

ASSET PURCHASE AGREEMENT

by and between

NEWBERRY BROADCASTING, INC.

and

RED SKY, LLC

for the purchase and sale of radio station

WWKN(FM), MORGANTOWN, KY

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made and entered effective as of August 4, 2022 by and between NEWBERRY BROADCASTING, INC., a Kentucky for-profit corporation (“Seller”), and RED SKY, LLC, a Kentucky limited liability company (“Buyer”).

Recitals

WHEREAS, Seller is the licensee of radio station WWKN(FM) (FCC Facility ID No. 170956), Morgantown, Kentucky; (the “Station”), which is authorized to operate pursuant to authorizations (the “Station’s Licenses”) issued by the Federal Communications Commission (“FCC” or “Commission”); and

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, assets relating to the Station, and to seek the consent of the FCC for an assignment of the Station’s Licenses, as set forth below, subject to the prior approval of the FCC and the other terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth below, the parties hereby agree as follows:

Section 1 **Purchase of Assets**

1.1 Assets to be Sold. On the Closing Date, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the following assets, free and clear of all liens and encumbrances (the “Station’s Assets”):

- (a) All of Seller’s rights and interests in and to the Station’s Licenses listed on **Schedule 1.1(a)** of this Agreement;
- (b) The tangible assets listed on **Schedule 1.1(b)** of this Agreement (the “Tangible Personal Property”);
- (c) An assignment of the lease for the Station’s FM transmission facilities including its transmitter and antenna as described in **Schedule 1.1(c)** of this Agreement (the “Transmitter Site Lease”);
- (d) All contracts and agreements (the “Contracts”), if any, used in the ordinary course of the Station’s business, including those listed in **Schedule 1.1(d)** of this Agreement;
- (e) The intangible assets (the “Intangible Assets”) listed on **Schedule 1.1(e)** of this Agreement; and

- (f) Books, files, and records specifically relating to the Station's Assets and used directly in connection with operations of the Station's Assets.

1.2 Excluded Assets. The Station's Assets shall not include cash, deposits, marketable securities, accounts receivable, security deposits, Seller's business records not used directly in connection with the operations of the Station's Assets such as any business record that may be shared with any of Seller's other radio stations, nor any tangible or intangible asset not specifically listed in the Schedules to this Agreement.

1.3 Liabilities. Other than the Station's Licenses, the Transmitter Site Lease, the Contracts and Intangible Assets, Buyer expressly does not, and shall not, assume or be deemed to have assumed, under this Agreement or otherwise by reason of the transactions contemplated hereby, any other liabilities, obligations or commitments of Seller.

1.4 Purchase Price. The price to be paid by Buyer for the Station's Assets (the "Purchase Price") shall be TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), which shall be paid by Buyer to Seller with: (a) a cash payment on the Closing Date of FIVE THOUSAND DOLLARS (\$5,000.00); (b) the delivery of a promissory note (the "Promissory Note") in form and substance of Exhibit 1.4(b) to this Agreement for ONE HUNDRED NINETY FIVE THOUSAND DOLLARS (\$195,000.00) with the full amount becoming due on the date ten (10) years from the Closing Date, such Promissory Note having no interest accruing or payable in the first year but subsequent to the first year accruing interest that is payable quarterly at a rate of 5% per annum; and (c) a security agreement (the "Security Agreement") in the form and substance of Exhibit 1.4(c).

1.5 Allocation. Seller shall in its sole discretion be entitled to allocate the Purchase Price among the Station's Assets for tax purposes.

1.6 Accounts Receivable. Accounts receivable, whether for cash, services or merchandise, in connection with the broadcasting operations of the Stations, including but not limited to accounts receivable for broadcast time, arising prior to the Closing Date (the "Seller's Accounts Receivable"), shall remain the property of the Seller.

Section 2 **Date of Closing**

2.1 Closing Date. The closing of the transactions contemplated in this Agreement (the "Closing") shall take place on the date (the "Closing Date") that is five (5) business days after FCC public notice in its Daily Digest of FCC Consent, as defined in Section 6 below, to the assignment by Seller to Buyer of the Station's Licenses.

2.2 Closing Time and Location. The Closing shall take place commencing at 10:00 a.m. local time at the business offices of Seller, or at such other time, location and/or manner (including exchange of closing documents by facsimile or electronic transmission) agreeable to the parties.

