

WABY(AM) LOCAL MARKETING AGREEMENT

This LOCAL MARKETING AGREEMENT (this “Agreement”), entered into on September 27, 2019 (the “LMA Execution Date”), and effective on September 27, 2019 (the “Effective Date”), is by and between **Saratoga Radio LLC**, a New York limited liability company (“Programmer”), and **Empire Broadcasting Corporation**, a New York corporation (“Licensee”).

RECITALS:

WHEREAS, Licensee is authorized to operate New York radio station WABY(AM), 900 kHz, Watervliet, New York, Facility ID No. 72620 (the “Station”) pursuant to license(s) and authorization(s) issued by the Federal Communications Commission (the “FCC”);

WHEREAS, the parties, as of the LMA Execution Date, have entered into an Asset Purchase Agreement (the “Purchase Agreement”), pursuant to which the Programmer intends to purchase certain assets used or useful in the operation of the Station, including assignment of the FCC licenses of the Station, and to assume certain liabilities set forth therein, subject to the prior approval of the FCC;

WHEREAS, Programmer and Licensee believe that it would serve the public interest and facilitate a smooth transition of ownership if they were to enter into this Agreement, whereby Programmer would offer programming for broadcast over the Station, which Licensee would agree to broadcast, from the Effective Date until the consummation of the transactions contemplated in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I **SALE OF TIME**

1.1 Sale of Time. Subject to the provisions of this Agreement and to applicable rules, regulations and policies of the FCC (“Rules and Regulations”), Licensee agrees to make the Station’s broadcasting transmission facilities available to Programmer for broadcast of Programmer’s programs on the Station (the “Programming”). Programmer will have the right to broadcast on the Station up to twenty-four (24) hours of programming each day during the Term (as defined in Section 1.2 below). Licensee reserves up to two (2) hours of the Station’s time for its own use at a mutually agreeable time on each Sunday between the hours of five o’clock a.m. and nine o’clock a.m.

1.2 Term. The term of this Agreement shall begin as of the Effective Date and shall continue until terminated in accordance with Sections 10.1 and/or 10.2 below (the “Term”).

1.3 Consideration. Programmer shall pay Licensee a monthly fee in accordance with Schedule 1.3 hereto (the “Monthly Fee”), provided, however, that Programmer’s obligation to

pay the Monthly Fee shall be suspended for any period during the Term during which Licensee does not have in place a tower lease used for operation of the Station.

ARTICLE II

PROGRAMMING AND OPERATING STANDARDS AND PRACTICES

2.1 Compliance with Standards. All Programming delivered by the Programmer and all programming supplied by the Licensee during the term of this Agreement shall be in accordance with the Rules and Regulations, and the programming policies set forth on Schedule 2.1 ("Program Policies"). The Licensee reserves the right to refuse to broadcast any Programming containing matter that the Licensee reasonably believes is not in the public interest or that may violate the right of any third party, or that the Licensee reasonably determines is, or in the reasonable opinion of the Licensee may be deemed to be, indecent (and not broadcast during the safe harbor for indecent programming established by the FCC) or obscene by the FCC or any court or other regulatory body with authority over the Licensee or the Station. If the Programmer does not adhere to the Program Policies or the Rules and Regulations, the Licensee, upon written notice to Programmer, may suspend or cancel any specific program not so in compliance, without any reduction or offset in the payments due the Licensee under this Agreement. Licensee, in good faith, shall not apply the rights and restrictions afforded Licensee by this Section for the Licensee's commercial or economic advantage.

2.2 Political Broadcasts. The Programmer shall maintain and deliver to the Licensee all records and information required by the Rules and Regulations to be placed in the Station's online public inspection file pertaining to the broadcast of political programming and advertisements and to the broadcast of sponsored programming addressing political issues or controversial subjects of public importance, in accordance with the provisions of Sections 73.1943 and 73.3526 of the Rules and Regulations. The Programmer shall consult and cooperate with the Licensee and adhere to all applicable Rules and Regulations, as announced from time to time, with respect to the political advertisements and programming (including, without limitation, the rights of candidates, as appropriate, and to the equal opportunity provisions of the Rules and Regulations) and the charges permitted therefor. The Programmer shall promptly provide to the Licensee such documentation relating to such programming as the Licensee is required to maintain in its online public inspection file, or as the Licensee may reasonably request.

2.3 Handling of Communications. The Programmer and the Licensee shall cooperate in promptly responding to all mail, email, cables, or telephone calls directed to the Station in connection with the Programming provided by the Programmer or any other matter relevant to its responsibilities hereunder. The Programmer shall provide copies of all such correspondence to the Licensee, and the Licensee shall provide copies of all such correspondence to the Programmer. Promptly upon receipt, the Programmer shall advise the Licensee, and the Licensee shall advise the Programmer, of any public or FCC complaint or inquiry known to the Programmer or the Licensee, as applicable, concerning such Programming, and each shall provide the other with copies of any letters from the public, including complaints concerning such Programming. Upon the Licensee's request, the Programmer shall broadcast material responsive to such complaints and inquiries. Notwithstanding the foregoing, the Licensee shall handle all matters or inquiries relating to FCC complaints and any other matters required to be handled by the Licensee under the Rules and Regulations.

