

## **SECOND ADDENDUM TO AGREEMENT OF SETTLEMENT AND COMPROMISE**

This Second Addendum to Agreement of Settlement and Compromise ("SECOND ADDENDUM") is entered into this 2<sup>nd</sup> day of June, 2016, by and between ALAN BISHOP ("BISHOP"), and GAYLE ESKAY MILLS solely in her capacity as the appointed and serving Chapter 7 Trustee ("TRUSTEE") for the bankruptcy estate of George Kimble and Patricia Kimble, husband and wife, in Case No. 4:09-bk-33058-EWH ("Bankruptcy Case"). Bishop and the Trustee are collectively referred to hereinafter as the "Parties".

### **RECITALS**

1. Bishop and Trustee, on behalf of the Bankruptcy Estate, are the co-owners of the Finger Lakes Radio Group, Inc., Geneva Broadcasting, Inc., Lake Country Broadcasting, Inc., Auburn Broadcasting, Inc. and ROI Broadcasting, Inc. (collectively "FLRG Corporations").

2. Bishop and the Trustee entered into an "Agreement of Settlement and Compromise" (the "Settlement Agreement") dated May 1, 2013, the terms of which were set forth in the Trustee's Motion to Authorize and Approve Settlement and Compromise of Claims Against Shareholder/Claimant Alan Bishop As to Allow Sale of Assets by Trustee and Dismissal of Adversary Complaint ("Bishop 9019") and approved by the Bankruptcy Court pursuant to Order dated June 19, 2013 (Doc #253) ("Settlement Order") entered in the Bankruptcy Case, which was amended by the First Addendum to Agreement of Settlement and Compromise in May, 2015 ("Addendum").

3. Pursuant to the terms of the Settlement Agreement, the Trustee obtained a sale of the assets of the FLRG Corporations, which the Bankruptcy Court approved pursuant to Order entered on September 3, 2014 (Doc #292) ("Sale Order") in the Bankruptcy Case. As set forth in the Sale Order and the Asset Purchase Agreement ("APA") incorporated therein, the Trustee was authorized to sell the assets of the FLRG Corporations to Hoosier AM/FM, LLC, or nominee ("Buyer") and related relief. Pursuant to Sale Order, the sale was scheduled to close by May 10, 2015. Bishop submitted a back-up bid to purchase the assets of the FLRG Corporations.

4. The Sale Order and the APA were amended four times by Orders dated as follows: (i) Order dated June 22, 2015 [DE #388], (ii) Order dated October 9, 2015 [DE #437] and (iii) Order dated December 17, 2015 [DE #454]; and (iv) Order dated March 29, 2016 [DE #476] (collectively the "Extension Orders"). The Extension Orders approved the extension of close of escrow and in consideration for the extensions of closing Buyer remitted additional earnest money deposits to Trustee and Bishop.

5. After the fourth extension, Buyer failed to submit the Commitment Letter as agreed and accordingly, the sale did not close escrow.

6. Due to the failure to close escrow, Trustee received from escrow and is currently

holding the sum of \$25,000, which had been deposited in escrow by Buyer pursuant to the third Order extending the close of escrow, dated December 17, 2015 [D.E. #454] and which was disbursed to the Trustee pursuant to the fourth Order extending the close of escrow dated March 29, 2016 [DE #476] (“\$25,000 Earnest Money”). The \$25,000 Earnest Money is to be divided between the bankruptcy estate and Bishop pursuant to their respective, stipulated, ownership interests in the FLRG Corporations; 67% to the bankruptcy estate and 33% to Bishop.

7. Bishop filed a general, unsecured claim in the bankruptcy case, Proof of Claim No. 26 (“POC 26”), which was amended pursuant to the Settlement Order, for the amount of \$712,300.

8. The Parties, by this Second Addendum, agree to amend the Settlement Agreement on the terms set forth herein and subject to approval by the Bankruptcy Court pursuant to the Stipulated Motion to Amend the Bishop 9019 (“Motion to Amend”), in order to authorize the Trustee to transfer the Estate’s interest in the stock in the FLRG Corporations to Bishop, on the terms set forth below.

Now therefore, in consideration of the Recitals above and the terms and conditions of this Second Addendum below, the Parties agree as follows:

A. The Recitals above are incorporated here as if set forth in full.

B. The terms and conditions of this Second Addendum are subject to Court approval in the Bankruptcy Case.

C. Bishop and Trustee have signed a Stock Purchase Agreement attached hereto as Exhibit A (the “Stock Purchase Agreement”) pursuant to which Bishop will remit payment in the amount of \$1,217,355.00 (“Settlement Amount”) to the Trustee in consideration for the transfer of the bankruptcy estate’s shares of stock in the FLRG Corporations to Bishop, within twenty (20) days after the later of (i) the entry of Order approving the Motion to Amend and the terms of the Second Addendum to the Settlement Agreement (as amended by the Addendum) and amending the Settlement Order, or, (ii) the date upon which the order of the FCC becomes final (i.e., no action, request for stay, petition for rehearing or reconsideration, or appeal is pending and the time for filing such request, petition, or appeal has expired); provided that the conditions to closing in the Stock Purchase Agreement have been met.

