

ASSET PURCHASE AGREEMENT

This Asset Purchase 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 (“Receiver”) for Pembroke Pines Elmira, Limited, a New York Corporation (“PPE”) and court appointed receiver over the real and personal property of Robert J. Pfunter used or useable in connection with the Stations (as defined below) (“Pfunter,” together with PPE being referred to herein as the “Seller”) and Great Radio, LLC, a Delaware limited liability company (“Buyer”).

WITNESSETH:

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. Pfunter et al., Index No. 12-13771 (the “Case”);

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

<u>Call sign</u>	<u>Fac. ID</u>	<u>Location</u>
WELM(AM)	52120	Elmira, NY;
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, in accordance with applicable FCC requirements, the Receiver on behalf of the Seller wishes to sell, transfer and assign, and Buyer wishes to purchase, acquire and assume, the Licenses and the other Station Assets (as defined herein) and the Assumed Liabilities (as defined herein) pursuant to the terms of this Agreement and an order of the Court approving the sale and assignment of the Licenses, Station Assets and Assumed Liabilities from Seller to Buyer pursuant to this Agreement (the “Approval Order”) free and clear of any liens (the “Liens”);

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants contained herein, the parties, intending to be legally bound, agree as follows:

ARTICLE I. **PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

1.1 **Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein the Receiver on behalf of Seller agrees to assign, sell and transfer to Buyer, free and clear of all

Liens, and Buyer agrees to purchase, acquire and assume from Seller, the following assets, properties and business (except for Excluded Assets (as defined herein)) real or personal, tangible or intangible, used or to be used or otherwise relating to the Stations as set forth below (collectively the "Station Assets");

(a) the Licenses and any and all other FCC authorizations pertaining to the Stations, including any renewals or modifications thereof between the date hereof and Closing;

(b) any and all applications pending or to be filed before the FCC which relate to the Stations, as set forth in Schedule 1(b) hereto;

(c) Reserved;

(d) all of Seller's right, title and interest under those existing agreements, contracts, commitments, programming and product contracts and leases (including without limitation, all real estate, towers, antennae and office leases) relating to the operation of the Stations as described on Schedule 1(d) hereto and to be assumed by Buyer (collectively, the "Assumed Contracts"). The contracts designated with an asterisk on Schedule 1(d) require consents from third parties, the receipt of which are conditions precedent to Buyer's obligation to close under this Agreement (collectively, the "Required Consents") and Buyer's reasonable approval, provided however, that for such Stations as a lease does not exist at the time of the date of this Agreement, the Seller's obtaining leases for antenna or tower sites at an initial rate of \$750 or less per month and for translator sites at an initial rate of \$200 per month or less, plus an annual COLA, for a minimum of five (5) years, together with three options to renew for successive five (5) year terms shall be deemed reasonable and shall satisfy this condition precedent. Anything herein 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 this Agreement.

(e) all of Seller's right, title and interest in and to the Stations' call letters and rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, jingles, slogans, logos and other intangible property which are used or held for use solely in the operations of the Stations, including without limitation those set forth and more fully described on Schedule 1(e) hereto (collectively, the "Intellectual Property");

(f) all of Seller's right, title and interest in towers, antennae, tower registrations, supplies, equipment, transmitters, antennas, cables, towers, vehicles, furniture, fixtures, spare parts, inventories, other property purchased but not installed, and other tangible personal property of every kind and description used or held for use in the operation of the Stations, including but not limited to the antenna structures identified in the FCC's database as Antenna Structure Nos. 1008001, 1008078, 1008079, 1008080 and 1226774. ASR No. 1008001 is located at 42-07-49.0 North Latitude; 076-47-22.0 West Longitude (NAD83) on Crane Road in Horseheads Township, New York and is approximately 59 meters above ground level. ASR No. 1008078, is located at 42-07-13.0 North Latitude; 076-48-36.4 West Longitude (NAD83) on Lake Street in Elmira, New York and is approximately 63.4 meters above ground level. ASR No. 1008079, is located at 42-07-11.3 North Latitude; 076-48-35.8 West Longitude (NAD83) on Lake Street in Elmira, New

York and is approximately 63.4 meters above ground level. ASR No. 1008080, is located at 42-07-9.6 North Latitude; 076-48-35.1 West Longitude (NAD83) on Lake Street in Elmira, New York and is approximately 63.4 meters above ground level. ASR No. 1226774 is located at 42-7-51.3 North Latitude; 76-47-24.8 West Longitude (NAD 83), on Crane Road in Horseheads Township, New York and is approximately 118.3 meters above ground level.

(g) all of Seller's right, title and interest in and to any files, documents, records, and books of account (or copies thereof) relating to the operation of the Stations, including local public files, programming information and studies, engineering data, advertising studies, marketing and demographic data, sales correspondence, list of advertisers, credit and sales reports, and logs, but excluding records comprising or related to the Excluded Assets; and

(h) all of Seller's right, title and interest in other assets, properties and businesses, real or personal, tangible or intangible, primarily used or otherwise primarily related to the Stations, except for the Excluded Assets.

1.2 **Excluded Assets.** Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests, and rights of Receiver and/or Seller in each of the following assets:

(a) cash, cash equivalents and cash items of any kind whatsoever, certificates of deposit, money market instruments, bank balances and rights in and to bank accounts, Treasury bills and marketable securities and other securities existing as of the Closing Date (as defined in Section 6.1);

(b) all of Seller's deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets;

(c) any claim, right or interest of Seller in or to any refund, rebate, abatement or other recovery for taxes, together with any interest due thereon or penalty rebate arising therefrom, for any tax period (or portion thereof) ending on or before the Closing Date;

(d) any rights, claims or causes of action of Seller against third parties relating to assets, properties, business or operations of Seller arising out of events occurring on or prior to the Closing Date;

(e) contracts of insurance and insurance plans and the assets thereof, promissory notes, amounts due from employees, bonds, letters of credit or other similar items and any cash surrender value in regard thereto;

(f) corporate records and other books and records that pertain to internal corporate matters of PPE;

(g) any right of Seller as of the Closing Date to payment for the sale of advertising time and other goods and services by the stations prior to the Closing Date (the "Accounts Receivable"), except as otherwise provided in that certain Local Marketing Agreement between the parties, dated as of even date herewith ("LMA") (attached hereto as Exhibit A) and

that certain Services Agreement between the parties, dated as of even date herewith (“Services Agreement”) (attached hereto as Exhibit B); and

(h) any assets, properties or rights of the Seller that are not used in connection with and do not relate to the operation of the Stations.

(i) the Station Assets shall not include any properties or rights, of any kind, of Receiver, whether or not related to the Stations of this transaction.