2.4 Preemption and Failures to Broadcast. The Licensee may, in his reasonable discretion, from time to time, preempt portions of the Programming to broadcast emergency information or programs it deems would better serve the public interest and may refuse to broadcast any program or announcement of the Programmer should Licensee reasonably deem such program or announcement to be contrary to the public interest as set forth in Section 2.1. The Programmer shall be notified in writing, at least one week in advance, of any preemption of any of the Programming for the purpose of broadcasting programs the Licensee reasonably deems necessary to serve the public interest unless such advance notice is impossible or impractical, in which case the Licensee shall notify the Programmer promptly, in writing, upon making such determination. The Licensee represents and covenants that preemption shall occur only to the extent that the Licensee reasonably deems preemption necessary to carry out its obligations as an FCC licensee and expressly agrees that its right of preemption shall not be exercised in an arbitrary manner or for the commercial or economic advantage of the Licensee or others. In the event Licensee preempts or rejects programming from Programmer pursuant to the terms of this Agreement, the Monthly Fee shall be prorated based on the percentage that the total hours in any calendar month of programming preempted or rejected by Licensee, bears to the total amount of programming that Programmer would have broadcast over the Station during the month if no programming had been preempted or rejected. If the broadcasts of the Station are interrupted or discontinued after the Effective Date, other than as a result of circumstances or events attributable to Programmer, Programmer shall be entitled to deduct from the Monthly Fee an amount equal to one-thirtieth (1/30th) of the aggregate of the Monthly Fee in such month for each day in which broadcasting is interrupted on any of the Station for eight or more hours. Notwithstanding the foregoing, with prior notice to Programmer, Licensee shall have the right to take the Station off the air for up to four hours per week for regular maintenance. Such regular maintenance may occur, without reduction of the Monthly Fee, during the hours of 1:00 a.m. to 5:00 a.m. Monday through Sunday with notice to, but not approval from, Programmer; or the regular maintenance may occur at alternative times as agreed upon by both parties (provided that Programmer agrees to be reasonably cooperative accommodating Licensee's timing requests and provided, further, that such maintenance shall not occur during "drive" time).

2.5 Rights in Programs. All right, title, and interest in and to the Programming, and the right to authorize the use of the Programming in any manner and in any media whatsoever, shall be and remain vested at all times solely in the Programmer. In the event that this Agreement is terminated, the Programmer and the Licensee will cooperate fully in effecting the reassignment of any program rights to the Licensee.

2.6 Payola and Plugola. The Programmer agrees that it will take commercially reasonable steps that are reasonably designed to assure that neither it nor its employees or agents will accept any gift, gratuity, or other consideration, directly or indirectly, from any person or company for the playing of music, the presentation of any programming, or the broadcast of any commercial announcement over the Station without reporting the same to the management of the Licensee and without such broadcast being announced as sponsored. It is further understood and agreed that no commercial message, plugs, or undue reference shall be made in programming presented over the Station to any business venture, profit-making activity, or other interest (other than non-commercial announcements for bona fide charities, church activities, or other public service activities) without the same having been approved by the management of the Licensee and said broadcast being announced as sponsored.

2.7 Advertising and Programming. The Programmer shall be solely responsible for any expenses incurred by it in connection with the broadcast of Programming and advertising on the Station on or after the Effective Date. The Licensee shall be solely responsible for any expenses incurred by it in connection with the broadcast of Licensee's programming and advertising prior to the Effective Date. The Programmer shall be entitled to all revenue from the sale of advertising or program time in connection with the broadcast of Programming or advertising on the Station on or after the Effective Date. The Licensee shall be entitled to all revenue from the sale of advertising or program time in connection with the broadcast of Licensee's programming or advertising on the Station prior to the Effective Date. Except as otherwise agreed by the parties, the Programmer does not assume any obligation of the Licensee under any contract or advertising arrangement entered into by the Licensee on or after the Effective Date that interferes in any way with the Programmer's Programming. The Programmer will advise the Licensee of its lowest unit charges for political advertising, and the Licensee shall not do anything that would lower or adversely affect the Programmer's lowest unit charges.

2.8 Streaming Programming. Notwithstanding anything herein to the contrary, (i) Programmer may (but shall not be obligated to) stream Programming furnished hereunder via an internet website operated under the Station's name or call sign, or developed by Programmer respecting the Station, and Programmer shall be entitled to all revenue therefrom; and (ii) Licensee shall not include any Programming furnished by Programmer hereunder in any internet streaming of any kind unless requested or expressly authorized to do so by Programmer. All copyright royalties and any other fees or expenses associated with any such internet streaming shall be paid directly by Programmer (in addition to the Monthly Operating Expenses).

