

LOCAL MARKETING AGREEMENT

This Local Marketing Agreement (the “Agreement”) is made this 31st day of January, 2014, by and between Richard A. Foreman, Receiver, in his capacity as the court appointed receiver (herein “Licensee”) for Pembroke Pines, Elmira, Limited, a New York Corporation (“PPE”) and court appointed receiver over the real and personal property of Robert J. Pfuntner used or useable in connection with the Stations (as defined below) (“Pfuntner,” together with PPE being referred to herein as the “Seller”) and Great Radio, LLC, a Delaware limited liability company (herein “Programmer”).

RECITALS:

WHEREAS, the Receiver was appointed Receiver pursuant to a Stipulation Regarding Order Appointing Receiver dated December 20, 2013 (the “*Receivership Order*”) and entered in the case pending in the Supreme Court of the State of New York, County of Monroe (the “*Court*”) captioned ACM Browncroft Trust v. Robert J. Pfuntner et al., Index No. 12-13771 (the “*Case*”);

WHEREAS, pursuant to authorizations issued by the Federal Communications Commission (“FCC”), the Receiver is currently, with the consent of the FCC, in control of PPE, which is the holder of certain licenses, permits and authorizations (the “*Licenses*”) for the radio broadcast station(s) listed below (collectively, the “*Stations*”):

<u>Call sign</u>	<u>Fac. ID</u>	<u>Location</u>
WLKY(FM)	52122	Elmira, NY;
WEHH(AM)	55271	Elmira Heights – Horseheads, NY;
WOKN(FM)	47322	Southport, NY;
W230BB (FX)	148156	Elmira, NY;
W273AC (FX)	47323	Corning, NY;
W229AS (FX)	148214	Corning, NY; and
W229AR (FX)	157446	Waverly, NY.

WHEREAS, Licensee (as Seller thereunder) and Programmer (as Buyer thereunder) have entered into an Asset Purchase Agreement (“APA”) dated as of even date hereof, contemplating the purchase of the Stations by Programmer; and

WHEREAS, Programmer desires to provide programming for and sell advertising time on the Stations (the “Programming”) and Licensee desires to accept the Programming on terms and conditions that conform to the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, the “Communications Laws”) and to this Agreement, subject to any order (“Approval Order”) issued by the Court.

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:

1. Sale of Time. From and after **February 1, 2014** (the “Commencement Date”), Programmer will have the right to broadcast its Programming on the Stations for up to twenty-four (24) hours each day during the Term, as defined herein. Notwithstanding the foregoing, (a)

Licensee may, but is not obligated to, set aside such mutually-agreeable time as it may require on each Station, during which time Licensee may broadcast public affairs programming; (b) Licensee may schedule downtime on the Stations for routine maintenance; and (c) Licensee may preempt or cancel any Programming as provided in Section 5 herein. Subject to Licensee's rights set forth herein, Programmer shall have the exclusive right to keep as its sole and exclusive property all monies, revenues (including but not limited to advertising revenues, sponsorships and "non-traditional" revenues), profits, royalties, fees, trades and other consideration arising from the Programming, including Programming distributed over-the-air or over the Internet (collectively, "Revenues").

2. Term. The term of this Agreement shall commence on the Commencement Date and shall continue for a period (the "Term") ending on the earliest of: (a) one (1) month following the termination of the APA under the provisions set forth in Article VII of the APA; (b) the Closing Date, as defined in Section 6.1 of the APA; or (c) termination of this Agreement pursuant to Section 13 hereof.

3. Consideration. As consideration for the air time made available by Licensee hereunder during the Term, Programmer shall pay Licensee the amount of \$10.00 and other valuable consideration including but not limited to Programmer's agreement to reimburse certain of Licensee's expenses as detailed herein, which amount is deemed sufficient.