Section 3

Seller's Representations and Warranties

Seller hereby represents and warrants to Buyer as follows:

3.1 Organization, Authorization and Binding Obligation. Seller is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky. Seller has full power and authority to own and operate the Station and to carry on the business of the Station as now being conducted, and as proposed to be conducted by it between the date hereof and the Closing Date. Seller has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary entity action on its part. This Agreement constitutes Seller's valid, legal and binding obligation, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.2 Absence of Conflicting Agreements or Required Consents. Seller's execution, delivery and performance of this Agreement (a) does not require the consent of any third party except for the FCC Consent; (b) to the best of Seller's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; (c) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit; (d) will not result in the creation of any lien, charge or encumbrance on any of the Station's Assets; and (e) will not in any way affect or violate the terms or conditions of, or result in the cancellation, modification, revocation or suspension of, any of the Station's Licenses.

3.3 Liabilities. There are no liens or encumbrances against the Station's Assets, other than the lien of taxes not yet due and payable (collectively, "Permitted Liens").

3.4 Station's Licenses. Seller is the authorized legal holder of the Station's Licenses. The Station's Licenses are in full force and effect. No proceedings are now pending before any governmental authority with respect to the Station, other than proceedings of general applicability. Seller knows of no other facts relating to the Station that would cause the FCC to delay or deny its consent to the assignment of the Station's Licenses to Buyer hereunder, institute revocation proceedings against the Station Licenses, or otherwise subject the Station Licenses to expiration prior to its stated license renewal date. Subject to the Communications Act of 1934 (the "Communications Act"), the rules and regulations promulgated thereunder (the "FCC Rules and Regulations"), the Station's Licenses are assignable from Seller to Buyer.

3.5 Tangible Personal Property. Seller owns and has good title to each item of Tangible Personal Property to be transferred to Buyer, and none of this Tangible Personal

Property is subject to any liens or encumbrances. The Tangible Personal Property is being sold in the condition existing as of the date of this Agreement, normal wear and tear excepted, without any further representations or warranties other than the transfer of good title on the Closing Date to such assets.

3.6 Leases. Seller has delivered to Buyer a true copy of the documents comprising the Transmitter Site Lease listed on Schedule 1.1(c).

3.7 Contracts. Seller has delivered to Buyer true copies of the Contracts listed on Schedule 1.1(d). Schedule 1.1(d) lists, but is not limited to, all material executory Contracts related to the operation of the Station or to the conduct of the Station's business to which Seller is a party or under which the Station has obligations or enjoys benefits, excluding contracts for the sale of on-air spot time, commercial time, programs and announcements.

3.8 Litigation. There is no litigation or proceeding pending or, to the best of its knowledge, threatened against Seller in any federal, state or local court, or before any administrative agency, which would have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

3.9 Brokers. Seller has not retained any brokers who are entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement.

Section 4

Buyer's Representations and Warranties

Buyer represents and warrants to Seller as follows:

4.1 Organization, Authorization and Binding Obligation. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky. Buyer has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary corporate action on its part. This Agreement constitutes Buyer's valid, legal and binding obligation, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.2 Absence of Conflicting Agreements or Required Consents. Buyer's execution, delivery and performance of this Agreement (a) does not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Buyer's formation or operating

agreements; (c) to the best of Buyer's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; and (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit.

4.3 FCC Qualifications. Buyer has no knowledge of any facts which would, under present law (including the Communications Act of 1934, as amended) and the FCC Rules and Regulations, disqualify Buyer as an assignee of the Station's Licenses or as an owner and/or operator of the Station's Assets, and Buyer will not take, or unreasonably fail to take, between now and the Closing Date any action which Buyer knows or has reason to know would cause such disqualification. Buyer is legally and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the FCC Rules and Regulations.

4.4 Litigation. There is no litigation or proceeding pending or, to the best of its knowledge, threatened against Buyer in any federal, state or local court, or before any administrative agency, which would have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

4.5 Brokers. Buyer has not retained any brokers who are entitled to any commission or finder's fee in connection with the transactions contemplated by this Agreement.

Section 5

Pre-Closing Covenants

5.1 Pre-Closing Covenants of Seller. Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer:

- (a) **Affirmative Covenants.** Seller shall:
 - (i) Maintain and preserve the Station's Licenses without material change, in accord with the Communications Act, the FCC Rules and Regulations, and any other applicable federal, state or local rules and regulations; and
 - (ii) Notify Buyer of any litigation or administrative proceeding pending or, to its knowledge, threatened against Seller which is likely to delay or otherwise interfere with Closing or otherwise adversely affect any of the Station's Licenses; any material damage or destruction of any of the Station's Assets; and any adverse change in the condition of the Station which is likely to delay or otherwise interfere with Closing, or otherwise adversely affect any of the Station's Licenses.