2.9 Compliance with Laws. At all times during the term of this Agreement, the Programmer and the Licensee shall comply in all material respects with all applicable federal, state, and local laws, rules, and regulations.

2.10 Certifications. The Licensee certifies that the Licensee maintains ultimate control over the Station's facilities, including, specifically, control over the Station's finances, personnel, and programming, and the Programmer certifies that this Agreement complies with the provisions of Section 73.3555 of the FCC's rules.

ARTICLE III

RESPONSIBILITY FOR EMPLOYEES AND EXPENSES

3.1 Programmer's Employees.

(a) The Programmer shall employ and be responsible for the payment of salaries, taxes, insurance, and all other costs related to all personnel used by Programmer in the production of the Programming, including those employees offered employment as of the Effective Date (the "Programmer's Employees").

(b) The Licensee shall have no authority over and shall not supervise persons in the employ of the Programmer after the Effective Date.

(c) The Programmer will not incur any liability on account of the Licensee's Employees (as defined herein).

3.2 Licensee's Employees.

(a) The Licensee may at its option employ and be responsible for the payment of salaries, taxes, insurance, and all other costs ("Employee Costs") related to all personnel it deems necessary to (i) fulfill its obligations as the Licensee, (ii) transmit the Programming, and (iii) deliver any other programming (the "Licensee's Employees"). The Licensee will not incur any liability on account of the Programmer's Employees.

(b) The Programmer shall have no authority over and shall not supervise Licensee's Employees.

(c) Principals of the Licensee will retain control over the operation of the Station pending sale by, among other things, monitoring Station broadcasts and maintaining communication with the Programmer in order to ensure that the Station is operated in the public interest and in accordance with the Rules and Regulations.

3.3 Programmer's Expenses. The Programmer shall pay for all costs associated with the production, development, promotion, and delivery of the Programming, including, but not limited to, (i) all ASCAP, BMI, SESAC, GMR, Sound Exchange (if it streams its signal) and other copyright fees associated with delivery of the Programming, (ii) any expenses incurred in connection with its sale of advertising time hereunder (including, without limitation, sales commissions) in connection with the Programming, and (iii) the salaries, taxes, insurance, and related costs for all personnel used in the production of the Programming and all sales personnel (including salespeople, traffic personnel, and programming staff).

3.4 Operating Expenses. The Licensee shall be responsible for the payment when due of all fees and expenses directly relating to the operation and/or maintenance of the Station as necessary for the Licensee to maintain the licensed transmitting capability of the Station and to fulfill its obligations as an FCC licensee, including, but not limited to, (i) any ASCAP, BMI, SESAC, GMR, Sound Exchange and other copyright fees associated with the delivery of Licensee's programming, (ii) any expenses incurred in connection with the sale of advertising time hereunder in connection with the delivery of Licensee's programming (including, without limitation, sales commissions), (iii) any utility payments for the towers and transmitters used in the operation of the Station, (iv) any rent and other payments for equipment used by the Licensee in the operation of the Station, (v) FCC regulatory fees, and (vi) Employee Costs (collectively, the "Operating Expenses"). The Programmer shall reimburse the Licensee for the Operating Expenses in accordance with Schedule 3.4 hereto, provided, however, that Programmer's obligation to reimburse Licensee for the Operating Expenses shall be suspended for any period during the Term during which Licensee does not have in place a tower lease used for operation of the Station.

3.5 Capital Expenses. The Licensee shall be responsible for all capital expenses incurred in making repairs or replacements to the facilities and equipment used in producing the Programming and operating the Station (the "Capital Expenses") to the extent specified in Section 6.4 of the Purchase Agreement.

ARTICLE IV

OPERATION OF STATION

4.1 Retention of Authority. Notwithstanding any provision of this Agreement to the contrary, the Licensee shall retain full authority and power with respect to the operation of the Station during the Term and may take any and all steps necessary to faithfully and continuously do so throughout the Term. The parties agree and acknowledge that the Licensee's continued control of the Station is an essential element of the continuing validity and legality of this Agreement. Accordingly, the Licensee shall employ such personnel as the Licensee determines may be necessary to fulfill its obligations as licensee under the Communications Act of 1934, as amended (the "Communications Act"), and the Rules and Regulations, and its obligations in accordance with Section 3.2 hereof. The Licensee shall notify the Programmer prior to making any changes in personnel. The Licensee shall retain full authority and control over the policies, programming, and operations of the Station, including, without limitation, the decision whether to preempt programming in accordance with Section 2.4 hereof. The Licensee shall have full responsibility to effectuate compliance with the Communications Act and the Rules and Regulations, regulations, and policies. The Licensee shall be responsible for maintaining the Station's online public inspection file, and the Programmer shall reasonably cooperate with Licensee to provide information, records, and data reasonably requested by Licensee for such purpose.