4. Programmer's Responsibility for Expenses. Programmer shall be responsible for timely payment or reimbursement to Licensee as the case may be, from Programmer's own accounts, of all the operating costs of the Stations (the "Operating Expenses"), including without limitation the following:

(a) salaries, commissions, payroll taxes, insurance, benefits and related costs of all personnel, except as set forth on Schedule A hereto;

(b) maintenance (to the extent set forth on Schedule B hereto) and the power, electric and other utility bills for the Stations' studio, transmission and tower facilities;

(c) the Stations' telephone, internet and cable expenses;

(d) income, gross receipts, excise, real estate and sales taxes related to the ownership of Licensee's assets or the Stations' programming;

(e) all Licensee costs related to any programming broadcast on the Stations, including expenses relating to Licensee's own programming broadcast on the Stations ("Licensee Programming"), and specifically including all music licensing rights;

(f) Maintenance (to the extent set forth on Schedule B hereto), lease payments, power and other utility bills and maintenance costs for the Stations' studio/office location, transmission and tower facilities; and

(g) costs and expenses (including legal costs and filing fees) incurred in connection with the Stations' compliance with the Communications Laws.

5. Licensee's Authority. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Stations at all times. Licensee shall be responsible for all Licensee Programming it furnishes for broadcast on the Stations and for the payment of the salaries and benefits to all of its employees (subject to reimbursement of such costs by Programmer, as set forth on Schedule A hereto), all of whom shall report solely to and be accountable solely to Licensee. Licensee shall retain the right to interrupt, cancel or preempt the Programming at any time if: (a) Licensee determines that such Programming (i) is not in the public interest, (ii) violates any Communications Law; or (iii) violates this Agreement; (b) necessary in case of an emergency or Emergency Alert System ("EAS"), or any successor systems, activation; or (c) Licensee desires to provide Licensee Programming that Licensee in its sole discretion determines to be of greater national, regional or local importance. However, any revenues realized by Licensee as a result of the provision of Licensee Programming on any Station shall promptly be remitted to Programmer.

6. Programmer Responsibility for Expenses. All costs associated with the delivery of the Programming to the Stations' transmitters and/or studios shall be borne by Programmer.

7. Advertising and Programming Revenues. Programmer shall retain all Revenues from Programming broadcast on the Stations on or after the Commencement Date until termination of this Agreement. Accounts receivable associated with the Stations accruing before the Commencement Date shall remain the property of the Licensee (subject to any previously existing local marketing agreement).

8. Political Advertising. Programmer shall cooperate and consult with Licensee concerning its policies and practices regarding political advertising and otherwise take such steps as may be necessary or appropriate in order to ensure Licensee's compliance with its obligations under the Communications Laws, with respect to the carriage of political advertisements and programs and the charges permitted therefor.

9. Licensee's Representations, Warranties and Covenants. Licensee represents to Programmer as follows:

(a) Authorization. Licensee has all requisite power and authority to enter into this Agreement. This Agreement is duly executed, and constitutes the valid and binding obligation of Licensee, enforceable according to its terms, subject to the provisions of any Approval Order and the Communications Laws.

(b) FCC Authorizations. Licensee holds all permits and authorizations necessary for the operation of the Stations as such operations are currently conducted, including all FCC licenses, permits and authorizations. Licensee will continue to hold such licenses, permits and authorizations throughout the Term.

(c) No Violation. Licensee 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 Licensee or its assets or on its ability to perform this Agreement.

(d) Compliance. Licensee shall be responsible for the Stations' compliance with all applicable Communications Laws.

(e) Employees. Licensee shall retain two (2) persons, comprising the full-time management and staff presence at each main studio, who shall be employed and paid by Licensee with such cost, including taxes, benefits, and costs associated therewith reimbursed to Licensee by Programmer in accordance with Schedule A hereto.

(f) Main Studio. Licensee shall maintain a main studio for the Stations, as that term is defined in the Communications Laws. Licensee shall maintain a public inspection file for each Station at its main studio.

(g) No Impeding Encumbrances. Throughout the Term, there shall be no liens or encumbrances on the Stations' assets which would impede or prevent full and complete access to and use of the Stations' facilities for the transmission of the Programming and the full performance by Licensee and by Programmer of their obligations under this Agreement.

(h) Music Licenses. Licensee maintains, and shall continue to make every effort to maintain, blanket licenses with the principal music licensing agencies, including, without limitation, ASCAP, BMI and SESAC. Programmer will reimburse Licensee for all such fees attributable to the Programming. The foregoing to the contrary notwithstanding, the parties acknowledge that PPE and Pfuntner are in default in their payment obligations under the music licenses and that it is the intention of the parties that these arrearages be cured at Closing from sale proceeds as part of the sale of the assets under the APA.