1.3 **Assumption of Liabilities.** On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities (as defined below) (collectively, the “Assumed Liabilities”):

(a) all Liabilities of Seller arising from or after Closing under the Assumed Contracts and not as a result of any previous breach or default thereunder by Seller;

(b) all Liabilities relating to amounts required to be paid by Buyer hereunder;

(c) all taxes related to the Station Assets that are required to be paid after the Closing Date, but only if such taxes are associated with matters accruing after the Closing Date; provided, however, that in no circumstances shall income taxes of Seller or taxes imposed in lieu thereof be assumed by Buyer; and

(d) all other Liabilities with respect to the Station Assets arising after the Closing Date.

1.4 **Excluded Liabilities.** Buyer shall not assume, nor be obligated to pay, perform or discharge, any debts, obligations, liabilities, or commitments of any nature, known or unknown, direct or indirect, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, legal, statutory, contractual or otherwise, disclosed or undisclosed (the “Liabilities” and each a “Liability”), of Seller (whether or not related to the Station Assets) or otherwise relating to or arising from the Station Assets or the operation of the Stations not expressly set forth in Section 1.3 above (such Seller retained liabilities are referred to, collectively, as “Excluded Liabilities”), including, without limitation, the following Liabilities:

(a) all Liabilities arising out of Excluded Assets;

(b) all Liabilities for taxes of Seller relating to the Station Assets for any tax payable on or before the Closing Date except Transfer Taxes (as defined herein);

(c) any indebtedness or other debt obligation of Seller,

(d) any Liabilities to current or former employees, consultants and contractors of Seller, except as they might arise in connection with an Assumed Contract after the Closing Date;

(e) any Liabilities relating to litigation, arbitration, investigation, claim or proceeding pending or threatened against Seller or its assets based on acts or omissions occurring prior to the Closing; and

(f) any Liabilities arising out of or payable upon consummation of the transactions contemplated by this Agreement that are not expressly assumed by Buyer hereunder (including, but not limited to, change-of-control payments, phantom stock payments, “success bonuses” or any broker’s fees), except Transfer Taxes.

1.5 **Seller’s Accounts Receivable.** The Accounts Receivable with respect to the period prior to February 1, 2014 shall be the property solely of the Seller (except as otherwise provided in the LMA and the Services Agreement) and shall be collected by Buyer on behalf of Seller pursuant to the terms and subject to the conditions of this Section 1.5. The Buyer shall collect the Accounts Receivable without additional fee, commission, or other remuneration.

(a) Within ten (10) days after the Closing Date, the Seller shall deliver to Buyer a complete and detailed list of all of the Accounts Receivable (the “Schedule of Accounts Receivable”).

(b) For a period of one hundred twenty (120) days following the Closing Date (the “Collection Period”), Buyer shall, as the Seller’s agent, collect such Accounts Receivable as shown on the Schedule of Accounts Receivable and as provided in this Section 1.5 and upon such collection, such Accounts Receivable shall be held by Buyer and paid over to Seller as provided herein. Buyer shall not be required to institute any legal proceedings to enforce the collection of such Accounts Receivable or to refer any of such Accounts Receivable to a collection agency. Seller shall provide Buyer a power of attorney or other required authorization for the limited purpose of allowing Buyer to endorse and deposit checks and other instruments received in payment of such Accounts Receivable. Buyer shall not adjust any such Accounts Receivable or grant credit without Seller’s prior written consent. Any Accounts Receivable amounts collected on behalf of the Seller shall be paid to the Seller within ten (10) calendar days after the end of each month during the Collection Period. Along with such payment, Buyer shall provide Seller with a detailed statement of the Accounts Receivable that have been collected on Seller’s behalf during the prior month and any other information reasonably requested by Seller.

(c) Within ten (10) calendar days after the end of the Collection Period, Buyer shall deliver to the Seller a statement listing all uncollected Accounts Receivable, together with all files concerning the collection or attempts to collect such Accounts Receivable. Other than cooperating with any subsequent request for information by the Seller, Buyer’s responsibility for such Accounts Receivable thereafter shall cease. Buyer shall incur no liability to the Seller for any uncollected Accounts Receivable. Thereafter, Seller shall have the right to collect such uncollected Accounts Receivable. If Buyer shall receive payment on any such uncollected Accounts Receivable, such payment shall be remitted to the Receiver.

(d) Except to remit collected Accounts Receivable in accordance herewith, Buyer shall have no liability or obligation to the Seller with respect to the collection of its Accounts Receivable and shall not be obligated to take any action to collect such accounts. All payments received by Buyer from any customer whose name appears in the Schedule of Accounts Receivable

and who is also a customer of Buyer shall be credited as payment of the account or invoice designated by such customer in writing. In the absence of any such designation by the customer, payments shall be first credited to the oldest invoice which is not disputed by said customer.

ARTICLE II. **CONSIDERATION**

2.1 Purchase Price and Payment.

(a) The purchase price for the Station Assets shall be Nine Hundred and Fifty Thousand Dollars (\$950,000) (the “Purchase Price”) which shall be due and payable at the Closing via a wire transfer of immediately available funds in currency of the United States to the parties and in the amounts set forth in Section 2.1(b). Contemporaneously with the execution of this Agreement, Buyer shall deliver to Francis J. Browne, Esq., counsel to the Receiver (“Escrow Agent”) the amount of Ninety Five Thousand Dollars (\$95,000) (“Escrow Deposit”), which shall be governed by the terms of an Escrow Agreement to be entered into by Buyer, Seller, and the Escrow Agent coincident with the execution and delivery of this Agreement. The Escrow Deposit shall be credited towards the Purchase Price, and shall be governed by the terms of that Escrow Agreement.

(b) Upon Closing, the Purchase Price shall be directly payable as follows:

(1) to the Receiver for unpaid costs/expenses (“Receiver Expenses”);

(2) to Richard A. Foreman Associates, Inc. for brokerage fees in the amount set forth in the Brokerage Agreement approved by the Court (the “Broker Fee”);

(3) to ASCAP (“ASCAP Fee”); to SESAC ; to BMI; and to the Radio Music License Committee in such amounts as is necessary to cure the defaults of the various stations under the agreements with such organizations; and

(4) the balance to the Receiver to hold pursuant to the further order of the Court and for the ultimate benefit of ACM Browncroft Trust.

(c) All revenues and all expenses arising from the Station Assets shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles, consistently applied, and to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and liabilities related to the period prior to the Closing Date, and Buyer shall receive all revenue and shall be responsible for all expenses, costs and liabilities related to the period on and subsequent to the Closing Date.

ARTICLE III. **REPRESENTATIONS OF SELLER**

The Receiver, on behalf of the Seller, hereby represents to Buyer as follows:

3.1 **Organization, Standing and Qualification.** Receiver is the receiver of PPE and property of Pfuntnr used in the operation of the Stations, as set forth in the Receivership Order,

and has all requisite power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Seller and to carry out the transactions contemplated hereby and thereby, subject to the provisions of any Approval Order.