(b) **Negative Covenants.** Seller shall not:

- (i) Create, assume or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Station's Assets that will not be extinguished on or prior to the Closing Date;
- (ii) Sell, assign, lease or otherwise transfer or dispose of any of the Station's Assets;
- (iii) Waive any material right relating to the Station or the Station's Assets;
- (iv) Take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement; or
- (v) Either itself or through any of its officers, directors, shareholders, employees, agents or any other person or entity acting on Seller's behalf, directly or indirectly, solicit or initiate any offer from, or conduct any negotiations with, any person or entity other than Buyer or its assignee(s) concerning the direct or indirect acquisition of the Station.

5.2 Pre-Closing Covenant of Buyer. Between the date hereof and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct the operations of the Station; such operations, including complete control and supervision of all Station programs, employees, policies and finances shall be the sole responsibility of Seller.

5.3 Joint Pre-Closing Covenant. Seller and Buyer will join together in seeking any required consents to the assignment of the Transmitter Site Lease and the Contracts. The Seller shall be required to use only commercially reasonable efforts to obtain required material consents or authorizations for an assignment of the contracts and agreements, and the failure of the Seller to obtain any third party consents, other than from the FCC or for the Transmitter Site Lease, shall not be a failure of a condition to Closing.

Section 6
FCC Consent

The assignment of the Station's Licenses from Seller to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent") pursuant to an application filed by Seller and Buyer with the FCC (the "Assignment Application"). The Buyer shall work with Seller to complete the Assignment Application, which shall be prepared and filed by Seller within five (5) business days of the date of this Agreement. Buyer and Seller shall each fully prosecute the Assignment Application with all diligence and shall otherwise use

their reasonable best efforts to obtain the grant of such application as expeditiously as practicable. The FCC filing fee for the Assignment Application shall be paid by Seller. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

Section 7

Instruments of Conveyance and Transfer.

At Closing, Seller shall deliver to Buyer instruments effecting the sale, transfer, assignment and conveyance of Seller's right, title and interest in and to the Station's Assets to Buyer pursuant to the terms of this Agreement, and Buyer shall deliver to Seller instruments effecting the assumption by Buyer of Seller's obligations under the Station's Assets pursuant to the terms of this Agreement, including without limitation the following:

7.1 Corporate or Member Resolutions. Certified copies of the resolutions of the Board of Directors, or managers or members of each of Seller and Buyer authorizing and approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby.

7.2 Assignment and Assumption of Licenses. An assignment and assumption, in a form acceptable to Seller and Buyer, of all right, title and interest in and to the Station's Licenses to be assigned pursuant to Section 1.1(a) of this Agreement;

7.3 Bill of Sale. A bill of sale in a form acceptable to Buyer transferring and delivering to Buyer all right, title and interest in and to the Tangible Personal Property described in Schedule 1.1(b) of this Agreement, free and clear of all liens and encumbrances;

7.4 Assignment and Assumption of Transmitter Site Lease. An assignment and assumption, in a form acceptable to Seller and Buyer, of the Transmitter Site Lease described in Section 1.1(c) of this Agreement;

7.5 Assignment and Assumption of Contracts. An assignment and assumption, in a form acceptable to Seller and Buyer, of the Contracts described in Section 1.1(d) of this Agreement;

7.6 Assignment and Assumption of Intangible Assets. An assignment and assumption, in a form acceptable to Seller and Buyer, of the Intangible Assets described in Section 1.1(e) of this Agreement; and

7.7 Further Instruments. Further instruments and documents that may be reasonably necessary to effectuate the transactions contemplated under this Agreement.

Section 8
Payment of Purchase Price

At Closing, Buyer shall cause the delivery of the Purchase Price to Seller in accordance with Section 1.4 of this Agreement.

Section 9
Expenses and Adjustments

9.1 Legal, Accounting and Other Transaction Expenses. Each party shall pay all of its own legal, accounting and other expenses which it incurs in connection with the transactions contemplated herein, except as may be otherwise provided in Section 6 with regard to the filing fee for the Assignment Application.

9.2 Transfer Taxes, Fees and Expenses. All customary federal, state and local sales and transfer taxes, if any, and any recording costs related to the transfer of the Assets shall be paid by Buyer.

