

W263CV and W266CR ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the 30th day of March, 2016, by and between **Indiana Community Radio Corporation** ("Seller") and **Grace Media, Inc.** ("Grace") and **New England Communications, Inc.** ("New England") (collectively, "Buyer").

WITNESSETH:

WHEREAS, Seller is the permittee of FM broadcast translator stations W263CV, Evansville, Indiana (Facility ID No. 144388) and W266CR, Henderson, Kentucky (Facility ID No. 144380) (each a "Station" and together the "Stations"); and

WHEREAS, Seller desires to sell and assign and Buyer desires to purchase and acquire certain assets owned or held by Seller for use in the construction and operation of the Stations; and

WHEREAS, the construction permits issued by the Federal Communications Commission ("Commission" or "FCC") for the construction of the Stations may not be assigned to Buyer without the prior consent of the Commission;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

1. SALE OF ASSETS AND ASSIGNMENT OF PERMITS

At the Closing, and subject to the provisions of Paragraph 2 hereof, Seller shall sell or assign and transfer to Buyer and Buyer shall purchase from Seller the following assets ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. **Licenses and Authorizations**: The construction permits for the Stations (BNPFT-20151216ASE and BNPFT-20151216AET, including the right to the use of the Stations' call signs) which have been issued by the Commission, together with all other authorizations issued by the FCC or other governmental agencies and that are associated exclusively with the Stations, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Permits").

B. **Intangible Personal Property**: All good will, trademarks, service marks, copyrights, trade names, common law property rights and all other intangible personal property owned by Seller and used or intended for use by it exclusively in connection with the construction and operation of the Stations (the "Intangible Property").

C. **Records**: Such of Seller's files, warranties, technical data, reports and other records relating exclusively to the Stations as Buyers may reasonably request (the "Records").

2. **ASSETS EXCLUDED**

It is understood and agreed that the Assets purchased pursuant to this Agreement shall not include (a) any equipment, it being understood that Buyers shall provide all equipment needed to construct and operate the Stations; (b) the transmitter sites specified in the Permits or any rights to the use thereof; (c) assets held by Seller and intended for use in Seller's other broadcast stations and businesses; (d) Seller's cash, bank accounts, accounts or notes receivable and investments; and (e) Seller's tax and other business records.

3. **PURCHASE PRICE AND TERMS**

The purchase price for the Assets being purchased by Buyers hereunder (the "Purchase Price") is Sixty Thousand Dollars (\$60,000), which shall be paid to Seller upon consummation of this Agreement by wire transfer, cashier's check or such other cash equivalent as Seller may reasonably request. Thirty Thousand Dollars (\$30,000) of the Purchase Price shall be allocated to each of the Permits. Both Buyers and Seller shall rely upon such allocation for all tax reporting purposes.

4. **PRORATIONS AND ADJUSTMENTS**

All taxes, prepayments (to the extent Buyers obtain the asset for which such prepayment was made), deposits and any income and operating expenses of the Station shall be prorated between Buyers and Seller as of 12:01 a.m. on the Closing Date. Insofar as feasible, prorations under this paragraph shall be determined and paid on the Closing Date as an adjustment to the Purchase Price, with a final accounting of prorated items, and the sum due from one party to another pursuant to this proration paid, within sixty (60) days after the Closing Date.

5. **EXPENSES**

All expenses incurred with respect to the preparation and implementation of this Agreement and the transactions contemplated hereunder shall be paid by the party incurring the same, provided, however, that FCC processing fees for the applications described in Paragraph 7 hereof, and recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyers, if any, will be paid one-half by Buyers and one-half by Seller.

6. **ASSUMPTION OF CERTAIN LIABILITIES**

At the Closing Buyers shall not assume responsibility for any of Seller's liens, taxes, debts, accounts payable, contracts or Station-related obligations.

7. **FILING OF FCC APPLICATION**

Buyers and Seller agree to proceed no later than five (5) days from execution hereof to file applications requesting FCC consent to the transactions herein set forth (each an

“Application” and together the "Applications"). The parties agree to prosecute the Applications, defend them against challenges and file any amendments or additional information requested by the FCC, all in good faith and with due diligence.