4.2. Call Signs. During the Term, Licensee will retain all rights to the call letters of the Station or any other call letters which may be assigned by the FCC for use by the Station, and will ensure that proper station identification announcements are made with such call letters in accordance with the Rules and Regulations. Programmer shall include in the Programming it delivers for broadcast an announcement at the beginning of each hour of such Programming to identify such call letters, as well as any other announcements required by the Rules and Regulations. Programmer is specifically authorized to use such call letters consistent with Section 5.2 below. Licensee will not change the call sign of the Station during the Term unless so requested by Programmer, in which event Licensee will cooperate in changing the call sign of the Station, provided that Programmer reimburses Licensee for applicable FCC filing fees incurred in such regard, unless the parties agree otherwise.

4.3. Force Majeure. No failure or impairment (*i.e.*, failure to broadcast at the Station's full authorized height and power) of the facilities of the Station or any delay or interruption in the broadcast of the Programming, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, or terrorists, strikes or threats thereof or *force majeure* shall constitute an Event of Default under this Agreement.

ARTICLE V

GRANT OF LICENSES

5.1 License to Use Station's Equipment and Facilities. The Licensee grants the Programmer, without additional charge, a license to access and use, as needed, all of the Station's equipment, facilities, and furnishings contained therein, as listed in the Purchase Agreement ("Station's Equipment"), in the production and broadcasting of the Programming and sales and administration relating thereto, in accordance with the terms set forth in this Section 5

(the “Programmer License”). The Programmer License shall have a term beginning on the Effective Date and ending upon the termination of this Agreement.

5.2 License of Intellectual Property. The Licensee licenses to the Programmer the exclusive right to use (or, to the extent the Licensee does not hold exclusive rights, the non-exclusive right to use) the intellectual property owned by or licensed to the Licensee and used in the operation of the Station (including, but not limited to, call signs and goodwill) (the “IP License”). Upon termination of this Agreement, the IP License shall terminate; provided, however, that the Programmer shall own all trademarks, service marks, trade names, characters, formats, jingles, promotional materials, logos, and positioning statements that the Programmer develops primarily for the Programming and uses in the broadcast of such Programming during the Term, and the Licensee shall not make use of any such materials without the prior written consent of the Programmer.

ARTICLE VI

INDEMNIFICATION

6.1 By Programmer. To the extent permitted by law, Programmer shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages and expenses of every kind, nature and description (“Claims”) arising out of or resulting from Programmer’s broadcasts pursuant to this Agreement or any material default by Programmer of its obligations hereunder.

6.2 By Licensee. To the extent permitted by law, Licensee shall indemnify and hold Programmer harmless from and against any and all Claims arising out of or resulting from programming originated by Licensee or by any material default by Licensee of its obligations hereunder.

6.3 Notice of Indemnity Obligation. Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this Article 6 unless such claim for indemnification is asserted in writing delivered to the other party, and, where such claim, loss, cost, liability, damage or defense involves a legal action, the party against whom indemnification is sought has been given written notice sufficiently in advance to permit such party to defend, contest, or compromise such action at its own cost and risk.

6.4 Survival. The obligation of Programmer and Licensee to indemnify and hold each other harmless as set forth in this Agreement shall survive any termination of this Agreement and shall continue until the expiration of all applicable statutes of limitations as to the parties hereto and to claims of third parties.

ARTICLE VII

WARRANTIES AND COVENANTS OF THE LICENSEE

7.1 Licensee’s Representations, Warranties and Covenants. Licensee represents, warrants and covenants to Programmer that:

a. Qualification. The Licensee is legally qualified, empowered and able to enter into and carry out this Agreement, and this Agreement constitutes the valid and binding obligation of Licensee.

b. Authorizations. The Licensee now holds all permits and authorizations necessary for the operation of the Station, including all FCC permits and authorizations. Licensee shall use reasonable commercial efforts to maintain such permits and authorizations throughout the Term.

c. Compliance. Licensee shall be responsible for the Station's compliance with all applicable provisions of the Communications Act, and the Rules and Regulations (including the technical operating and reporting requirements established by the FCC), and all other applicable laws. Licensee shall be responsible for ensuring that qualified control operators monitor and control the Station's transmissions at all times, in full conformity with FCC requirements.

d. Station Identification. Licensee, with the reasonable cooperation of Programmer, shall ensure that all required station identification announcements are broadcast as required by the Rules and Regulations.

e. Prompt Payment of Expenses. Licensee shall promptly pay when due any and all expenses or obligations of any kind and nature relating to the operation of the Station, including its equipment and facilities, except those for which Programmer is specifically responsible hereunder, and shall take all steps necessary to ensure the continued uninterrupted use of that equipment and those facilities by Programmer.

