

EXECUTION

LOCAL MARKETING AGREEMENT

THIS Local Market Agreement (this “Agreement”) is made as of August ____, 2021, between Richard J. Samson, as Receiver (“Licensee”) and Desert Mountain Broadcasting LLC, a Montana limited liability company (“Programmer”).

RECITALS

A. Licensee is the Receiver of Reier Broadcasting Company, Inc., and as such owns and operates the following radio broadcast Stations (the “Stations”) pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”):

1. KBOZ (AM), Bozeman, Montana (Facility ID No. 16775),
2. KBOZ-FM, Bozeman, Montana (Facility ID No. 55676),
3. KOBB (AM), Bozeman, Montana (Facility ID No. 55677),
4. KOBB-FM, Bozeman, Montana (Facility ID No. 16776), and
5. KOZB (FM), Livingston, Montana (Facility ID No. 16777).

WHEREAS, Programmer and Licensee have entered into that certain Asset Purchase Agreement (the “Purchase Agreement”), pursuant to which Licensee has agreed to sell to Programmer certain of the assets of the Stations;

WHEREAS, Capitalized terms used herein not otherwise defined shall have the meaning given to them in the Purchase Agreement;

WHEREAS, Programmer desires to broker time on the Stations pursuant to the provisions hereof and pursuant to and in accordance with the Communications Act of 1934, as amended (the “Communications Act”) and applicable regulations of the FCC until the closing date under the Purchase Agreement, or the expiration of the term hereof, whichever occurs first; and

WHEREAS, Licensee desires to accept Programmer’s brokerage services and transmit programming supplied by Programmer on the Stations while maintaining control over Licensee’s finances, personnel matters and programming.

NOW, THEREFORE, in consideration of these premises and the mutual promises, undertakings, covenants and agreements of the parties contained in this Agreement, the parties hereto do hereby agree as follows:

ARTICLE 1
PROGRAMMING AGREEMENT

1.1 Programmer Programming. During the term of this Agreement, Programmer hereby agrees to provide and Licensee agrees to transmit on the Stations news, sports,

informational or entertainment programming and associated advertising, promotional, public service programming and announcement matter sufficient to program all of the Stations' broadcast day in accordance with FCC requirements (the "Programmer Programming").

1.2 Advertising Sales. Programmer shall have the sole right to sell advertising to be placed in all Programmer Programming broadcast on the Stations and shall collect and retain all advertising revenues associated with the Programmer Programming.

ARTICLE 2 **PROGRAMMING STANDARDS**

2.1 Rights and Obligations of Licensee. Licensee shall remain responsible for the control of the day-to-day operation of the Stations and serving the needs of the Stations' community of license and service areas in conformance with its FCC licenses, permits and authorizations. Without limiting the generality of the foregoing, Licensee shall retain the following rights and obligations with respect to programming and technical operation of the Stations:

2.1.1 Licensee's Absolute Right to Reject Programmer Programming. Licensee shall retain the absolute right to accept or reject any Programmer Programming (including advertisements) that Licensee in its reasonable discretion deems contrary to the public interest. If Licensee rejects any Programmer Programming, the monthly fee due to Licensee by Programmer under Section 4.1 below shall be adjusted downward by an amount equal to the pro rata amounts attributable to such time.

2.1.2 Licensee's Right to Preempt Programmer Programming for Special Events. Licensee shall have the right to preempt the Programmer Programming in order to broadcast programming deemed by Licensee to be of national, regional or local interest, and to use part or all of the hours of operation of the Stations for the broadcast of events of special importance. In all such cases, Licensee will give Programmer reasonable advance notice of its intention to preempt any regularly scheduled programming. Licensee expressly agrees that its right of preemption shall not be exercised in an arbitrary manner or for the commercial advantage of Licensee.

2.1.3 Licensee's Compliance with FCC Requirements. Licensee shall comply with the FCC rules and regulations with respect to the ascertainment of community problems, needs and interests and broadcast programming responsive thereto, timely prepare and place in the Stations' public inspection files appropriate documentation thereof, and comply with all other FCC rules and regulations which may be applicable to the operation of the Stations. During the term of this Agreement, each of the Station shall broadcast in compliance with the terms of its technical license or of any grant of special temporary authority issued to it.

2.2 Rights and Obligations of Programmer. Programmer shall not take any action, or omit to take any action, inconsistent with Licensee's obligations under law to retain ultimate responsibility for the programming, finances and technical operations of the Stations. Without limiting the generality of the foregoing, Programmer agrees as follows:

2.2.1 Compliance with Laws and Stations Policies. All Programmer Programming shall conform in all material respects to the Communications Act and all applicable rules, regulations and policies of the FCC, and all other laws or regulations applicable to the broadcast of programming by the Stations.