8. **TERMINATION**

A. If the Commission has not granted either or both Applications within six months after the date hereof, then either Buyers or Seller may terminate this Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder, and provided, further, that if only one of the Applications has not been granted within such period, then this Agreement may be terminated only with respect to the portion of the Assets relating to the Station that is the subject of such ungranted Application.

B. Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, **provided, however**, that if any such breach is not reasonably susceptible of being cured within ten (10) days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.

9. **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties, all of which have been relied upon by Buyers in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization**: Seller is a corporation organized and in good standing in the state of Indiana and has full power and authority to enter into and perform this Agreement.

B. **Authorization**: The execution, delivery and performance of this Agreement constitute a valid and binding agreement of Seller, enforceable in accordance with its terms.

C. **No Contravention**: The execution, delivery and performance of this Agreement by Seller will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Seller is a party or by which he or any of the Assets is bound or affected.

D. **Licenses**: The Permits are the only authorizations issued by the Commission and other governmental agencies needed to construct the Stations pursuant to the parameters set forth in the Permits and as otherwise required by applicable law. The Permits are in material compliance with all applicable rules and policies of the FCC and other governmental agencies.

E. **Compliance with Laws; Litigation**: There is no judgment outstanding and, to the best of Seller's knowledge, no litigation, proceeding or investigation of any nature (other than that intended to affect substantial segments of the industry as a whole) pending or threatened which is likely to materially and adversely affect the construction or operation of the Stations, the use by Buyers of the Assets, or Seller's ability to timely consummate all of the transactions contemplated herein.

10. **COVENANTS OF SELLER**

A. **Negative**: Between the date hereof and the Closing Date or earlier termination of this Agreement, Seller will not sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets nor discuss any such sale, assignment, lease, conveyance, transfer or disposition with any party other than Buyers, nor create any lien or encumbrance upon any of the Assets.

B. **Affirmative**: Pending the Closing Date, Seller will:

(i) Give to Buyers, their counsel, engineers, accountants and other authorized representatives, reasonable access during normal business hours to all of the properties, premises, books and records pertaining to the Stations for the purposes of inspection; and

(ii) Promptly notify Buyers of any unusual or material developments with respect to the Stations; and remove any and all violations of Commission rules or regulations which come to its attention or assume responsibility for the costs of removing same, including the payment of any fines that may be assessed for any such violation.

11. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER**

Buyers make the following representations, warranties and covenants, all of which have been relied upon by Seller in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization**: Buyers are corporations duly organized, validly existing, and in good standing under the laws of the State of South Carolina and have full power and authority to enter into and perform this Agreement.

B. **Authorization**: The execution, delivery and performance of this Agreement have been duly authorized by Buyers, and constitute a valid and binding agreement of Buyers, enforceable in accordance with its terms.

C. **No Contravention**: The execution, delivery and performance of this Agreement by Buyers will not violate any provision of its organizational documents and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or

other instrument to which Buyers or any of their principals is a party or by which they are bound or affected.

D. **Qualification:** Buyers are fully qualified, legally and financially, to become the permittees of the Stations and to timely consummate all of the transactions contemplated by this Agreement.

12. **PERMIT MODIFICATIONS**

Seller acknowledges that Buyers intend to utilize the Stations as translators for their AM stations – W263CV for WLMR, Chattanooga, Tennessee and W266CR for WBXR, Hazel Green, Alabama. As soon as practicable following acceptance of the Applications, Buyers shall file minor change applications to specify new sites and/or channels for the Stations consistent with the parameters set out in the FCC’s *Revitalization of the AM Service*, FCC 15-142, released October 23, 2015 and the FCC’s *Public Notice*, DA 1491, released December 23, 2015 (the “Modifications”). Buyers shall be responsible for the entire cost of preparing, filing and prosecuting the Modifications, for which Seller shall extend reasonable cooperation.

13. **RISK OF LOSS**

The risk of loss or damage to any of the Assets shall be upon Seller prior to the Closing, and thereafter upon Buyers.