f. No Violation. Licensee, to its knowledge, is not in material violation of any statute, ordinance, rule, regulation, order or decree of any federal, state, local or foreign governmental agency, court or authority having jurisdiction over it or over any part of its operations or assets, which material default or violation would have an adverse effect on the business or operation of the Station or its assets or on Licensee's ability to perform its obligations under this Agreement.

g. Transmitting Facilities. The transmitting and tower facilities of the Station are currently, and during the Term shall be, maintained in accordance with good engineering practice and the Rules and Regulations and shall transmit at full licensed power in accordance with the FCC licenses to the extent that Licensee has in place a tower lease used for operation of the Station. Licensee shall during the Term use its best efforts to maintain in full force and effect the tower lease utilized for the Station as of the LMA Execution Date. Licensee shall file a request for Special Temporary Authority with the FCC within two business days in the event it is not operating in accordance with the FCC Licenses. The Station currently complies in all material respects with all engineering requirements as set forth in its FCC authorizations, and Licensee shall maintain compliance therewith. Licensee shall consult with Programmer prior to seeking any modification to the licenses of the Station.

ARTICLE VIII
WARRANTIES AND COVENANTS OF PROGRAMMER

8.1 Programmer's Representations, Warranties and Covenants. Programmer represents, warrants and covenants to Licensee that:

a. Qualification. Programmer is legally qualified, empowered and able to enter into and carry out this Agreement, and this Agreement constitutes the valid and binding obligations of Programmer.

b. Compliance. All of the programming, advertising and promotional material Programmer broadcasts on the Station shall be in accordance with the Rules and Regulations and the Communications Act, and the reasonable standards established by Licensee. Programmer shall reasonably cooperate with Licensee so that Licensee may fulfill its FCC obligations, including, without limitation, by including, within the programming it supplies to the Station, programs or program segments, addressing local needs and interests of the Station's community of license and providing Licensee with a list of such programming, the date broadcast, and the local needs addressed in a form suitable for inclusion in Licensee's quarterly issues-programs list.

c. Station Identification. Programmer shall reasonably cooperate with Licensee to ensure that all required station identification announcements are broadcast as required by the Rules and Regulations.

d. Nondiscrimination Policy. Programmer shall not discriminate in advertising contracts on the basis of race or ethnicity. Any provision in any order or agreement for advertising on the Station that purports to discriminate on the basis of race or ethnicity, even if handwritten, typed, or otherwise made a part of a particular contract shall be deemed rejected and void.

e. Correspondence. Programmer shall promptly forward to Licensee any correspondence which it may receive from any agency of government or any correspondence from members of the public, including email, or other information it may receive relating to the Station or to any of Programmer's programming broadcast on the Station.

ARTICLE IX
RIGHT TO USE PROGRAMS

9.1 Right to Use Programs. The right to use Programmer's Programming and to authorize the use of the Programming in any manner and in any media whatsoever shall be, and will remain, vested in Programmer.

ARTICLE X
TERMINATION

10.1 Grounds. In addition to any other remedies available at law or equity, this Agreement may be terminated as set forth below by either Licensee or Programmer by written

notice to the other, if the party seeking to terminate is not then in material default or breach of this Agreement, upon the occurrence of any of the following:

a. This Agreement is declared invalid or illegal in whole or material part by an order or decree of the FCC or any other administrative agency or court of competent jurisdiction over the parties, and such order or decree has become final and no longer subject to further administrative or judicial review;

b. The other party is in material breach of its obligations hereunder and has failed to cure such breach within fifteen (15) days of written notice from the non-breaching party;

c. The other party shall make a general assignment for the benefit of creditors, files or has filed against it a petition for bankruptcy, reorganization or an arrangement for the benefit of creditors, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which if filed against such party, has not been dismissed within sixty (60) days thereof; or

d. There has been a change in the Rules and Regulations or case law precedent that would cause this Agreement or any provision thereof to be in violation thereof and such change is not the subject of an appeal or further administrative review.

10.2 Automatic Termination. This Agreement shall automatically terminate upon the earlier occurrence of any one of the following:

a. The Closing of a sale of the Station, as defined in the Purchase Agreement (which shall follow FCC approval of the transaction);

b. The termination of the Purchase Agreement; provided, however, that no party may use its own breach under the Purchase Agreement as grounds to terminate this Agreement; or

c. The mutual written consent of both parties.

10.3 Certain Matters Upon Termination.

a. Upon any termination of this Agreement, the Licensee shall have no further obligation to provide to the Programmer any broadcast time or broadcast transmission facilities.

b. If this Agreement terminates other than as a result of the Closing (as defined in the Purchase Agreement), the Programmer shall (i) assure that it has complied with all contracts and commitments that it has made for LMA operations and Licensee shall not be required to fulfill any such contracts or commitments; (ii) be responsible for only those obligations under the contracts arising on or after the Effective Date and prior to the termination of this Agreement; and (iii) be responsible for collecting the accounts receivable arising from the Programmer's operation of the Station on or after the Effective Date and prior to the termination of this Agreement. In addition, if this Agreement terminates other than as a result of the Closing,

the Licensee shall reimburse the Programmer for sales commissions paid by the Programmer for sales relating to the contracts to the extent that the revenue from such sales relates to commercial announcements to be broadcast after the termination of this Agreement.