9.3 Station's Income and Expenses. The operation of the Station and the income and expenses attributable thereto up until 11:59 p.m. on the day preceding the Closing Date shall be for the account of Seller and thereafter for the account of Buyer. At Closing, the following shall be adjusted and apportioned between Seller and Buyer:

- (a) Deposits placed with telephone and utility companies, and any advance rents or deposits with service companies or suppliers which shall be for the credit of the Seller;
- (b) The annual FCC regulatory fees for the Station; and
- (c) All other taxes, charges, utility bills, and expenses attributable to the operation of the Station prior to Closing.

9.4 Closing Adjustments. In the event Closing adjustments are in favor of Seller, the same shall be paid at Closing by check of Buyer or added to the Purchase Price. In the event that Closing adjustments are in favor of Buyer, the same shall be paid by check of Seller or deducted from the Purchase Price. In the event it is impractical or impossible to compute the amounts of adjustments at Closing, the amount shall be computed and paid on a date no later than 120 days following the Closing Date.

Section 10
Risk of Loss

The risk of any loss, damage or destruction to any of the Station's Assets from fire or other casualty or cause shall be borne by Seller at all times prior to Closing, and Buyer shall bear the risk of any such loss or damage thereafter.

Section 11
Termination Rights

This Agreement may be terminated prior to the Closing, upon written notice to the other, provided that the terminating party is not then in material breach or default of this Agreement upon the occurrence of any of the following:

11.1 Material Default by Buyer. By Seller for a material default by Buyer in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) days after written notice of the breach.

11.2 Material Default by Seller. By Buyer for a material default by Seller in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) days after written notice of the breach.

11.3 Failure to Consummate. By Seller if Buyer fails to cause the delivery of the Purchase Price and consummate the transaction on the Closing Date, or by Buyer if Seller fails to appear and consummate the transaction on the Closing Date.

11.4 Denial of FCC Assignment Application. By either Buyer or Seller if the FCC denies the Assignment Application (and such denial is not the fault, directly or indirectly, of the terminating party) and such order becomes a Final Order.

11.5 Passage of Time. By either Buyer or Seller if the Closing has not occurred on or prior to the date that is one (1) year subsequent to the filing of the FCC Assignment Application pursuant to Section 6 of this Agreement.

The termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination.

Section 12
Miscellaneous

12.1 Survival of Representations and Warranties. Other than the warranty of transfer of good title to Buyer as specifically provided in this Agreement, the representations and warranties in this Agreement shall not survive Closing. The covenants and agreements in this Agreement shall survive Closing until performed.

12.2 Assignment. Neither Seller nor Buyer may assign its rights and obligations hereunder. The rights and obligations of the parties hereunder shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

12.3 Construction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky without regard to choice of laws principles. Any action brought under this Agreement shall be in either the state or federal court having jurisdiction over claims arising in Morgantown, Kentucky.

12.4 Attorney's Fees and Costs. 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 or any action, the prevailing party in such lawsuit shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

12.5 Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent for next business day delivery by USPS Express Mail, Federal Express or similar recognized overnight courier service with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day after being sent. All such notices, demands, and requests shall be addressed as follows:

If to Seller:

Newberry Broadcasting, Inc.
113 West Public Square, Suite 400
Glasgow, KY 42141
Attn: W. Dale Thornhill

With a copy to:

Robert A. Silverman, Esq.
Womble Bond Dickinson (US) LLP
2001 K Street, NW
Suite 400 South
Washington, DC 20006

If to Buyer:

Red Sky, LLC
1823 McIntosh, Suite 107
Bowling Green, KY 42104
Attn: S. Walker Newberry

With a copy to:

or at such other address as either party shall specify by written notice to the other.

12.6 Multiple Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All of such counterpart signature pages shall be read as though all of the signers had signed a single signature page. This Agreement may be signed and exchanged by facsimile transmission or PDF scans, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

12.7 Entire Agreement. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all other and prior memoranda and agreements between the parties with respect to such subject matter and may not be modified or amended except by a written instrument signed by all of the parties hereto.

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

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

12.10 Further Assurances. From time to time after Closing at another party's request and without further consideration, a party shall execute and deliver such further instruments of conveyance, assignment and transfer, and take such other actions as the requesting party may reasonably request, in order to more effectively convey and transfer any of the Station's Assets.

12.11 Investigations. No inspection or investigation made by or on behalf of Buyer, or Buyer's failure to make any inspection or investigation, shall affect Seller's representations, warranties, and covenants set forth in this Agreement, or be deemed to constitute a waiver of any of those representations, warranties, and covenants.


12.12 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

NEWBERRY BROADCASTING, INC.

By: 
W. Dale Thornhill
Vice President

RED SKY, LLC

By: 
S. Walker Newberry
Member