3.2 **Authorization and Binding Obligation.** Except for such authorization as is required by the Court, (a) the execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary action on the part of Receiver; and (b) this Agreement has been duly signed and delivered by Receiver and constitutes the legal, valid and binding obligations of Seller, enforceable in accordance with its terms and the terms of any Approval Order, except as the enforceability may be affected by the Receivership and other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

3.3 **FCC and Governmental Matters.**

(a) The Receiver, as receiver for the Seller, is the FCC-authorized person in control of licensee of the Licenses attached as Schedule 1(a), and said licenses are, in effect in accordance with their terms and will not have been revoked, suspended, canceled, rescinded or terminated. The Licenses are all of the authorizations, construction permits or licenses from all federal and governmental entities, including the FCC, necessary to operate the Stations to the full extent as such operations are currently conducted and there are no conditions upon the Licenses outside of the ordinary course, except as set forth in Schedule 1(b). The Seller has no other authorizations, construction permits or licenses issued by the FCC pertaining to the Stations. Except as disclosed in Schedule 3.3(a); (i) there is not pending, or, to Seller's knowledge threatened, any action before the FCC to revoke, suspend, cancel or rescind any of the Licenses (other than proceedings to amend FCC rules of general applicability); (ii) there is not now issued, pending, outstanding, or to Seller's knowledge threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller, the Stations or any of the Licenses; (iii) Seller has received no written communication from the FCC indicating that Seller is not in substantial compliance in all material respects with all applicable requirements of the FCC; and (iv) Seller intends to timely file FCC applications of renewal of licenses for the Stations (the "FCC Renewal Applications").

(b) To the knowledge of Seller, all regulatory fees required to be paid to the FCC by Seller have been paid or have been waived or deferred.

(c) To Seller's knowledge, Seller is or by the Closing will be, in all respects material to the transactions described herein, in compliance with all requirements of law, federal, state and local, and all requirements of governmental authorities having jurisdiction over it including, without limitation, the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated pursuant thereto (collectively, the "Communication Laws").

3.4 **Taxes.** All federal, state and local returns, reports, estimates and other statements ("Returns") required to have been filed with any jurisdiction with respect to Seller and the operation of the Stations with respect to any income, franchise, property, sales, value-added, payroll, withholding, excise, assessment, levy, capital and all other taxes, duties, penalties,

assessments or deficiencies of every nature and description (collectively, "Taxes") have been duly and timely filed, (except for those Taxes that are being contested in good faith by Seller) or to the extent that there may exist a lien for such taxes at the time of Closing, will be paid at Closing.

3.5 **Breach.** Seller is not in material violation or breach of any of the terms, conditions or provisions of any Assumed Contract, court order, judgment, arbitration award or decree relating to or affecting the Stations or the Station Assets, to which Seller is a party or by which it is bound. All accrued and currently payable amounts due from Seller under any Assumed Contract have been paid, except where a good faith claim has been raised. To Seller's knowledge, no other party thereto is in default or breach under any of the Assumed Contracts.

3.6 **Absence of Litigation.** Except for matters pending before the Court, specifically, the case pending in the Supreme Court of the State of New York (the "Court") captioned ACM Browncroft Trust v. Robert J. Pfuntner et al., Index No. 12-13771 (previously defined as the "Case") and as other property of Robert J. Pfuntner not used in connection with the Stations being sold hereunder may otherwise be affected by the case entitled Citizens & Northern Bank v. Pembroke Pines Mass Media, N.A. Corp., et al, Index No. 37667/2009, (N.Y. Sup. Ct. Allegany Co.), and except as otherwise set forth on Schedules 3.3 or 3.4, there is no suit, action, proceeding or investigation now pending or, to the best knowledge of Seller, threatened before any federal, state or local court, grand jury, administrative or regulatory body, arbitration or mediation panel or similar body, against Seller or in any way involving or relating to the Station Assets, or which may result in any judgment, order, decree, liability, award or other determination which will, or could, have any material adverse effect upon any of the Station Assets, nor to the knowledge of Seller are there any grounds therefore. There is no order, judgment or decree of any court or governmental agency, and to the knowledge of Seller there are no circumstances that could be reasonably expected to result in any such order, judgment or decree, enjoining Seller from selling and transferring the Licenses or any of the Station Assets to Buyer pursuant to this Agreement.

3.7 **Title to the Purchased Assets.** All of the Seller's right, title and interest in the Station Assets will be transferred at the Closing to Buyer free and clear of all Liens pursuant to the Approval Order.

3.8 **Contracts.** Seller has performed in all material respects each term, covenant and condition of each of the Assumed Contract, each of Assumed Contract is in full force and effect, unimpaired by any acts or omissions of Seller, and constitutes the legal and binding obligation of, and is legally enforceable against.

3.9 **Intellectual Property.** There are no material claims, demands or proceedings instituted or pending, or to the knowledge of Seller overtly threatened in writing, by any third party, pertaining to or challenging Seller's right to ownership or use of any of the Intellectual Property. To the knowledge of Seller, there is no Intellectual Property necessary for the continued operating of the Stations owned by any person or entity, other than Seller, which Seller is using without proper license to do so (and which licenses, if any, constitute part of the Assumed Contracts). The parties acknowledge that the Seller is in violation of its licensing agreements with ASCAP, SESAC, BMI and the Radio Music License Committee, and that a portion of the Purchase Price hereunder shall be used to re-instate the licenses with these entities in good standing, which licenses the Buyer will either assume as part of the Assumed Liabilities hereunder or which

licenses will be terminated and new licenses entered into by the Buyer with ASCAP, SESAC and the Radio Music License Committee, respectively.

3.10 **Brokers and Finders.** Except for Richard A. Foreman Associates, Inc., there is no investment banker, broker, finder, financial advisor or other intermediary (collectively a “Broker”) who has been retained by or is authorized to act on behalf of Seller who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement. It is understood and agreed that all liabilities relating to any such Broker are the sole and exclusive obligations of Seller and are Excluded Liabilities unless Buyer has contracted with Broker or is obligated to pay a Broker.