10.4 Effect of Termination. Upon termination of this Agreement according to the provisions of this Article 10, the payments, reimbursements and fees provided for hereunder shall be prorated to the effective termination date of this Agreement. Licensee shall cooperate reasonably with the Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such programming that which otherwise would have been paid to Programmer hereunder.

10.5 No Release of Liability Through Termination. No termination pursuant to Article 10 shall relieve any party of liability it would otherwise have for breach of this Agreement.

ARTICLE XI **MISCELLANEOUS**

11.1 Notices. Any notice required hereunder shall be in writing, including by email, and any payment, notice or other communications shall be delivered personally, or mailed by certified mail, postage prepaid, with return receipt requested, or delivered to FedEx (Federal Express), or any other nationally recognized overnight delivery service for next morning delivery, or by email with such notice attached in Portable Document Format (PDF) and sent with requests for delivery and read receipts, the return of such receipts being deemed conclusive evidence of such dispatch, in each case addressed to the persons, parties or entities identified as follows:

If to Licensee:

Joseph A. Reilly
Empire Broadcasting Corporation.
P.O. Box 1507
Clifton Park, NY 12065
Email: joereilly@empirebroadcasting.net

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

Lawrence M. Miller, Esq.
Garvey Schubert Barer, P.C.
1000 Potomac Street, NW - Suite 200
Washington, DC 20007-3501
Email: lmiller@gsblaw.com

If to Programmer:

Ricki Lee Shorthose
Saratoga Radio LLC

PO BOX 3100
Saratoga Springs, NY 12866
Email: ricki@bordermedia.com

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

Tim Nelson, Esq.
Brooks Pierce, LLP
1700 Wells Fargo Capitol Center
150 Fayetteville Street, Raleigh, NC 27601
Email: tnelson@brookspierce.com

a. Alternate Addressees. Notice, as provided by this Section, may be given to any other person or party, as any party hereto may in the future designate in writing, upon due notice to the other party(ies).

b. Date of Notice, Action. The date of delivery by hand, or the postal receipt for deposit with the U.S. Mail, or email or facsimile delivery receipt, or courier service specified herein shall establish the date of such notification or communication. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of New York, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

11.2 Modification and Waiver. No modification of any provision of this Agreement shall in any event be effective unless the same shall be in writing and then such modification shall be effective only in the specific instance and for the purpose for which given.

11.3 Construction. This Agreement shall be construed in accordance with the internal laws of the State of New York, and the obligations of the parties hereto are subject to all federal, state and local laws and regulations now or hereafter in force and to the Rules and Regulations and all other government entities or authorities presently or hereafter to be constituted.

11.4 Headings. The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

11.5 Counterpart Signature. This Agreement may be signed in counterparts, each of which shall be deemed a duplicate original and binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be legally binding and effective upon acknowledged delivery by email of scanned signatures.

11.6 Entire Agreement. This Agreement supersedes any prior agreements between the parties, other than the Purchase Agreement, and contains all of the terms agreed upon with respect to the subject matter hereof. This Agreement may not be altered or amended except by an instrument in writing signed by the party against whom enforcement of any such change is sought.

11.7 No Partnership or Joint Venture Created. Nothing in this Agreement shall be construed to make Licensee and Programmer partners or joint venturers or to afford any rights to any third party other than as expressly provided herein.

11.8 Assignment. Neither Programmer nor Licensee may assign this Agreement without the prior approval of the other party, provided that Programmer may freely assign this Agreement without Licensee's approval to any corporation, partnership, or other entity which is controlled by or under common control with Programmer.

11.9. Subject to Laws; Partial Invalidity. The obligations of the parties under this Agreement are subject to the Rules and Regulations and all other applicable laws. The parties agree to file a copy of this Agreement with the FCC if required in accordance with applicable Rules and Regulations. If any provision in this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if it did not contain such invalid, illegal, or unenforceable provision, except where the unenforceability prevents or effectively prevents a party from achieving the purposes of this Agreement, in which event, the parties shall negotiate in good faith to revise the Agreement to eliminate the invalid, illegal, or unenforceable provision. If the parties are not able to reach agreement as to any amendment to this Agreement to address the invalidity, illegality or unenforceability, within thirty (30) days of the holding that the Agreement is invalid, illegal or a provision is released, this Agreement shall terminate.

11.10. Further Assurances; Cooperation. After the Effective Date, each of the parties, upon the reasonable request of the other, will take such reasonable actions or deliver or execute such further documents, materials, signatures, or information as may be reasonably necessary to assure compliance with, or effectuation of, the terms and conditions to this Agreement and the *bona fide* good faith intentions of the parties hereto. Each party will reasonably cooperate with the other with respect to establishing and attaining the strategic and operational goals for the Station.