(i) **DISCLAIMER. ANY STATEMENTS MADE HEREIN BY THE RECEIVER ON BEHALF OF LICENSEE ARE MADE SOLELY TO THE RECEIVER'S ACTUAL KNOWLEDGE AND BELIEF WITHOUT INQUIRY AND WITHOUT DUTY OF INQUIRY AND ARE MADE WITH KNOWLEDGE BY THE BUYER/PROGRAMMER THAT THE RECEIVER HAS BEEN OPERATING THE STATIONS FOR A LIMITED PERIOD OF TIME AND HAS LIMITED KNOWLEDGE. ANY PROVISION HEREUNDER TO THE CONTRARY NOTWITHSTANDING THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING UNDER THE APA OR THE EARLIER TERMINATION OF THIS AGREEMENT. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

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

(a) Authorization. This Agreement has been authorized by all necessary company action, is duly executed, and constitutes the valid and binding obligation of Programmer, enforceable according to its terms.

(b) FCC Compliance. All Programming shall be in accordance with the Communications Laws and the reasonable standards established by Licensee. Programmer shall cooperate with Licensee so that Licensee may fulfill its obligations under the Communications Laws. Programmer shall consult with Licensee, as reasonably requested by Licensee, in the selection of the Programming to ensure that the content of the Programming contains matters

responsive to issues of public concern in the Stations' service area, as those issues are made known to Programmer by Licensee as well as known by Programmer as a result of its involvement in the service areas served by the Stations. In particular, Programmer, working closely with Licensee, shall ensure that: (i) each Station is airing a reasonable amount of informational programming responsive to community needs, interests and issues and that such programming is routinely documented, (ii) Licensee is provided with a draft of each Quarterly Issues/Programs List at least five business days before the list is required to be placed in each Station's public inspection file, and (iii) the Licensee approved list is timely placed in each Station's public inspection file.

(c) Correspondence. Programmer shall promptly forward to Licensee any mail which it may receive from any agency of government or any correspondence from members of the public or other information it may receive relating to the Stations or the Programming.

(d) Station Identification Announcements/EAS Tests. During all hours when Programmer is delivering the Programming, Programmer shall (i) include in the Programming, at the appropriate times, the hourly station identification announcement required to be broadcast over the Stations; and (ii) maintain at the location from which the Programming is being originated a receiver capable of receiving test messages and alerts over the Emergency Alert System, which EAS receiver shall be continuously monitored. If an EAS test or alert is received during the hours when Programmer is delivering the Programming, Programmer shall cause the appropriate EAS test or alert message to be transmitted over the applicable Station and shall be responsible for ensuring that the receipt and broadcast of such EAS tests and alerts are properly recorded in such Station's log.

(e) Sponsorship Identification. Programmer shall include in the Programming the sponsorship identification/political advertising announcements with respect to advertising and other material included in the Programming as are required by the Communications Laws. In addition, Programmer shall provide to Licensee in advance any information known to Programmer regarding any money or other consideration which has been paid or accepted, or has been promised to be paid or to be accepted, for the inclusion of any matter as a part of any programming or commercial material to be supplied to Licensee by Programmer for broadcast on either Station, unless the party making or accepting such payment is identified in the program as having paid for or furnished such consideration, in accordance with the Communications Laws.

(f) Prompt Payment of Expenses; Commissions. Programmer shall promptly pay when due any and all expenses or obligations of any kind and nature relating to the Stations' operation, and shall take all steps necessary to ensure the continued uninterrupted use of the Stations' equipment and facilities by Programmer. Licensee shall pay commissions to sales staff for receivables generated prior to the Commencement Date. Programmer shall pay commissions for receivables generated thereafter.

(g) Written Notice. Programmer shall give Licensee written notice of any material adverse event or information that affects the assets, business or financial matters of the Stations. Such written notice from Programmer to Licensee shall be provided as soon as possible, but in any event, no later than five (5) days after Programmer becomes aware of (or should have become aware with the exercise of reasonable diligence) such material event or occurrence with respect to such Station.

11. Right to Use Programs. The right to use Programmer's programs and to authorize their use in any manner and in any media whatsoever shall be, and remain, vested in Programmer.