3.11 **Absence of Violation, Conflicting Agreements.** Seller’s execution, delivery and performance of this Agreement (with or without the giving of notice, lapse of time, or both): (i) do not require the consent of any third party other than from the FCC, the Court, and the other Required Consents noted on Schedule 1(d); (ii) will not violate any provision of any formation document; (iii) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, ordinance or ruling of any court or governmental authority; (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which Seller is a party or by which Seller may be bound, such that Seller could not sell the Station Assets; provided the FCC Assignment Consent (as defined herein), the Approval Order by the Court and the other Required Consents are obtained prior to Closing

3.12 **DISCLAIMER.** ANY STATEMENTS MADE HEREIN BY THE RECEIVER ON BEHALF OF SELLER 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 THAT THE RECEIVER HAS BEEN OPERATING THE STATIONS FOR A LIMITED PERIOD OF TIME AND HAS LIMITED KNOWLEDGE. BUYER HAS BEEN AFFORDED AN OPPORTUNITY TO CONDUCT ITS DUE DILIGENCE AND IN ENTERING INTO THIS AGREEMENT ACKNOWLEDGES THAT IT IS SATISFIED WITH THE ASSETS. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OF TITLE TO THE ASSETS AND SHALL SUPERSEDE ANY AND ALL TERMS TO THE CONTRARY WHICH MAY APPEAR IN ANY AND ALL OTHER DOCUMENTS OR INSTRUMENTS ASSOCIATED WITH THE TRANSACTION CONTEMPLATED HEREUNDER. WITH REGARD TO REPRESENTATIONS OR WARRANTIES OF TITLE, THE BUYER SHALL RELY SOLELY UPON THE APPROVAL ORDER TO BE ISSUED BY THE COURT IN THE UNDERLYING RECEIVERSHIP CONVEYING TITLE FREE AND CLEAR OF LIENS. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller and the Receiver as follows:

4.1 **Organization and Standing.** Buyer is a limited liability company organized under the laws of the State of Delaware, and has all requisite corporate power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Buyer and to carry out the transactions contemplated hereby and thereby.

4.2 **Authorization and Binding Obligation.** The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly signed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer, enforceable against it in accordance with its terms, except as the enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

4.3 **Absence of Violation, Conflicting Agreements.** Buyer's execution, delivery and performance of this Agreement (with or without the giving of notice, lapse of time, or both): (i) do not require the consent of any third party other than the FCC; (ii) will not violate any provision of its Certificate of Formation or Operating Agreement; (iii) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, ordinance or ruling of any court or governmental authority; (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Station Assets.

4.4 **Absence of Litigation.** There is no suit, action, proceeding or investigation pending or, to Buyer's knowledge, threatened before any federal, state or local court, grand jury, administrative or regulatory body, arbitration, or mediation panel or similar body, to which Buyer is a party, which seeks to enjoin or prohibit or otherwise to question the validity of any action taken or to be taken by Buyer pursuant to or in connection with this agreement.

4.5 **Financial Ability.** Buyer has and will have the funds available to purchase the Stations pursuant to the consideration provisions set forth under Section 2.1(a) of this Agreement at the Closing.

4.6 **Condition of the Station Assets.** Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in Article III hereof (as modified by the schedules hereto as supplemented or amended), and Buyer acknowledges and agrees that, except for the representations and warranties contained therein, the Station Assets are being sold on a "where is" and, as to condition, "as is" basis. Buyer acknowledges that it has conducted to its satisfaction, its own independent investigation of the Station Assets and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of its own independent investigation, and is not

relying on any statements or representations of Seller, or any of its employees or agents, other than those representations or warranties expressly set forth in Article III hereof.

4.7 **FCC Matters.** To Buyer's knowledge, Buyer is legally, financially and otherwise qualified to assume and hold the Licenses and to acquire, own, and operate the Stations under the Communications Laws, including all provisions thereof, relating to attribution of media ownership, foreign ownership and control, and character qualifications. Except as set forth on Schedule 4.7 hereto, Buyer knows of no fact that would, under the Communications Laws (i) disqualify Buyer as an assignee of the Licenses or as the owner and operator of the Stations or (ii) cause the FCC to fail or refuse to grant the FCC Assignment Application (as defined in Section 5.2 hereto) in a timely manner; and no waiver of any FCC rule or policy, or divestiture of any FCC authorization, is necessary to be obtained for the grant of the FCC Assignment Application or the consummation of this transaction, nor will processing pursuant to any exception to any FCC rule or policy of general applicability be requested or required in connection with Buyer's consummation of the transactions contemplated by this Agreement.

4.8 **Brokers and Finders.** There is no investment banker, broker, finder, financial advisor or other intermediary (collectively a "Buyer Broker") who has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement. It is understood and agreed that all liabilities relating to any Buyer Broker are the sole and exclusive liability of Buyer.

4.9 **Solvency.** The Buyer represents that it is solvent, that the value of its assets exceed its liabilities and that it is paying its obligations in the ordinary course. Further, Buyer represents that after payment of the Purchase Price and the consummation of the transaction hereunder that the value of its assets shall continue to exceed its liabilities.

ARTICLE V. **COVENANTS**

5.1 **Covenants of Seller.** Between the date hereof and the Closing Date, except as contemplated by this Agreement and/or the LMA, the Services Agreement or with the prior written consent of Buyer, which consent shall be unreasonably denied, conditioned or delayed, Seller hereby covenants and agrees:

(a) to operate the Stations in the ordinary course of business in accordance with past practices consistently applied, including without limitation continuing to make promotional efforts and expenditures consistent with past practice and to retain the Stations' current programming formats;

(b) not to sell, transfer or further encumber (including without limitation permitting a Lien to come into existence) any of the Station Assets;

(c) to keep in full force and effect, without amendment, cancellation or other modification, all Assumed Contracts;

(d) upon execution of this Agreement and reasonable advance notice received from Buyer, (a) to afford Buyer and its authorized representatives full and free access, during

regular business hours, to Seller's and PPE's personnel, properties, contracts, books and records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operation of the Stations; (b) to afford Buyer and its authorized representatives access to copies of all such contracts, Licenses, books and records and other existing documents and data relating to the Station Assets; (c) to afford Buyer and its authorized representatives access to such additional financial, operating and other relevant data and information relating to the Station Assets as Buyer may reasonably request and permit Buyer to review and make inquiries and obtain responses from PPE's personnel and representatives concerning such information and any information provided prior to the date hereof; (d) to allow Buyer and its authorized representatives access to conduct environmental surveys and studies on and in respect of the Real Property; and (e) otherwise to cooperate and to assist, to the extent reasonably requested by Buyer, with Buyer's review and examination of the properties and assets, and financial condition and results of operations, of or related to the Station Assets;

(e) not enter into, or become obligated under, any agreement or commitment affecting the Stations or their operations, except for agreements or commitments entered into in the ordinary and regular course of business not in excess of \$5,000 individually, or \$10,000 in the aggregate, or change, amend, terminate or otherwise modify in any material respect any of the Station Contracts, agreements or commitments, except for those which terminate or expire by their own terms;

(f) to promptly notify Buyer in writing of the commencement of any material claim, suit, action, arbitration, legal, administrative or other proceeding, governmental investigation or tax audit against (i) Seller or (ii) any other party that relates in any way to, or that could reasonably be expected to have a material adverse effect on the Licenses or any of the Station Assets;