2.2.2 Cooperation with Licensee. Programmer, on behalf of Licensee, shall include within the Programmer Programming all Stations identification announcements required by the FCC's rules. Programmer shall provide to Licensee information with respect to any of the Programmer Programming which is responsive to the public needs and interests of the area served by the Stations so as to assist Licensee in the preparation of any required issues/programs reports, and will provide upon request other information to enable Licensee to prepare other records, reports and logs required by the FCC or other local, state or federal governmental agencies. Programmer shall maintain and deliver to Licensee all records and information required by the FCC to be placed in the files of the Stations pertaining to the broadcast of political programming and advertisements, in accordance with the provisions of Section 73.1943 of the FCC's rules, and agrees that broadcasts of sponsored programming will comply with the provisions of Section 73.1212 of the FCC's rules.

2.2.3 Payola and Plugola. Programmer shall provide to Licensee in advance any information known to Programmer regarding any money or other consideration, compensation, gift or gratuity 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 the Stations, unless the party making or accepting such payment is identified in the program as having paid or furnished such consideration for the programming, in accordance with FCC requirements. Commercial matter with obvious sponsorship identification will not require disclosure beyond the sponsorship identification contained in the commercial copy. Programmer shall at all times endeavor to proceed in good faith to comply with the requirements of Sections 317 and 507 of the Communications Act and the related rules and regulations of the FCC.

2.2.4 Compliance with Copyright Act. Programmer shall not broadcast any material on the Stations in violation of the Copyright Act or the rights of any person. All music supplied by Programmer shall be (i) licensed by the program provider or by a music licensing agent such as ASCAP, BMI or SESAC, (ii) in the public domain, or (iii) cleared at the source by Programmer. Licensee shall not be obligated to pay any music licensing fees or other similar expenses required in connection with the material broadcast by Programmer on the Stations.

ARTICLE 3 **OPERATIONS**

3.1 Programmer Feed. Programmer agrees to provide a broadcast-quality feed to each Station's transmitter. Programmer technical personnel shall be responsible for connection of this feed to each Station's broadcast transmission system and for switching the signal to air at the appropriate time, under the direction and supervision of Licensee.

3.2 Expenses. Licensee shall pay when due all fees and expenses relating to (i) the Stations' transmission facilities, including utilities, (ii) property taxes with respect to the Assets; (iii) casualty and liability insurance with respect to the Assets, and (iv) FCC regulatory fees. As provided in Schedule A, attached hereto Programmer shall reimburse Licensee for certain of the expenses Licensee incurs in connection with the obligations described above.

ARTICLE 4 **CONSIDERATION**

As consideration of the brokerage of air time on the Stations for the broadcast of the Programmer Programming pursuant to the terms and conditions of this Agreement, Programmer shall pay to Licensee the consideration provided for in Schedule A to this Agreement.

ARTICLE 5 **TERM AND REGULATORY REQUIREMENTS**

5.1 Term. Subject to the provisions for early termination contained herein, the term of this Agreement shall commence effective on August ___, 2021 (the "Effective Date"). This Agreement shall terminate on the earlier of (i) the closing date of the transaction contemplated by the Purchase Agreement or the termination of the Purchase Agreement by its terms without consummation of the transactions contemplated thereby, or (ii) twelve (12) months from the date hereof (the "Term").

5.2 Assignability. This Agreement shall inure to the benefit of and be binding upon Licensee, its successors and assigns and shall not terminate upon the sale or any other transfer of control of the Stations or Licensee to any successor licensee, except as provided in Section 5.3 below. Neither party shall assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

5.3 Early Termination for Breach and Nonperformance. Should either party be in breach of this Agreement for the nonperformance of a material obligation, the nonbreaching party may, in addition to pursuing any other remedies available at law or in equity, terminate this Agreement if such breach shall continue for a period of fifteen (15) days following the receipt of written notice from the nonbreaching party, which notice shall indicate the nature of such breach, except if the breaching party has commenced a cure of such breach within said fifteen (15) day period, the breach is capable of cure and the breaching party acts in good faith to cure the breach within a reasonable time the breaching party shall not be deemed to be in breach.