11.11 Rules of Interpretation. The following rules of interpretation shall apply to this Agreement: the defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined; whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms; the words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation," and any list or series following any such term(s) is not exhaustive and not meant to be limited to elements or items of the same or similar kind; all references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require; all references to "herein," "hereof," "hereunder," and words of similar import shall refer to this Agreement as a whole rather than specific sections hereof unless the context shall otherwise require; the word "or" is not exclusive; a reference to any law includes any amendment or modification of such law and all regulations, rulings, and other laws promulgated thereunder and any reference to the laws of any jurisdiction shall be deemed to include a reference to the analogous laws, if any, of another relevant jurisdiction; references to any document, instrument, or agreement (i) shall include all exhibits, schedules, and other attachments thereto, which shall be deemed incorporated by reference in such document, instrument, or agreement, (ii) shall include all documents, instruments, or agreements issued or executed in replacement thereof, and (iii) shall mean such document,

instrument, or agreement, or replacement thereof, as amended, modified, and supplemented from time to time and in effect at any given time; this Agreement is the result of arm's-length negotiations among, and has been reviewed by, each party hereto and its respective counsel, and accordingly, this Agreement shall be deemed to be the product of the parties thereto, and no ambiguity shall be construed in favor of or against any party; and references to either party's "knowledge" shall mean the actual knowledge of the principals of such party, and the knowledge that each such person would have reasonably obtained after making due and appropriate inquiry with respect to the particular matter in question.

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IN WITNESS WHEREOF, the parties have executed this Local Marketing Agreement to be effective as of the date first above written.

PROGRAMMER:

SARATOGA RADIO LLC

By: 
Ricki Lee Shorthose, Member

LICENSEE:

EMPIRE BROADCASTING CORPORATION

By: _____
Joseph A. Reilly, President

IN WITNESS WHEREOF, the parties have executed this Local Marketing Agreement to be effective as of the date first above written.

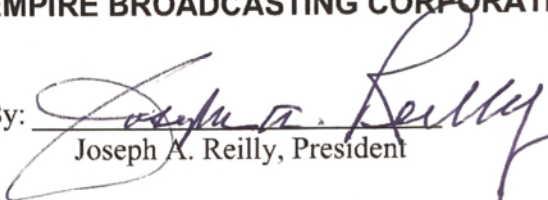
PROGRAMMER:

SARATOGA RADIO LLC

By: _____
Ricki Lee Shorthose, Member

LICENSEE:

EMPIRE BROADCASTING CORPORATION

By:  _____
Joseph A. Reilly, President

SCHEDULE 1.3

Programmer shall pay Licensee a Monthly Fee each month during the Term of this Agreement in an amount equal to \$50.00. The Monthly Fee shall be prorated for any calendar month during which this Agreement is not in effect for the entirety of the month. The Monthly Fee shall be paid in advance, prorated if necessary, upon execution of this Agreement, and then due on the first day of each calendar month thereafter. The total amount of Monthly Fees paid by Programmer during the term of this Agreement shall be credited to Programmer, prorated as a Buyer's credit and subtracted from the Purchase Price to be paid by Buyer under the Purchase Agreement.

SCHEDULE 2.1

Programming Policy

Programmer and Licensee shall cooperate with each other in the broadcasting of programming of the highest possible standard of excellence. Without limiting the generality of the foregoing, the parties will observe the following policies in the preparation, writing, and production of their own (non-syndicated or network) programs:

(a) *Respectful of Faiths.* The subject of religion and references to particular faiths and tenets shall be treated with respect at all times.

(b) *Controversial Issues.* Any discussion of controversial issues of public importance shall be reasonably balanced with the presentation of contrasting viewpoints in the course of overall programming; no attacks on the honesty, integrity, or like personal qualities of any person or group of persons shall be made; and Station programs (other than public forum or talk features) are not to be used as a forum for editorializing about individual candidates. If such events occur, Licensee may require that responsive programming be aired. In the event that a statute, regulation, or policy is adopted that requires the airing of responsive programming, Programmer agrees to comply with such statute, regulation, or policy and will prepare such responsive programming.

(c) *EAS Tests.* During all hours when Programming is being broadcast over the Station, at the location from which the Programming is being originated, a receiver shall be maintained capable of receiving test messages and alerts over the Emergency Alert System, which EAS receiver Licensee shall cause to be operated in automatic mode or be continuously monitored or otherwise operated so as to assure compliance with the FCC's Emergency Alert System ("EAS") rules. Such equipment shall be in compliance with the Rules and Regulations concerning EAS equipment. If an EAS test or alert is received during the hours when Programmer is delivering its Programming for broadcast over the Station, Programmer shall cause the appropriate EAS test or alert message to be delivered to Licensee to be transmitted over the Station and shall, in the event of an actual activation of the Emergency Alert System, cause all steps that the Station is required to take in such an event to be taken. Licensee shall be responsible for assuring that the receipt and broadcast of all EAS tests and alerts are properly recorded in the Station's logs.