(g) maintain in full force and effect policies of liability and casualty insurance of the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Stations;

(h) not enter into any agreement providing for a delayed or deferred payment that Buyer would be obligated to pay after the Closing Date, except as permitted pursuant to Section 5.1;

(i) not increase the amount of airtime on the Stations devoted to commercials or advertising beyond the amount consistent with past practice;

(j) to promptly notify Buyer in writing if Seller becomes aware that any representation or warranty made in this Agreement by Seller is no longer true and correct;

(k) to cooperate fully with Buyer in taking any and all actions necessary or desirable for the consummation of the transactions contemplated by this Agreement;

(l) to file, as soon as reasonably practicable following execution of this Agreement, with the Court a motion (the "Approval Motion") seeking entry of an Approval Order, including without limitation, providing for the sale of the Station Assets free and clear of all Liens, and authorizing and approving the transactions contemplated by this Agreement and take any and

all actions, and make such deliveries, motions, and filings as reasonably necessary, to obtain as soon as practicable the Approval Order; and

(m) to timely prepare, file and prosecute the FCC Renewal Applications. In addition, Seller shall promptly provide to Buyer a copy of any pleading, order or other document served on or delivered to it relating to any FCC Renewal Application. Seller shall take or cause to be taken all commercially reasonable actions necessary or appropriate to permit the FCC to grant the FCC Renewal Applications at the earliest practicable date and agree to comply with all conditions imposed on it (or its affiliates) by the FCC associated with such grants (the “FCC Renewal Consents”) that are applicable to radio broadcast stations generally and that are customarily imposed on similarly situated radio broadcast stations. Seller shall use its commercially reasonable efforts to oppose any petitions to deny or other objections filed with respect to any FCC Renewal Application and any requests for reconsideration or review of any FCC Renewal Consent.

5.2 Covenant Regarding FCC Assignment Application. Buyer and Seller shall cooperate fully with each other (and cause their respective counsel so to cooperate) in taking any actions necessary to obtain FCC Assignment Consent, as defined in this Section 5.2, including (i) the filing of an application (the “FCC Assignment Application”) with the FCC for all necessary consent of the FCC to the assignment of the Licenses to Buyer or its assignee as proposed in this Agreement, and (ii) the defense against any petition to deny or informal objection filed against the FCC Assignment Application. Each party shall prepare its portion of the FCC Assignment Application, which shall be filed with the FCC within [thirty (30)] calendar days after the date of this Agreement. Buyer shall pay all FCC filing fees associated with the FCC Assignment Application. Each party shall pay its own attorney fees incurred in filing and prosecuting the FCC Assignment Application. The FCC action or order granting the FCC Assignment Application without any material adverse conditions other than those of general applicability is referred to as the “FCC Assignment Consent,” provided that the following shall be deemed to be customarily imposed conditions and not “material adverse conditions”: any condition that arises from or that adversely affects a party because of that party’s breach of its representations, warranties, or covenants under this Agreement, and any condition that requires the parties to delay consummation until the FCC Renewal Consents have been granted. The parties hereto acknowledge that the purchase and sale of the Station Assets as contemplated by this Agreement is subject to the receipt of the FCC Assignment Consent. Each party will promptly provide to the other party a copy of any pleading, order or other document served on or delivered to it relating to the FCC Assignment Application. Buyer and Seller shall take or cause to be taken all commercially reasonable actions necessary or appropriate to permit the FCC to grant the FCC Assignment Consent at the earliest practicable date and agree to comply with all conditions imposed on it (or its affiliates) by the FCC Assignment Consent that are applicable to radio broadcast stations generally, that are customarily imposed on similarly situated radio broadcast stations or that arise out of such party’s breach of this Agreement. Each of Buyer and Seller shall use its commercially reasonable efforts to oppose any petitions to deny or other objections filed with respect to the FCC Assignment Application and any requests for reconsideration or review of the FCC Assignment Consent. Neither Seller, on the one hand, nor Buyer, on the other hand, shall agree to participate in any meeting with the FCC in respect of any filing, consent, approval, investigation or other inquiry relating to this Agreement or the transactions contemplated hereby unless it consults with the other party in

advance and, to the extent permitted by the FCC, gives the other party the opportunity to attend and participate in such meeting.

5.3 **Required Consents.** Seller shall use its commercially reasonable efforts to obtain any and all consents, transfers, authorizations, or approvals required for the consummation of the transactions contemplated by this Agreement, including the Required Consents and any third party consents necessary for the assignment of any Assumed Contract. Buyer will cooperate with Seller in obtaining, and providing all information necessary to obtain such consents. To the extent that any Assumed Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed at Closing pursuant hereto shall not constitute an assignment thereof, but to the extent permitted by law shall constitute an equitable assignment by Seller and assumption by Buyer of Seller's rights and obligations under the applicable Assumed Contract, with Seller making available to Buyer the benefits thereof and Buyer performing the obligations thereunder on Seller's behalf.

5.4 **Further Assurances.** Each of Seller and Buyer shall use its commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement. At and after the Closing, Buyer and Seller will, without further consideration, execute and deliver such further instruments and documents and do such other acts and things that the other party may reasonably request in order to effect or confirm the transactions contemplated by this Agreement.

5.5 **Confidentiality.** Buyer and Seller acknowledge and agree that the Evaluation Material (as defined in the Confidentiality Agreement) provided to Buyer or its affiliates in connection with this Agreement, including under Section 5.1(d), and the consummation of the transactions contemplated hereby, is subject to the terms of the confidentiality agreement between Recipient (as defined in the Confidentiality Agreement) and Seller (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

ARTICLE VI. **CLOSING**

6.1 **Time and Place.** The closing of the sale of the Station Assets to Buyer from Seller (the "Closing") shall take place at a location the parties may mutually specify or by electronic mail and facsimile followed by overnight delivery service with funds transferred by same day wire to accounts directed by the Receiver and shall occur, provided the conditions set forth at Sections 6.2 and 6.3 hereto have been either satisfied or waived by the party with authority to issue such waiver, within ten (10) business days following the later of (a) the date of the FCC Assignment Consent issued by the FCC's Media Bureau acting pursuant to delegated authority approving the sale becomes a final order; (b) the date the Approval Order becomes a Final Order; (c) the date upon which the last of the FCC Renewal Consents becomes a Final Order; or (d) at such other time and place as the parties may mutually agree, provided that the FCC Assignment Consent shall then be in effect and shall not have been reversed, stayed, enjoined, annulled or set aside (such date, the "Closing Date"). In the event the FCC Assignment Consent is granted before the Approval Order has become a Final Order, or before the FCC Renewal Consents have been granted, the parties

shall cooperate as necessary to extend the effective period of the FCC Assignment Consent to permit Closing to occur following the later of the Final Order issuance of the Approval Order and the latest of the FCC Renewal Consents as issued by the FCC's Media Bureau acting pursuant to delegated authority to become Final Orders, whichever occurs later. The term "Final Order", as used herein, shall mean an order with respect to which no appeal, no petition for re-hearing, reconsideration, or stay, and no other administrative or judicial action contesting such consent or approval, is pending and as to which the time for filing any such appeal, petition or other action has expired or, if filed, has been denied, dismissed, or withdrawn and the time for instituting any further legal proceeding has expired.