14. **CLOSING DATE AND PLACE**

The Closing Date and time shall be fixed by Buyers by giving at least five (5) days' written notice thereof to Seller. Unless extended by mutual written consent of Buyers and Seller, the date of Closing shall be five (5) days after public notice of FCC grant of the Applications, unless a petition to deny or informal objection shall have been filed against either Application, in which case Buyer may elect to defer the Closing with respect to the challenged Application until the FCC’s consent thereto shall have become final (that is, no longer subject to reconsideration, review or appeal by or to the Commission or any court of competent jurisdiction). The Closing shall take place by the exchange of scanned or telecopied executed documents or in such other manner as the parties may mutually agree. At the Closing, Seller shall deliver to Buyers such bills of sale, assignments and other instruments of conveyance transferring title of the Assets as Buyers may reasonably request, and Buyers shall pay the Purchase Price to Seller in the manner specified in paragraph 3.

15. **REMEDIES UPON TERMINATION OR DEFAULT**

If this Agreement is terminated due to no fault of Buyers or Seller, then no party shall have any further liability to the others. If the Agreement is terminated due to a material default of Seller then, in addition to any other remedies to which they may be entitled, Buyers may seek decrees of specific performance, it being agreed by Buyers and Seller that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyers for the loss of an opportunity to acquire the Assets on the terms set forth herein.

16. **INDEMNIFICATION**

Seller shall indemnify, defend, and hold Buyers harmless against all claims, demands and legal actions and will reimburse Buyers for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by Seller of any of its representations, warranties or covenants set forth herein. Buyers shall indemnify, defend and hold Seller harmless against all claims, demands and legal actions, and will reimburse Seller for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the material breach by either Buyer of any of its representations, warranties or covenants set forth herein. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.

17. **SURVIVAL**

The representations, warranties, covenants, and agreements contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder for a period of six (6) months.

18. **BROKER/FINDER**

Buyers and Seller hereby mutually represent that there are no finders, consultants or brokers involved in this transaction other than Roehling Broadcast Services, whose fee shall be the exclusive responsibility of the Seller, and that neither Seller nor either Buyer has agreed to pay any other brokers', finders' or consultants' fees in connection with this transaction.

19. **NOTICES**

All necessary notices, demands and requests shall be deemed duly given if mailed by registered or certified mail, postage prepaid, addressed as follows:

Buyers: Grace Media, Inc.
New England Communications, Inc.
7924 Lasley Forest Road
Lewisville, North Carolina 27023
Attn: Robert L. Wilkins, President

With a copy, which shall not constitute notice, to:

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1200 19th Street, NW, 5th Floor
Washington, DC 20036

Seller: Indiana Community Radio Corporation

P O Box 846
Greenfield, Indiana 46140
Attn: Linda Jerome, President

With a copy, which shall not constitute notice, to:

Richard Carr, Esq.
J Richard Carr Consulting Inc
5528 Trent St
Chevy Chase, MD 20815

20. **CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

21. **ASSIGNMENT AND BENEFIT**

This Agreement is not assignable by either Buyers or Seller without written consent of the other. This Agreement and all of the obligations set forth herein shall be binding upon the parties and their respective heirs, assigns and successors.

22. **COOPERATION**

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement.

23. **TIME OF ESSENCE**

Time is of the essence with respect to every provision of this Agreement.

24. **ENTIRE AGREEMENT**

This Agreement embodies the entire agreement among the parties and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

25. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

EXECUTED on the day first above written.

ATTEST:

INDIANA COMMUNITY RADIO CORPORATION

_____ By: 
Linda Jerome, President

ATTEST:

GRACE MEDIA, INC.

_____ By: _____
Robert L. Wilkins, President

ATTEST:

NEW ENGLAND COMMUNICATIONS, INC.

_____ By: _____
Robert L. Wilkins, President

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EXECUTED on the day first above written.

ATTEST: **INDIANA COMMUNITY RADIO CORPORATION**

_____ By: _____
Linda Jerome, President

ATTEST: **GRACE MEDIA, INC.**

Julie Ziegler By: _____
Robert L. Wilkins, President

ATTEST: **NEW ENGLAND COMMUNICATIONS, INC.**

Julie Ziegler By: _____
Robert L. Wilkins, President