

## **ESCROW AGREEMENT**

THIS ESCROW AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2001 by and between Pinwheel, Inc. d/b/a Pinwheel Communications Company, a Texas Corporation ("Seller"), and Seguin Media Group, Ltd., a Texas Limited Partnership ("Buyer") and Alamo Title Company, a \_\_\_\_\_ Corporation ("Escrow Agent").

### **RECITALS**

- A. Concurrently with the execution and delivery of this Agreement, Buyer and Seller are entering into an Asset Purchase Agreement dated as of the date hereof (the "Purchase Agreement"), pursuant to which Seller is agreeing to sell and Buyer is agreeing to purchase the assets used or useful in the operation of the Station KWED (AM) (FCC Facility ID No. 52671), Seguin, Texas and an associated advertising flyer (the "Station");
- B. Upon execution of this Agreement, Buyer is depositing with Escrow Agent the amount of TEN THOUSAND DOLLARS (\$10,000.00) ("Initial Escrow Deposit"), as contemplated by Section 2.1 of the Purchase Agreement, to be held, acted upon and delivered pursuant to this Agreement;
- C. If the Commission has not granted its Consent to the Application, as defined in Section 12.1 of the Purchase Agreement, within four (4) calendar months from the date the Application is filed, then Buyer shall deliver to Escrow Agent an additional TEN THOUSAND DOLLARS (\$10,000.00) ("Subsequent Escrow Deposit"), as contemplated by Section 2.1 of the Purchase Agreement, to be held, acted upon and delivered pursuant to this Agreement.
- D. The sum of the Initial Escrow Deposit shall be considered the Escrow Deposit ("Escrow Deposit") until such time as the sum of the Subsequent Escrow Deposit is delivered to the Escrow Agent. Upon delivery of the Subsequent Escrow Deposit, the sum of the Initial Escrow Deposit and the Subsequent Escrow Deposit shall jointly be referred to as the Escrow Deposit.
- E. Upon execution of this Agreement, Seller and Buyer are depositing complete and executed Closing Documents with Escrow Agent, as contemplated by Section 5.1, 5.2 and 13.5 of the Purchase Agreement, to be held, acted upon and delivered pursuant to this Agreement; and
- F. Capitalized terms used herein and not defined shall have the respective meanings set forth in the Purchase Agreement.

## **AGREEMENTS**

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Appointment of Escrow Agent. Buyer and Sellers hereby appoint and designate Alamo Title Company as Escrow Agent for the purposes set forth herein, Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein, and covenants to take the actions set forth herein.

2. Delivery of Escrow Documents to Escrow Agent. Attached to the original of this Agreement, the following enumerated documents are being delivered to Escrow Agent (hereinafter the “Escrow Documents”):

- 2.1 Bank check for Escrow Deposit attached as Exhibit 2.1;
- 2.2 Bill of Sale attached as Exhibit 2.2;
- 2.3 Special Warranty Deed(s) attached as Exhibit 2.3;
- 2.4 Assignment of Authorizations attached as Exhibit 2.4;
- 2.5 Assignment of Intangible Assets attached as Exhibit 2.5;
- 2.6 Assignment of Contracts and consents to those assignments attached as Exhibit 2.6;
- 2.7 Assumption of Contracts attached as Exhibit 2.7;
- 2.8 Seller Certificate of Representations and Warranties attached as Exhibit 2.8;
- 2.9 Seller Lien Certification attached as Exhibit 2.9;
- 2.10 Lien Letter from Seller to Escrow Agent attached as Exhibit 2.10; and
- 2.11 Further instruments and documents attached as Exhibit 2.11 as Buyer and Seller may agree upon to effectuate the transactions contemplated under the Purchase Agreement.

3. Holding of Escrow Documents. The Escrow Agent shall immediately deposit the Escrow Deposit check into a separate interest bearing account at a federally chartered and insured financial institution and thereafter hold the Escrow Deposit and the Escrow Documents in custody until an event described in Section 3.1 or Section 3.2 occurs, provided that if an

event specified in Section 3.1.3 occurs, in that event Escrow Agent shall act in accord with Section 3.1.3:

- 3.1 In the event seller delivers to Escrow Agent a signed original letter in form and substance as attached hereto as Exhibit 3.1 (the “FCC Opinion Letter”), which FCC Opinion Letter shall state the date upon which FCC Consent became a Final Order, Escrow Agent shall:
  - 3.1.1 notify the parties that the Closing Date shall be the 8<sup>th</sup> business date of the calendar month following the date (a) in which FCC Consent became a Final Order, or (b) in which the FCC Opinion Letter was delivered, whichever is later (i.e. if the date upon which FCC Consent became a Final Order is February 6<sup>th</sup> and the FCC Opinion Letter is delivered to Escrow Agent on February 7<sup>th</sup>, the Closing Date is the 8<sup>th</sup> business day in March, but under the same circumstances if the FCC Opinion Letter is not delivered to Escrow Agent until March 3<sup>rd</sup>, the Closing Date is the 8<sup>th</sup> business day in April); and
  - 3.1.2 provided that the Buyer has delivered to Escrow Agent the balance of the Purchase Price, as contemplated in Section 2.2 of the Purchase Agreement, take the actions specified in Section 4;
  - 3.1.3 provided however, if the Buyer delivers to the Escrow Agent prior to the Closing Date: (a) notification that the Seller has materially breached its representation, warranties or covenants under the Purchase Agreement, and such notification is accompanied by a lawsuit relating to such breach filed in a court of competent jurisdiction, then in such case the Escrow Agent shall deposit the Escrow Deposit and Escrow Documents with such court; or (b) notification stating that FCC Consent is not a Final Order, then in such case Escrow Agent shall hold the Escrow Documents in custody and not take any further actions until document signed by both Seller and Buyer pursuant to Section 3.2 is delivered to it.
- 3.2 In the event Escrow Agent receives a document signed by both the Seller and Buyer, Escrow Agent shall follow the instructions in such document.

4. Delivery of Escrow Documents. Upon the Closing Date being set pursuant to Section 3.1.1, Escrow Agent shall:

- 4.1 initiate a lien search of the Station to confirm the results of the Lien Certification held pursuant to Section 2.9, notify the parties of the result of such lien search and in the event the Seller delivers to the Escrow Agent a modified Lien Letter as a result of such lien search or otherwise, provided that the Buyer agrees to such modified Lien Letter; accept and act upon the modified Lien Letter as the Lien Letter pursuant to Section 2.10 (“Modified Lien Letter”);
- 4.2 make arrangements to pay off debts and obligations of Seller on the Closing Date as represented by all liens against the Station and its Assets, and pursuant to the instructions in the Lien Letter or Modified Lien Letter, as applicable;
- 4.3 accept any update, modifications or replacements to any of the Closing Documents provided that any such update, modification or replacement is jointly delivered by both the Seller and Buyer;
- 4.4 Accept the delivery from Buyer the balance of the Purchase Price, as contemplated in Section 2.2 of the Purchase Agreement, in immediately available funds (“Closing Payment”) , and deliver the Escrow Deposit and the Closing Payment funds in the following order and take the following actions:
  - 4.4.1 follow the instructions in the Lien Letter, or Modified Lien Letter, as applicable, and deliver the payments specified therein;
  - 4.4.2 pay any additional debts and obligations of Seller represented by any other outstanding liens on the Station or its Assets;
  - 4.4.3 obtain termination statements, releases or UCC-3s, as applicable, evidencing a release of all liens on the Station and its Assets and take all necessary actions to file such termination statements, releases or UCC-3s as appropriate;
  - 4.4.4 record the Special Warranty Deed in the Official Records of the Guadalupe County Clerk’s Office;
  - 4.4.5 date each of the Escrow Documents as of the Closing Date, and deliver the Escrow Documents as follows:
    - (a) Deliver to Buyer the Bill of Sale attached as Exhibit 2.2;

- (b) Deliver to Buyer the Special Warranty Deed(s) attached as Exhibit 2.3;
- (c) Deliver to Buyer the Assignment of Authorizations attached as Exhibit 2.4;
- (d) Deliver to Buyer the Assignment of Intangible Assets attached as Exhibit 2.5;
- (e) Deliver to Buyer the Assignment of Contracts and consents to those assignments attached as Exhibit 2.6;
- (f) Deliver to Seller the Assumption of Contracts attached as Exhibit 2.7;
- (g) Deliver to Buyer the Seller Certificate of Representations and Warranties attached as Exhibit 2.8;
- (h) Deliver to Buyer the Seller Lien Certification attached as Exhibit 2.9; and
- (i) Deliver to Seller or Buyer as indicated the further instruments and documents attached as Exhibit 2.11.

4.4.6 deliver any interest which has accrued on the Escrow Deposit to Buyer, and deliver the balance of the sum of the Escrow Deposit and Closing Payment to Seller;

4.4.7 provided however, if the sum of the Escrow Deposit and the Closing Payment will be insufficient to satisfy the obligations enumerated in Sections 4.4.1 and 4.4.2 above, Escrow Agent shall take no actions until instructed to do so by delivery of a document signed by both the Seller and the Buyer;

## 5. Escrow Agent's Undertakings and Limitation of Liability.

- 5.1 Escrow Agent undertakes to perform only such duties as are expressly set forth herein. It is understood and agreed that the duties of Escrow Agent are purely ministerial in nature. Escrow Agent shall not have any liability under, nor duty to inquire into the terms and provisions of, any agreement or instructions other than as set forth in this Agreement.
- 5.2 Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it

and reasonably believed by it to be genuine and to have been executed and presented by the proper party or parties as provided pursuant to this Agreement. Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document.