5.4 FCC Action. Should a change in FCC policy or rules make it necessary to obtain FCC consent for the continuation or further effectuation of any element of this Agreement, both parties hereto shall use their best efforts to diligently prepare, file and prosecute before the FCC all petitions, waivers, construction applications, amendments, rulemaking comments and other related documents necessary to secure and/or retain FCC approval of all aspects of this Agreement. Programmer shall bear the cost of preparation of such documents and prosecution of

such actions. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties hereto have reviewed said filing and consented to its submission. If the FCC determines that this Agreement is inconsistent with Licensee's license obligations or is otherwise contrary to FCC policies, rules and regulations, or if regulatory or legislative action subsequent to the Effective Date alters the permissibility of this Agreement under the FCC's rules or the Communications Act, the parties shall renegotiate this Agreement in good faith and recast this Agreement in terms that are likely to cure the defects perceived by the FCC and return a balance of benefits to both parties comparable to the balance of benefits provided by the Agreement in its current terms. If, after such good faith negotiations, either party reasonably determines that recasting this Agreement to meet the defects perceived by the FCC is impossible, either party may terminate this Agreement without further liability upon ten (10) days prior written notice. If termination shall occur pursuant to this section, such termination shall extinguish and cancel this Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES; COVENANTS

6.1 Licensee's Representations and Warranties. Licensee represents and warrants to Programmer as follows:

6.1.1 Authority. Licensee has full power and authority to enter into and carry out all of the transactions contemplated by this Agreement. Except as otherwise stated herein, no consent, approval or authorization by or filing by Licensee with any governmental authorities is required in connection with the transactions contemplated herein. The carrying out of this Agreement will not result in any violation of or be in conflict with any existing judgment, decree, order, statute, law, rule or regulation of any governmental authority.

6.2 Programmer's Representations and Warranties. Programmer represents and warrants to Licensee as follows:

6.2.1 Authority. Programmer has full power and authority to carry out all of the transactions contemplated by this Agreement. Except as otherwise stated herein, no consent, approval or authorization by or filing by Programmer with any governmental authorities is required in connection with the transactions contemplated herein. The carrying out of this Agreement will not result in any violation of or be in conflict with Programmer's formation documents, or any existing judgment, decree, order, statute, law, rule or regulation of any governmental authority.

6.3 Affirmative Covenants. Programmer covenants and agrees that it will fully comply with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations) in the provision of the Programmer Programming to Licensee or in connection with its performance of obligations hereunder relating to the Stations or this Agreement.

6.4 Negative Covenants. Licensee covenants that during the term of this Agreement, Licensee shall not, without the prior written consent of Programmer (which Programmer may

grant or refuse in its sole discretion) change the call letters or seek FCC consent to modification of facilities which would specify a frequency change or have a material adverse effect upon the presently authorized coverage contour of the Stations.

ARTICLE 7
MISCELLANEOUS

7.1 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to perform any obligation under this Agreement if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of God or other contingencies, including equipment failures, beyond the reasonable control of the parties (each an event of “Force Majeure”), and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of such Force Majeure event which interferes with such performance.

7.2 Indemnification. From and after the date of this Agreement, Programmer and Licensee shall indemnify, defend and hold harmless the other, its affiliates and their respective officers, directors, managers, members, employees and representatives, and the successors and assigns of any of them, from and against and reimburse them for, all claims, damages, costs and expenses, including, without limitation, interest, penalties, court costs and reasonable attorney’s fees and expenses, resulting from (i) any programming provided by such party for broadcast on the Stations, and (ii) any material breach by such party of any representation, warranty, covenant or other agreement contained in this Agreement. Each party’s indemnification obligations contained in this Section 7.2 shall survive for twelve (12) months from the date of the termination of this Agreement.

7.3 Trademarks. Licensee hereby grants Programmer an unlimited, royalty-free license to use, in connection with providing the Programmer Programming on the Stations, any and all trademarks, service marks, trade names, jingles, slogans, logotypes and other intangible rights owned and used or held for use by Licensee in conjunction with the Stations. Licensee agree to execute such additional documentation as may be necessary or desirable to effectuate the license granted under this section.

7.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Seller: Richard J. Samson, as Receiver
310 West Spruce Street
Missoula, MT 59802

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

Fletcher, Heald & Hildreth, PLC
1300 N 17th Street, Suite 1100
Arlington, VA 22209
Attention: Matthew H. McCormick, Esq.

and

Holland & Hart LLP
401 N. 31st Street, Suite 1500
Billings, MT 59101
Attention: Charles W. Hingle, Esq.