12. Indemnification. (a) Programmer shall indemnify, defend, and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature, and description, arising out of (i) the broadcast of the Programming under this Agreement; (ii) Programmer's operation of the Stations; (iii) any misrepresentation or breach of warranty of Programmer contained in this Agreement.

(b) Licensee shall indemnify, defend, and hold Programmer harmless from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures, and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature, and description, arising out of (i) the broadcast of Licensee's programming under this Agreement; (ii) Licensee's operation of the Stations; (iii) any misrepresentation or breach of warranty of Licensee contained in this Agreement, except as otherwise provided herein.

(c) Notice. Licensee shall not be entitled to indemnification pursuant to this Section 12 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.

(d) Survival. The obligation of Programmer to indemnify and hold 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.

13. Termination.

(a) Termination by Order of the Court. This Agreement may be terminated by order of the Court.

(b) Mutual Termination. This Agreement may be terminated by mutual consent.

(c) Termination Pursuant to APA. This Agreement shall terminate automatically thirty days following termination or immediately upon the closing under the APA.

(d) Termination Pursuant to Event of Default. In addition to other remedies available at law or equity, this Agreement may be terminated prior to the end of the Term 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 hereof, upon the occurrence of any of the following:

(i) This Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an administrative agency or court of competent jurisdiction, if such

order or decree has gone into effect and has not been stayed, and if the parties are unable to modify this Agreement to comply with applicable law.

(ii) The other party is in material breach of its obligations hereunder and has failed to cure such breach within thirty (30) days after receipt of written notice of such breach from the party seeking to terminate; provided, however, that no such notice and cure period shall pertain for any failure by Programmer to make a payment due hereunder by the date therefor.

(iii) Any material representation or warranty made by either party to this Agreement, or in any certificate or document furnished by either party to the other pursuant to the provisions of this Agreement, or in the APA, proves to have been intentionally false or misleading in any material respect as of the time made or furnished.

(iv) The uncured default by either party in the observance or performance of any covenant or agreement contained in the APA in any material respect that entitles the other party to terminate the APA.

(e) Termination in Connection with Pending Renewal Applications. This Agreement may be terminated by Seller, at its sole option, if (i) the FCC or any of its Bureaus, acting on delegated authority, informs Seller in writing or informally through a telephone call or email from its staff, that the pending application(s) for license renewal for any of the Stations will not be granted while this Agreement is in effect (an "FCC Objection"), and such FCC Objection is not cured by Seller or Programmer to the reasonable satisfaction of Seller's FCC Counsel within fifteen (15) days of Programmer's receipt of notice of such FCC Objection; or (ii) a third-party files, or threatens to file, a complaint at the FCC regarding the operation of any of the Stations by Programmer and the matters raised in such complaint or threat are not cured by Programmer to the reasonable satisfaction of Seller's FCC counsel within fifteen (15) days of Programmer's becoming aware of such complaint. In the case of (i) above, to the extent any FCC Objection is related in any way to the actions or inactions of Seller, Seller agrees to take all commercially reasonable steps to the reasonable satisfaction of Programmer's FCC Counsel to cure the matters raised in any such FCC Objection, and Seller may not terminate this Agreement if the uncured matters referenced in the FCC Objection are unrelated to Programmer's provision of Programming or to Programmer's other station-related performance under this Agreement or if Seller's reasonable efforts to cure have not been undertaken to the reasonable satisfaction of Programmer's FCC Counsel.

(f) Effect of Termination. Upon termination of this Agreement according to the provisions of this Section 13:

(i) The consideration provided for hereunder shall be prorated to the effective termination date of this Agreement;

(ii) Licensee shall cooperate reasonably with the Programmer to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the broadcast of such programming the payments which otherwise would have been paid to Programmer hereunder.

(iii) Neither party shall be permitted to remove any Station equipment without the consent of the other party; and

(iv) Licensee shall be entitled to acquire from Programmer at a fair market value any equipment owned by Programmer associated with the Stations.

(g) Except as specifically provided herein, no termination pursuant to this Section 13 shall relieve any party of liability it would otherwise incur for breach of this Agreement.