6.2 **Seller's Deliveries at Closing.** At Closing, the Receiver on behalf of Seller shall deliver or cause to be delivered to Buyer the following:

(a) a Bill of Sale, Assignment and Assumption of Licenses, Assignment and Assumption of Contracts, Assignment and Assumption of Intellectual Property, endorsed vehicle titles, if any, Lien Search (as defined below) and all other documents required to be delivered by the Receiver prior to the Closing pursuant to this Agreement and such other instruments in form and substance satisfactory to Buyer and its counsel, as are required to effectively vest in Buyer title in and to all of the Station Assets, free and clear of any and all Liens, along with any other documents or instruments reasonably required by Buyer to consummate the transactions contemplated hereby and reasonably requested of the Receiver at or prior to the Closing, including assignments of the Assumed Contracts. For purposes of this Agreement, all such documents are defined as the "Transaction Documents";

(b) copies of the Licenses, together with copies of the FCC Assignment and FCC Renewal Consents, and all other files, records and correspondence pertaining to the Licenses or the Stations in Seller's possession that are not Excluded Assets;

(c) instructions submitted jointly with Buyer to the Escrow Agent to disburse the Escrow Amount to Seller; and

(d) certificate executed by Receiver on behalf of Seller containing a representation that the conditions set forth in Sections 9.1 and 9.3 have been satisfied.

6.3 **Buyer's Deliveries at Closing.** At Closing, Buyer shall deliver or cause to be delivered to Receiver the following:

(a) Purchase Price as provided in Section 2 hereof, less the Escrow Amount, by wire transfer or immediately available funds;

(b) certificate executed by Buyer containing a representation and warranty of Buyer that the conditions set forth in Sections 9.2 and 9.3 have been satisfied; and

(c) instructions, submitted jointly with Seller, to the Escrow Agent, to disburse the Escrow Amount to the Receiver.

6.4 **Closing Costs.** At Closing, Seller will pay: (i) one-half of the escrow fees of Escrow Agent. Buyer will pay (i) one half of the escrow fees of Escrow Agent and (ii) all recording fees. At the Closing the Buyer will pay all Transfer Taxes.

ARTICLE VII. **TERMINATION**

7.1 **Termination by Buyer.** Buyer may terminate this Agreement, if not then in material default, upon written notice to Seller upon the occurrence of any of the following:

(a) if the FCC Assignment Consent is denied or the FCC Assignment Consent has not been issued within nine months from the date the FCC Assignment Application is filed, provided, however, that Buyer may extend such period by up to an additional six (6) months upon written notice to Seller at any time prior to expiration of the initial six (6) month period (or such additional time as the parties may agree); or

(b) if the Seller defaults in the observance or in the due and timely performance of any of its material covenants or agreements contained herein and such default has not been cured within thirty (30) days after receiving written notice from the Buyer. If unable to cure, the Seller shall have the option to reduce the purchase price hereunder in compensation for such default.

(c) if the Court shall approve a Competing Bid (defined herein).

(d) Upon the occurrence of 7.1(a), (b) or (c) hereof, the Escrow Deposit shall be returned to the Buyer.

7.2 **Termination by Seller.** Seller may terminate this Agreement, if not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(a) if the FCC Assignment Consent is denied or the FCC Assignment Consent has not been received within the nine-month period after the FCC Assignment Application is filed, provided, however, that Seller may, with Buyer's consent, extend such period by up to an additional six (6) months upon written notice to Buyer at any time prior to expiration of the initial six (6) month period (or such additional time as the parties may agree);

(b) if the Court shall enter an order approving a Competing Bid;

(c) if the Court shall not have issued the Approval Order within six (6) months after the date of the execution of this Agreement;

(d) if the Buyer defaults in the observance or in the due and timely performance of any of its material covenants or agreements contained herein, and such default has not been cured within twenty (20) days after receiving written notice from the Seller; or

(e) if for any reason, other than: (i) one caused by Seller's breach or default under this Agreement; or (ii) the failure of any governmental authority, including the FCC, to approve the Divestiture Transaction (as defined in Schedule 4.7 hereto) for reasons other than

issues or circumstances associated with the qualifications of Buyer or assignee (as defined in the Divestiture Transaction), including, for example, an Act of God or a government shutdown, such that the Divestiture Transaction is not consummated by the Closing Date, Seller shall have the option, but not the requirement, to terminate this Agreement without regard to any Seller breach or default that may have no effect on the timing of consummation of the Divestiture Transaction.

7.3 **Effect of Termination.**

(a) In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Buyer or Seller subject to the provisions of this Section 7.3; provided, however, that the obligations of the parties set forth in Article X hereof shall survive any such termination and shall be enforceable hereunder.

(b) Nothing in this Article VII shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination, provided that Seller's liability to Buyer hereunder shall be limited to a return of the Escrow Deposit, except as expressly set forth in Section 7.5, below.

(c) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Article VII shall relieve Buyer or Seller of their respective obligations thereunder.

7.4 **Liquidated Damages for Buyer's Breach.** Buyer and Seller agree that if the Closing does not occur due to an uncured breach of any material term of this Agreement by Buyer, Seller's sole and exclusive remedy shall be the right of Seller to retain the Escrow Deposit as liquidated damages. The parties agree that the liquidated damages provided in this Section are not a penalty, are intended to limit the claims that Seller may have against Buyer in the circumstances described herein, and that the liquidated damages provided herein bear a reasonable relationship to the anticipated harm which would be caused by a Buyer's breach. The parties further acknowledge and agree that the amount of actual loss caused by Buyer's breach is difficult to estimate with precision and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder.

7.5 **Break-up fee.** Anything herein to the contrary notwithstanding, in the event that the Seller cannot perform hereunder because the Court has not issued an Approval Order and has, instead, entered an order approving a Competing Bid (defined below), then and only upon the occurrence of such event, the Receiver acting on behalf of the Seller shall pay the Buyer a "break-up" fee of fifteen percent (15%) of the purchase price set forth in this 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 Buyer, including without limitation the anticipated costs associated with obtaining counsel and reviewing documents, the cost associated with performing due diligence, lost opportunity costs associated with regard to the investment of the downpayment hereunder for an extended period of time and costs incurred in obtaining financing, if applicable. The parties acknowledge that the extent of the damages that may be suffered by the Buyer is difficult, if not impossible, to calculate and that the figure set as the break-up fee is fair and reasonable under the circumstances.