D. In consideration of the Settlement Amount, the Trustee will transfer the bankruptcy estate’s interest in the stock of the FLRG Corporations to Bishop. The transfer of the stock will be on an as-is, where-is basis, except for the warranties and representations set forth in the Stock Purchase Agreement. The Parties will execute the documents necessary to transfer the stock to Bishop.

E. The transfer of the stock to Bishop will require approval from the FCC. Bishop will apply for the transfer with the FCC within ten (10) days after execution of this Second Addendum.

F. Effective upon Trustee's receipt of payment in full of the Settlement Amount, and the transfer of stock in the FLRG Corporations to Bishop, pursuant to the terms and conditions of the Stock Purchase Agreement (the "Closing"), Bishop, individually and on behalf of the FLRG Corporations, and the Trustee, on behalf of the bankruptcy estate, hereby mutually release and forever discharge each other, from any and all claims, demands, causes of action, actions, damages, losses, costs, expenses, compensation and all other damages and liabilities of any kind or nature whatsoever, direct or indirect, known or unknown, for any matter, cause or thing whatsoever from the beginning of the world to the effective date of the Closing, except with respect to Bishop's Claim POC 26, which shall be subordinated to all claims of the Estate in accordance with subsection H below. This release shall not affect the Parties' rights to enforce the terms of the settlement and Second Addendum.

G. Effective upon Closing, Bishop releases any and all interest in the \$25,000 Earnest Money currently in the Trustee's possession. No disbursement shall be made to Bishop from the \$25,000 Earnest Money.

H. Bishop further stipulates and agrees, effective upon the Closing, to subordinate his claim, POC 26, to all claims of the Estate.

I. The Parties shall each take all further steps and execute all documents necessary or appropriate to transfer the stock in FLRG Corporations.

J. The Parties recognize that the delay of this agreement could cause or result in changed circumstances, some foreseeable and some maybe not, but the Parties agree to work together to minimize any such changes and successfully close the sale before or on the extended closing date.

K. All other terms of the parties' Agreement of Settlement and Compromise, including the terms of the first Addendum, will remain the same.

L. The Parties to this Second Addendum have the power and authority to execute this Second Addendum.

M. This Second Addendum may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**BISHOP**

By:   
Alan Bishop

Date: 6/2/16

**BANKRUPTCY ESTATE**

By: \_\_\_\_\_  
Gayle Eskay Mills, Trustee

Date: \_\_\_\_\_

F. Effective upon Trustee's receipt of payment in full of the Settlement Amount, and the transfer of stock in the FLRG Corporations to Bishop, pursuant to the terms and conditions of the Stock Purchase Agreement (the "Closing"), Bishop, individually and on behalf of the FLRG Corporations, and the Trustee, on behalf of the bankruptcy estate, hereby mutually release and forever discharge each other, from any and all claims, demands, causes of action, actions, damages, losses, costs, expenses, compensation and all other damages and liabilities of any kind or nature whatsoever, direct or indirect, known or unknown, for any matter, cause or thing whatsoever from the beginning of the world to the effective date of the Closing, except with respect to Bishop's Claim POC 26, which shall be subordinated to all claims of the Estate in accordance with subsection H below. This release shall not affect the Parties' rights to enforce the terms of the settlement and Second Addendum.

G. Effective upon Closing, Bishop releases any and all interest in the \$25,000 Earnest Money currently in the Trustee's possession. No disbursement shall be made to Bishop from the \$25,000 Earnest Money.

H. Bishop further stipulates and agrees, effective upon the Closing, to subordinate his claim, POC 26, to all claims of the Estate.

I. The Parties shall each take all further steps and execute all documents necessary or appropriate to transfer the stock in FLRG Corporations.

J. The Parties recognize that the delay of this agreement could cause or result in changed circumstances, some foreseeable and some maybe not, but the Parties agree to work together to minimize any such changes and successfully close the sale before or on the extended closing date.

K. All other terms of the parties' Agreement of Settlement and Compromise, including the terms of the first Addendum, will remain the same.

L. The Parties to this Second Addendum have the power and authority to execute this Second Addendum.

M. This Second Addendum may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**BISHOP**

By: \_\_\_\_\_  
Alan Bishop

Date: \_\_\_\_\_

**BANKRUPTCY ESTATE**

By:   
Gayle Eskay Mills, Trustee

Date: June 2, 2016