(h) Further, in the event of termination of this Agreement due to the uncured breach of this Agreement by Programmer, the Programmer shall pay the Receiver as Licensee a “break-up” fee of eight and one-quarter percent (8.25%) of the purchase price set forth in the APA. The break-up fee is intended as liquidated damages, not as a penalty or fine, on account of anticipated damages which may be suffered by the Receiver as Licensee if the Programmer, as purchaser under the APA, fails to perform its obligations thereunder and the responsibility for running the Stations is returned to the Licensee, including without limitation those anticipated costs associated with a potential decline in revenues, changes in programming, failure of the Programmer to comply with applicable law including FCC regulations, the failure to retain existing customers, the necessity of creating or reconstructing records, all of which would result in harm to the Programmer. The parties acknowledge that the extent of the damages that may be suffered by the Licensee is difficult, if not impossible, to calculate and that the figure set as the break-up fee is fair and reasonable under the circumstances. The Programmer shall pay the break-up fee upon execution of this Agreement by the Programmer, which will be held by counsel for the Receiver in a non-interest-bearing trustee account until consummation of the APA or earlier termination in accordance with the terms of this Agreement; alternatively, the break-up fee may be secured by a Letter-of-Credit in favor of the Receiver as Licensee or corporate guarantee in favor of the Receiver as Licensee (subject to prior favorable review of the financial information of the guarantor).

14. 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 mailed by certified mail, return receipt requested, postage prepaid, or by an overnight carrier that provides a written confirmation of delivery, to the parties as set forth in the APA.

15. 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.

16. Construction. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, without regard to the choice of law provisions thereof. Jurisdiction and venue of any dispute arising out of this Agreement shall reside exclusively in the Court.

17. 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.

18. Counterpart Signatures. This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart.

19. Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties and supersedes any and all prior agreements, arrangements, and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or conditions hereof, or consent pursuant to this Agreement, will be effective unless evidenced by an instrument in writing signed by the party to be charged therewith.

20. 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.

21. Assignment. Neither Programmer nor Licensee may assign this Agreement without the prior written approval of the other party, or the Court, if necessary. Notwithstanding the foregoing, Programmer may assign this Agreement, with the prior written consent of Licensee, which consent shall not be unreasonably withheld, to an entity controlled by Programmer upon ten (10) days' written notice to Licensee; provided that such assignment is not reasonably likely to result in any delay in the filing or processing of the FCC Assignment Application.

22. Force Majeure. Any failure or impairment of facilities or delay or interruption in broadcasting the Programming, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, strikes or threats thereof or any other *force majeure* or due to causes beyond the control of Licensee, shall not constitute a breach of this Agreement and Licensee will not be liable to Programmer therefor.

23. Certifications.

(a) Licensee's Certification. Licensee hereby certifies that it shall maintain ultimate control over the Stations' facilities and operations, including specifically control over the Stations' finances, personnel and programming, throughout the term of this Agreement.

(b) Programmer's Certification. Programmer hereby certifies that it is qualified under Section 73.3555 of the FCC's rules, including all Notes thereto, to enter into this Agreement and to perform in accordance with its terms.

[signature pages to follow]

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

PROGRAMMER:

GREAT RADIO, LLC

By: 

William C. Christian

President

PEMBROOK PINES ELMIRA, LIMITED

By: _____

Richard A. Foreman

Its Receiver

LICENSEE:

RICHARD A. FOREMAN, RECEIVER

By: _____

Richard A. Foreman

Receiver

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

PROGRAMMER:

GREAT RADIO, LLC


By: _____
William C. Christian
President

PEMBROOK PINES ELMIRA, LIMITED

By:  _____
Richard A. Foreman
Its Receiver

LICENSEE:

RICHARD A. FOREMAN, RECEIVER

By:  _____
Richard A. Foreman
Receiver

SCHEDULE A
STATION PERSONNEL

The salary (up to \$600 per week), payroll taxes, insurance, benefits, commissions and related costs of two general managers shall be paid by Licensee and shall be reimbursed in full by Programmer; and the salary (up to \$400 per week), payroll taxes, insurance, benefits and related costs of two contract administrators shall be paid by Licensee, of which fifty percent (50%) of such costs shall be reimbursed by Programmer.

SCHEDULE B
MAINTENANCE AND RELATED COSTS

All maintenance and labor costs associated with the Stations shall be paid by Licensee and reimbursed by Programmer pursuant to the following schedule:

The first Five Thousand Dollars (\$5,000) shall be the sole responsibility of Programmer. All subsequent amounts shall be shared equally between Licensee and Programmer.