(d) *No Plugola or Payola.* The mention of any business activity or plug for any commercial, professional, or other related endeavor, except where contained in an actual commercial message of a sponsor, or otherwise lawful, is prohibited.

(e) *No Prohibited Lotteries.* Announcements giving any information about lotteries or games prohibited by federal or state law or regulations are prohibited.

(f) *No Numbers Games.* References to chapter and verse paragraphs, paragraph numbers, or song numbers, which involve three digits should be avoided and, when used, must reasonably relate to a non-gambling activity.

(g) *Election Procedures.* At least sixty (60) days before the start of any lowest-unit-charge period for any primary or primary run-off or general or special election, Programmer will clear with Licensee's general manager the rates Programmer will charge for time to be sold to candidates for public office or to any other party entitled to the lowest unit charge to make certain the rates charged are in conformance with applicable law and Licensee's policy.

(h) *Required Announcements.* Programmer shall include in the Programming (i) an announcement in form satisfactory to Licensee at the beginning of each hour to identify the Station, (ii) an announcement at the beginning of each broadcast day or appropriate broadcast period to indicate that program time has been obtained by Programmer, and (iii) any other announcement that may be required by law or regulation.

(i) *Commercial Record Keeping.* No commercial messages or plugs shall be made in programming presented over the Station with reference to any business venture, profit-making activity, or other interest (other than non-commercial announcements for *bona fide* charities, church activities, or other public service activities) in which Programmer or its employees is or are directly or indirectly interested without the same having been approved in advance by Licensee's general manager or such broadcast being announced and logged as sponsored.

(j) *Licensee's Discretion Paramount.* In accordance with Licensee's responsibility under the Communications Act and the Rules and Regulations, Licensee reserves the right to reject or terminate any advertising or programming being presented over the Station that in Licensee's sole but reasonable judgment would not serve the public interest.

(k) *Non-Discrimination in Advertising.* Programmer shall not discriminate on the basis of race or ethnicity in the sale of advertising time. Programmer shall include on advertising contracts and/or written agreements for the sale of advertising on the Station a clause stating that it does not discriminate on the basis of race or ethnicity.

(l) *Programming Prohibitions.* Programmer shall not knowingly broadcast any of the following programs or announcements.

- (i) *False Claims.* False or unwarranted claims for any product or service.
- (ii) *Unfair Imitation.* Infringements of another advertiser's rights through plagiarism or unfair imitation of either program idea or copy, or any other unfair competition.

- (iii) *Commercial Disparagement.* Any unfair disparagement of competitors or competitive goods.
- (iv) *Profanity, Obscenity, Indecency.* Any programs or announcements that are slanderous, obscene, indecent (except during the safe harbor for indecent programming established by the FCC), profane, vulgar, repulsive, or offensive, either in theme or treatment.
- (v) *Unauthenticated Testimonials.* Any testimonials which cannot be authenticated.
- (vi) *Descriptions of Bodily Functions.* Any presentation which describes in a repellent manner bodily functions.
- (vii) *Advertising.* Any advertising matter or announcement that may, in the opinion of Licensee, be injurious or prejudicial to the interests of the public or the Station, or to honest advertising and reputable business in general.
- (viii) *Telephone Conversations.* Any programming in violation of any statute, regulation, or policy, including, without limitation, Section 73.1206 of the Rules and Regulations, or any successor regulation, dealing with the taping and/or broadcast of telephone conversations.
- (ix) *No advertisements for cannabis or medical marijuana.*

The parties may jointly waive any of the foregoing policies in specific instances if, in their opinion, good broadcasting in the public interest would be served thereby.

In any case where obvious questions of policy or interpretation arise, the Programmer will attempt in good faith to submit the same to the Licensee for decision before making any commitments in connection therewith.

SCHEDULE 3.4

Operating Expenses

Attached hereto as Exhibit 3.4 is Licensee's estimated monthly budget for the Operating Expenses, as defined in Section 3.4 of the Agreement. Programmer shall pay Licensee such estimated budget amount, or a *pro rata* amount if this LMA takes effect during a calendar month, and shall thereafter pay Licensee such estimated budget amount by the first day of each succeeding month during this the Term of this LMA. Within ten business days following the conclusion of each calendar month during the Term, Licensee shall provide the Programmer with an accounting of the actual Operating Expenses during that past calendar month together with full and proper documentation, and Programmer's next payment will be adjusted upwards to cover any excess, undisputed Operating Expenses incurred by Licensee or downwards to reflect any extent to which actual, undisputed Operating Expenses fell short of the estimated budget.