shall be reimbursed for reasonable attorneys' fees and out-of-pocket expenses incurred in connection with such dispute and the settlement thereof as provided in Section 3.4, below. In no event shall the

Escrow Agent be under any duty to institute or defend any such proceeding, nor shall the Escrow Agent be required under any circumstances to take any action requested by Seller or Buyer until indemnified to the Escrow Agent's reasonable satisfaction by the Party or Parties requesting such action.

3.3. Indemnification. Seller and Buyer, jointly and severally, agree to indemnify the Escrow Agent and hold it harmless against any and all liabilities incurred by it hereunder, except for liabilities, losses and expenses incurred by Escrow Agent resulting from its own bad faith, willful misconduct or gross negligence. As between Seller and Buyer, each Party shall be responsible for the payment of one-half of any such liabilities. There shall be no escrow fee payable to the Escrow Agent for the services rendered hereunder.

3.4. Interpleader. If, at any time prior to the termination of this Escrow Agreement as provided herein, either Buyer or Seller should make demand upon or file suit against the Escrow Agent for the Escrowed Funds, the Escrow Agent shall be authorized to bring an interpleader action in any court of competent jurisdiction, and name Buyer and Seller (or either of them) as additional parties to such action, and the Escrow Agent may tender the Escrowed Funds into such court for determination of the respective rights of Seller and Buyer thereto. Upon such tender, the Escrow Agent shall be entitled to receive from Seller or Buyer the Escrow Agent's reasonable attorneys' fees and expenses incurred in connection with said interpleader action. Such fees, expenses and other sums shall be paid, in the case of a dispute between Buyer and Seller, by the Party which fails to prevail in the proceedings brought in a court of competent jurisdiction to determine the appropriate distribution of the Escrowed Funds or, in the case of a claim against the Escrowed Funds by a third party claiming by or through Seller or Buyer, by Seller or Buyer, as the case may be. If and when the Escrow Agent shall so interplead and deliver the Escrowed Funds to the clerk of such court, all of its duties shall cease and it shall have no further obligations hereunder. Nothing herein shall prejudice any other right or remedy of the Escrow Agent.

3.5. Discharge by Delivery. After the Escrow Agent has delivered the Escrowed Funds pursuant to the terms of this Escrow Agreement, the Escrow Agent shall have discharged all of its obligations hereunder and neither Seller nor Buyer shall thereafter have any claim against the Escrow Agent on account of this Escrow Agreement.

3.6. Conflict. In the event of any conflict between the terms and provisions of this Escrow Agreement and those of the Purchase Agreement, the terms and provisions of this Escrow Agreement shall control as to the rights, duties, obligations and liabilities of the Escrow Agent, and the terms of the Purchase Agreement shall control as to the respective rights, duties, obligations and liabilities of Seller and Buyer.

#### 4. MISCELLANEOUS.

4.1. Assignment. Except as may be provided in the Purchase Agreement and in Section 3.1 of this Escrow Agreement, no Party may assign its rights and obligations hereunder without the prior written consent of the other Parties.

4.2. Binding Effect. This Escrow Agreement will be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assignees of the Parties.

4.3. Entire Agreement; Amendments. This Escrow Agreement, as read in conjunction with the Purchase Agreement, contains the entire understanding of the Parties with respect to the subjectmatter hereof and may be amended only by written instrument duly executed by all the Parties.

4.4. 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 11<sup>th</sup> 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 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

If to Escrow Agent: Susan A. Marshall, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

4.5. Governing Law. This Escrow Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of West Virginia, without regard to the conflict of law rules utilized in that jurisdiction.

4.6. Counterparts. This Escrow Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Escrow Agreement may be executed and exchanged by facsimile transmission or electronic mail, with the same legal effect as if the signatures both appeared in original handwriting on the same physical document.

4.7. Continuing Effect. This Escrow Agreement shall remain in full force and effect until the Escrow Agent have delivered the Escrowed Funds and any monies and earnings thereon and other instruments held by them pursuant to this Escrow Agreement in accordance with the terms hereof.

4.8. Headings. Section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Escrow Agreement.

4.9. Legal Representation. All Parties acknowledge that Fletcher, Heald & Hildreth, P.L.C. ("FHH") is acting as Escrow Agent as an accommodation to both Buyer and Seller and that FHH represents Buyer. By execution of this Agreement, both Buyer and Seller acknowledge the potential for conflict but specifically waive any claim or right to make a claim that FHH is or would be prohibited from representation of Buyer in any transaction with the other Parties by virtue of the fact (i) that FHH has served as Escrow Agent or (ii) that FHH has learned facts about the other Parties in its capacity as Escrow Agent, or (iii) that FHH, by virtue of its role as fiduciary for Buyer, with respect only to the Escrowed Funds, could therefore be held to have a conflict of interest. Seller and Buyer agree that information conveyed to the Escrow Agent during the course and scope of the Escrow Agent's duties, as Escrow Agent only, shall not be considered confidential by Seller or Buyer. Finally, Buyer and Seller agree that in the event there exists an actual controversy between Buyer and Seller, the Escrow Agent can interplead the Escrowed Funds, resign as Escrow Agent and represent Buyer with respect to the subjectmatter of the controversy.

4.10. Waivers. Any waiver by any Party of any breach of or failure to comply with any provision of this Agreement by any other Party shall be in writing and shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

4.11. Third Parties. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity other than Buyer, Seller and Escrow Agent any rights or remedies under, or by reason of, this Agreement.

4.12. Attorneys' Fees/Costs of Suit. If either Buyer or Seller institutes a legal action against the other with respect to the Escrowed Funds, the prevailing Party shall be entitled to its attorneys' fees and costs of suit, including the costs of any appeals.

[Signature Page Follows]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed and delivered by the Parties as of the date first written above.

SELLER:

**EDUCATIONAL MEDIA FOUNDATION**

By:   
Mike Novak, President/CEO

BUYER:

**FIFTH AVENUE BROADCASTING  
COMPANY, INC.**

By: \_\_\_\_\_  
Richard Michael Kirtner, President

ESCROW AGENT:

**FLETCHER, HEALD & HILDRETH, P.L.C.**

By: \_\_\_\_\_  
Susan A. Marshall, Member

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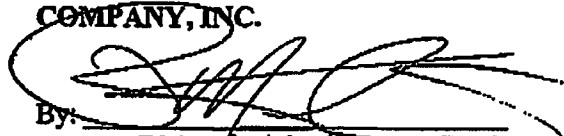
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ESCROW AGENT:

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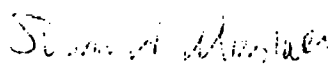
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Richard Michael Kirtner, President

**ESCROW AGENT:**

**FLETCHER, HEALD & HILDRETH, P.L.C.**

By:  \_\_\_\_\_  
Susan A. Marshall, Member