7.6 **Specific Performance.** Seller acknowledges and agrees that the Station Assets are unique assets not readily available on the open market, and in the event Seller shall fail to perform its obligations to consummate the transactions contemplated hereby, on account of the breach by Seller, and not on account of the action on the FCC or the Court, Seller acknowledges that money damages alone may not adequately compensate Buyer for its injury and therefore Buyer shall be entitled to elect as its exclusive remedy (except as is otherwise specifically provided in Section 7.5 above), specific performance and in the event of such election Seller shall waive any defense based on Buyer's having an adequate remedy at law.

ARTICLE VIII. **COURT MATTERS**

8.1 **Competing Transaction.** This Agreement is subject to approval by the Court and the consideration of higher or better competing bids (each a "Competing Bid") if a Competing Bid is received prior to entry of the Approval Order. From the date of this Agreement and until the date that the Court shall have approved this Agreement and entered the Approval Order, Seller may respond to any inquiries or offers to purchase all or any part of the Station Assets and perform any and all other acts related thereto which are required under applicable law, including, without limitation, supplying information relating to the Stations or the Station Assets to prospective purchasers. In the event that Seller receives a Competing Bid, Seller shall provide Buyer with the material terms of such Competing Bid and Buyer, subject to approval by the Court, shall have the right to purchase the Station Assets covered by such Competing Bid on the same terms as such Competing Bid.

ARTICLE IX. **CONDITIONS TO CLOSING**

9.1 **Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Buyer) at or prior to the Closing of the following conditions:

(a) all of the covenants and obligations that Seller are required to comply with or to perform at or prior to Closing shall have been complied and performed in all material respects;

(b) Buyer shall have received each of the items set forth in Section 6.2, including but not limited to an FCC Renewal Consent for each Station (and no such FCC Renewal Consent contains any condition outside of the ordinary course);

(c) Seller shall have obtained and delivered to Buyer all Required Consents to be conveyed hereunder, which consents shall not have as a condition thereof any modifications to the terms thereof or any payment by Buyer to consummate the assignment, consistent with the Approval Order.

(d) the Approval Order shall have become a Final Order, including without limitation that the conveyance of the Station Assets is free and clear of all Liens, and not stayed;

(e) ACM Browncroft Trust shall have delivered a release of its liens on the Station Assets in exchange for receipt by the Receiver of the proceeds payable pursuant to

Article 2;

(f) Buyer shall have completed its environmental surveys and studies and determined that there are no material Liabilities related to environmental matters regarding the Station Assets.

9.2 **Conditions to Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Seller), at or prior to the Closing of the following conditions:

(a) each of the representations and warranties made by Buyer in this Agreement shall be true and correct on the Closing Date with the same form and effect as though such representations and warranties had been made on and of such time;

(b) all of the covenants and obligations that Buyer is required to comply with or to perform at or prior to Closing shall have been complied and performed in all material respects; and

(c) Seller shall have received the Approval Order and each of the items set forth in Section 6.3.

9.3 **Conditions to Obligations of Buyer and Seller.** The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer and Seller in whole or in part to the extent permitted by applicable Law):

(a) the FCC shall have issued the FCC Assignment Consent, which shall have become a Final Order; and

(b) there shall not be in effect any preliminary or permanent injunction or other order or decree issued by any federal, state, local, municipal, governmental or quasi-governmental authority or court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

9.4 **Frustration of Closing Conditions.** Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article IX if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE X. **MISCELLANEOUS**

10.1 **Reserved.**

10.2 **Assignability.** Each party agrees that the entirety of the other party's unperformed rights, duties, benefits and obligations under this Agreement are assignable to a directly or indirectly commonly owned affiliate, provided that party agrees to accept such assignment and assume all such obligations hereunder and such assignment is not likely to result in any delay in

the filing or processing of the FCC Assignment Application. Further, Buyer shall be permitted to so assign this Agreement to third parties to accommodate any divestitures of certain of the Stations as deemed necessary to allow the parties hereto to obtain the FCC Assignment Consent. Any other assignment shall require the prior written consent of the other party, which shall not be unreasonably withheld. No assignment by Buyer of its rights under this Agreement, either in whole or in part, shall relieve Buyer of any of its obligations under this Agreement; and, in the event of any breach or failure to close on the part of Buyer or any assignee of Buyer, Seller may elect to proceed solely against Buyer for the full amount of any damages Seller may be entitled to hereunder. Notwithstanding any assignment of rights of Buyer, Seller shall have no obligation to proceed to Closing unless all of Seller's rights in each of the Stations will be assigned at a single Closing on a single day.

10.3 **Taxes.** Buyer shall be solely responsible for and shall pay and file any necessary documentation with applicable taxing authorities for any sales, use, excise, bulk sales or transfer tax due as a result of this transaction (the "Transfer Taxes"). To the extent that Seller shall be required to pay any Transfer Taxes, Buyer shall promptly reimburse Seller, as applicable, for such Transfer Taxes.

10.4 **Attorney Fees.** Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit for damages, specific performance, or other permitted remedy, the prevailing party in such lawsuit shall be entitled to its reasonable legal fees and expenses, including such fees and expenses at the appellate level.

10.5 **Benefit and Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

10.6 **Governing Law.** 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. Venue of any dispute arising out of this Agreement shall reside exclusively in the Court.

10.7 **Construction.** The parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting party.

10.8 **Notices.** All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified, express or registered mail, return receipt requested, postage prepaid, overnight air courier service, personal delivery, or via facsimile (with proof of transmission) to the address specified below (or to such other address which a party shall specify to the other party in accordance herewith):

If to Buyer:

Great Radio, LLC
Attn: William Christian, President
33 East Market Street
Corning, NY 14830

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

Smithwick & Belendiuk, P.C.
Attn: Mark B. Denbo
5028 Wisconsin Avenue, N.W., Suite 301
Washington, DC 20016

If to Seller:

Pembroke Pines Elmira, Limited
Attn: Richard A. Foreman, Receiver
330 Emery Drive East
Stamford, CT 06905

With a copy to:

Francis J. Browne, Esq.
Francis J. Browne, Esq, P.C.
1700 Bedford Street, Suite 204
Stamford, CT 06905

Notice shall be deemed to have been given on earlier of the date of actual delivery or the date set forth in the records of the delivery service if by personal service or overnight courier.

10.9 **Multiple Counterparts and Facsimile Signatures.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Counterpart signatures to the Agreement delivered and received by facsimile or portable document format (.PDF) shall be acceptable and binding to both parties and deemed an original.