If to Buyer: Desert Mountain Broadcasting LLC
2075 Central Ave., #5
Billings, MT 59102
Attention: Cameron Maxwell, President and CEO

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

Gray Miller Persh LLP
2233 Wisconsin Ave. NW
Suite 226
Washington, DC 20007
Attention: Derek H. Teslik

7.5 Duty to Consult. Each party agrees that it will use its best efforts not to take any action that will unreasonably interfere, threaten or frustrate the other party's purposes or business activities, and that it will keep the other party informed of, and coordinate with the other party regarding, any of its activities that may have a material effect on such party.

7.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement shall not be affected thereby, and the parties agree to use their best efforts to negotiate a replacement article that is neither invalid, illegal nor unenforceable.

7.7 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter, and constitutes (along with the recitals hereto and the schedules and documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

7.8 Payment of Expenses. Except as otherwise provided, Licensee and Programmer shall pay their own expenses incident to the preparation and carrying out of this Agreement, including all fees and expenses of their respective counsel.

7.9 Counterparts. 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, and shall become effective on the Effective Date (as defined in Section 5.1 above).

7.10 Headings. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

7.11 Dealings with Third Parties. Neither party is nor shall hold itself out to be vested with any power or right to bind contractually or act on behalf of the other as its contracting broker (other than as a time broker of Stations time), agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any representations contractually binding such party.

7.12 Attorneys' Fees. The prevailing party in any proceeding relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party all out-of-pocket costs, expenses and actual attorneys' fees (including expert witness and other consultants fees and costs) relating to or arising out of (1) the proceeding (whether or not the proceeding results in a judgment) and (ii) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses and actual attorney's fees.

7.13 Governing Law. This Agreement will be governed by the regulations of the FCC and laws of the State of Montana without regard to conflict of laws principles.

7.14 Required Certifications.

7.14.1 By Licensee. Licensee hereby certifies that it has, and shall maintain ultimate control over the Stations' facilities, including specifically control over the finances, personnel, and program content of the Stations. Licensee represents and warrants that this certification may be relied upon by the FCC, as well as by Programmer.

7.14.2 By Programmer. Programmer certifies that the arrangement with Licensee as set forth in this Agreement and as contemplated in all aspects of operation is and shall remain in compliance with 47 C.F.R. § 73.3555 and 47 C.F.R. § 73.3556, concerning time brokerage agreements and duplicated programming, and that it will provide to the FCC any documents, exhibits, or other material necessary to demonstrate such compliance. Programmer represents and warrants that this certification may be relied upon by the FCC, as well as by Licensee.

7.15 Nondiscrimination. Programmer shall not discriminate in any contract for advertising on the Stations on the basis of race or ethnicity, and all such contracts shall be evaluated, negotiated and completed without regard to race or ethnicity. Programmer shall include a clause to such effect in all contracts for advertising on the Stations, and if requested shall provide written confirmation of compliance with such requirement.

[CONTINUED TO NEXT PAGE FOR SIGNATURES]

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

LICENSEE: RICHARD J. SAMSON, AS RECEIVER

By: 
6F817849E2874DE...
Richard J. Samson, as Receiver

PROGRAMMER: DESERT MOUNTAIN BROADCASTING LLC

By: _____
Cameron Maxwell, Member, President and CEO

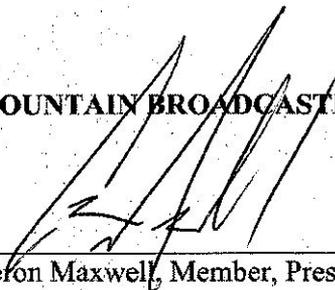
[SIGNATURE PAGE TO LOCAL MARKETING AGREEMENT]

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

LICENSEE: **RICHARD J. SAMSON, AS RECEIVER**

By: _____
Richard J. Samson, as Receiver

PROGRAMMER: **DESERT MOUNTAIN BROADCASTING LLC**

By:  _____
Cameron Maxwell, Member, President and CEO

[SIGNATURE PAGE TO LOCAL MARKETING AGREEMENT]

SCHEDULE A

CONSIDERATION

Programmer shall reimburse Licensee for the following expenses of Licensee in operation of the Stations:

1. Transmitter site utilities; and
2. Up to \$500 per month in rent for the KOZB Site.

Programmer shall pay directly all music license fees due with respect to the broadcast of its Programming on the Stations.

It is not intended that Programmer shall reimburse Licensee for the following expenses incurred by Licensee:

1. Licensee's own corporate income or other tax obligations including, but not limited to, real property, personal property, gross receipts, and franchise taxes; and
2. Licensee's professional services, including its attorneys' and accountants' fees.