- 5.3 Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect; provided that no resignation by Escrow Agent shall be effective until a bank, title company, professional escrow agent or other entity of comparable standing designated by Buyer and Sellers, or by Escrow Agent if Buyer and Sellers have not designated a replacement escrow agent within ten (10) business days after the date of Escrow Agent's notice of resignation, has agreed to serve as escrow agent in accordance with the terms of this Agreement, and provided further that from the date of said resignation until the delivery of the Escrow Documents to the successor escrow agent, Escrow Agent's sole duty hereunder shall be to retain the Escrow Documents.
- 5.4 Escrow Agent shall not be responsible for the performance of Buyer or Sellers under this Escrow Agreement or any other agreement.
- 5.5 Escrow Agent shall not assume any responsibility or liability for the completeness, correctness or accuracy of any transactions between Buyer and Sellers or for the sufficiency of the Escrow Documents in connection therewith.

6. Conflict with Terms of Agreement. In the event Escrow Agent receives instructions, claims or demands from Buyer or Sellers that, in its good faith opinion, conflict with any provision of this Agreement, it shall without liability of any kind be entitled to refrain from taking any action, and its sole obligation in such instances shall be to keep safely the Escrow Deposit and Escrow Documents until it shall be directed otherwise in writing by all of the other parties hereto or by a final and nonappealable judgment, decree or order of a court of competent jurisdiction. Escrow Agent may deposit the Escrow Deposit and Escrow Documents into a court of competent jurisdiction and upon such deposit, Escrow Agent shall be relieved of any further liability or responsibility with respect thereto.

7. Termination. This Agreement shall be terminated (a) upon disbursement of all of the Escrow Deposit, Closing Payment and Escrow Documents by Escrow Agent; (b) by written mutual consent signed by all parties; or (c) by deposit of the Escrow Deposit, Closing Payment (if received by Escrow Agent) and Escrow Documents into a court of competent jurisdiction in accordance with Section 6 hereof. This Agreement shall not be otherwise terminated.

8. Notices.

All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally or delivered by certified mail, return receipt requested, postage prepaid, same day delivery service, hand delivery with a receipt signed by recipient, facsimile with confirmation page or delivered by an overnight carrier that provides a written confirmation of delivery, addressed as follows:

If to Buyer, to:

Mr. James M. Story  
Seguin Media Group, Ltd.  
116 North Camp Street  
Seguin, Texas  
Facsimile: 803/372-3011

(with a copy to)

John F. Garziglia, Esq.  
Pepper & Corazzini, LLP  
1776 K Street, N.W., Suite 200  
Washington D.C. 20006  
Facsimile: 202/ 296-5572

If to Sellers to:

Bennie Bock II, Esq.  
Pinwheel, Inc.  
838 West Court Street  
Seguin, Texas 78155

If to Escrow Agent to:

Alamo Title Company  
107 S. River Street  
Seguin, Texas 78155  
Facsimile: 830/303-3908

or to such other person or address as Sellers shall furnish to Buyer in writing. In the event that Escrow Agent, in its sole discretion, determines that an emergency exists, Escrow Agent may use such other means of communicating with Sellers and/or Buyer as Escrow Agent reasonably deems advisable.

9. Reliance on Instructions.

9.1 In the event any instructions are delivered to Escrow Agent, whether in writing, by telecopier or otherwise, Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the representatives of Buyer and Sellers designated in Section 8(a), and Escrow Agent may rely upon the confirmation of anyone purporting to be a representative so designated. The persons and telephone numbers for call-backs may be changed only in a written instrument actually received and acknowledged by Escrow Agent. Buyer and Sellers acknowledge that such security procedure is commercially reasonable.

9.2 It is understood that in any funds transfer Escrow Agent may rely upon wire transfer instructions set forth in a disbursement notice with an account number or similar identifying number signed by the party to receive the funds.

10. Waiver or Amendment. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a written instrument signed by all of the parties hereto.

11. Assignment. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and assigns. Without limiting the foregoing, Buyer shall have the right to freely assign this Agreement to an entity that is at least 51% owned by Buyer or its principals.

12. Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be binding upon such signatory party, if said signature is delivered by telecopier or other like transmission.

13. Governing Law. The rights and duties of Sellers, Buyer and Escrow Agent to each other shall be governed by the laws of the state of Texas, without regard to its rules for conflicts of laws.

14. Jurisdiction. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Agreement to which Escrow Agent is to be a party, the parties hereto consent to and agree to submit to the jurisdiction of any of the courts of Texas and agree to accept service or process to vest personal jurisdiction over them in any of these courts.



**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to execute this Escrow Agreement effective as of the date first written above.

**SELLERS:**

PINWHEEL, INC. d/b/a PINWHEEL  
COMMUNICATIONS COMPANY

By: \_\_\_\_\_  
Bennie Bock, Esq., President

**BUYER:**

**SEGUIN MEDIA GROUP, LTD.**

By: STORY MEDIA, LLC

By: \_\_\_\_\_  
James M. Story, Its President

**ESCROW AGENT:**  
**ALAMO TITLE COMPANY**

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

## **Escrow Documents**