10.10 **Entire Agreement.** This Agreement, the schedules and exhibits hereto, and all documents to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer, Seller and Receiver with respect to the subject matter hereof. This Agreement supersedes all prior memoranda and agreements between the parties hereto and may not be modified, supplemented or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified, supplemented or amended.

10.11 **Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

10.12 **No Waiver.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by the other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by another shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by any party for the

performance of any obligation or act by any other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

10.13 **Risk of Loss.** Seller shall bear all risk of loss or damage by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, acts of God or public enemy, or other casualty or cause, reasonable wear and tear excepted, to any of the Station Assets to be assigned to Buyer hereunder occurring prior to the Closing. In the event any loss or damage occurs, the proceeds of the insurance covering such loss be used by Seller to repair, replace or restore any such loss prior to the Closing; provided, however, that, if the proceeds of such insurance are not sufficient to repair, replace or restore the loss, and Seller does not provide additional funds for such purpose upon request by Buyer, Buyer may terminate this Agreement. In the event such loss or damage prevents the broadcast transmission of the Stations in the normal and usual manner, Seller shall give prompt written notice thereof to Buyer. If Seller cannot restore the facilities so that transmission can be resumed in the normal and usual manner within thirty (30) days, Buyer shall have the right after such 30-day period to terminate this Agreement by giving written notice to Seller. In the event of any such termination pursuant to this Section 10.13 neither party shall have any further right or liability hereunder and Buyer's Escrow Deposit shall be returned to Buyer.

10.14 **Interpretation.** The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

10.15 **Indemnification of Buyer by Seller.** Seller shall indemnify and hold Buyer and its members, officers, managers, agents, employees and affiliates (hereafter collectively "Agents") harmless from and against any liability, loss, cost, expense, judgment, order, settlement, obligation, deficiency, claim, suit, proceeding (whether formal or informal), investigation, Lien or other damage, including, without limitation, reasonable attorney's fees and expenses (all of the foregoing items for purposes of this Agreement are referred to as "Damages") and are not limited to matters asserted by third-parties against a party, but includes Damages incurred or sustained by a party caused by breach or default by the other party), resulting from, arising out of or incurred with respect to:

- (a) a breach of any warranty, representation of the Seller contained in this Agreement or in any certificate or other instrument furnished to the Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;
- (b) a breach of any covenant or agreement of the Seller contained in this Agreement;
- (c) any Excluded Liabilities; or
- (d) any and all actions, suits or proceedings incident to any of the foregoing.

10.16 **Indemnification of Seller by Buyer.** Buyer shall indemnify and hold Seller and its Agents, including the Receiver, harmless from and against any Damages resulting from, arising

out of, or incurred with respect to:

(a) a breach of any warranty, representation of the Buyer contained in this Agreement or in any certificate or other instrument furnished to the Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(b) a breach of any covenant or agreement of the Buyer contained in this Agreement;

(c) any Assumed Liabilities; or

(d) any and all actions, suits or proceedings incident to any of the foregoing.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and first year above written.

SELLER:

PEMBROOK PINES ELMIRA, LIMITED

By 
Richard A. Foreman
Its Receiver

RECEIVER:

RICHARD A. FOREMAN

By 
Richard A. Foreman
Receiver

BUYER:

GREAT RADIO, LLC

By _____
William C. Christian
President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and first year above written.

SELLER:

PEMBROOK PINES ELMIRA, LIMITED

By _____
Richard A. Foreman
Its Receiver

RECEIVER:

RICHARD A. FOREMAN

By _____
Richard A. Foreman
Receiver

BUYER:

GREAT RADIO, LLC

By  _____
William C. Christian
President

Exhibit A

Local Marketing Agreement

Exhibit B
Services Agreement

Schedule 1(a)

Copies of FCC Licenses

Schedule 1(b)

Pending Applications before FCC

Special Temporary Authorities:

WEHH(AM)

WQRS(FM)

Renewal of License:

WEHH(AM)/W230BB

WELM(AM)

WLKY(FM)/W229AR/W229AS

WOKN(FM)/W273AC

Schedule 1 (d)

Assumed Contracts

ASCAP

SESAC

BMI

Radio Music License Committee

Leases of real property:

<u>Call sign</u>	<u>Fac. ID</u>	<u>Address</u>
WELM (AM)	52120	1705 Lake Street, Elmira, NY 14901;
WLKY (FM)	52122	355 Crane Road, Horseheads, NY 14845; *
WEHH (AM)	55271	1705 Lake Street, Elmira, NY 14901;
WOKN (FM),	47322	355 Crane Road, Horseheads, NY; *
W230BB (FX)	148156	355 Crane Road, Horseheads, NY; *
W273AC (FX)	47323	51 – 53 E. Market Street, Corning, NY; *
W229AS (FX)	148214	51 – 53 E. Market Street, Corning, NY; *
W229AR (FX)	157446	53 State Route 17C, Waverly, NY 14892.

Domain name agreements for various websites.

Satellite Agreement with Westwood One for WOKN.

Contract with NBC Sports for WELM.

CBS Radio Network News contract for WELM and WOEM.

Schedule 1(e)

Call Signs; Intellectual Property

<u>Call sign</u>	<u>Fac. ID</u>	<u>Location</u>
WELM (AM)	52120	Elmira, NY;
WLVY (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.

Schedule 3.3(a)

FCC Actions

None.

Schedule 3.4

Pending Litigation

Schedule 4.7

Buyer FCC Matters

Buyer is the licensee of WCBA(AM), Corning, NY, which is a part of the Elmira, NY Metro. A divestiture of WCBA may be necessary prior to the issuance by the FCC of the FCC Assignment Consent and/or the consummation of this transaction. Accordingly, Buyer shall, no later than the date the FCC Assignment Application has been filed with the FCC, (i) have entered into a legally binding agreement to sell WCBA to a third-party which is unaffiliated with Buyer and which possesses all required FCC-related qualifications, without any need for a waiver of any FCC rule or policy or any divestiture, to own and operate WCBA (“WCBA Buyer”), and (ii) have caused an acceptable application for FCC consent to the voluntary assignment of license for such station to WCBA Buyer (the “WCBA Assignment Application”) to have been duly filed with the FCC. Furthermore, Buyer shall use its best efforts to (i) prosecute the WCBA Assignment Application toward an expeditious grant and to preserve such grant, and (ii) to consummate the sale of WCBA to WCBA Buyer (“Divestiture Transaction”) no later than the Closing of this transaction if such consummation is a condition precedent to the consummation of the transactions that are the subject of this APA. If, between the date of this APA and the Closing, Buyer is able to reasonably satisfy Seller’s FCC Counsel that it has taken legally adequate action(s) to eliminate the need for the divestiture of WCBA before Buyer and Seller may lawfully consummate the transactions that are the subject of this APA, Buyer will not be required to consummate the sale of WCBA to WCBA Buyer.