

**ASSET PURCHASE AGREEMENT**

**by and between**

**INDEPENDENCE MEDIA HOLDINGS, LLC**

**and**

**NEWBERRY BROADCASTING, INC.**

**for the purchase and sale of**

**RADIO STATION WWKN(FM)**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is made and entered effective as of February 26, 2008, by and between INDEPENDENCE MEDIA HOLDINGS, LLC (“Seller”), and NEWBERRY BROADCASTING, INC. (“Buyer”).

### Recitals

WHEREAS, Seller is the permittee of radio station WWKN(FM), licensed to Morgantown, KY (FCC Facility ID No. 170956) (the “Station”), which is authorized to operate on 99.1 MHz 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 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 (the “Station’s Assets”):

- (a) All of Seller’s rights and interests in and to the Station’s Licenses, including those listed on **Schedule 1.1(a)**; and
- (b) Copies of all filings with the FCC and authorizations issued by the FCC relating to the Station, and all books, files (including, without limitation, public files), records, and logs required by the FCC to be maintained in connection with the operation of the Station.
- (c) The Station’s Assets shall not be deemed to include those assets listed on **Schedule 1.1(c)**.

**1.2 Liabilities/Accounts.** 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 liabilities, obligations or commitments of Seller of any nature whatsoever arising during, or attributable to, any period of time on or prior to Closing.

**1.3 Purchase Price.** The price to be paid by Buyer for the Station’s Assets (the “Purchase Price”) shall be Two Hundred Fifty Thousand Dollars (\$250,000.00), which shall be

payable to Seller at the Closing by immediately available funds to an account or accounts designated by Seller.

**1.4 Escrow Deposit.** Simultaneously with the execution of this Agreement, Buyer is depositing Twelve Thousand Five Hundred Dollars (\$12,500.00) (the “Escrow Deposit”) with Patrick Communications, LLC (“Escrow Agent”) pursuant to an Escrow Agreement among Seller, Buyer and Escrow Agent. At Closing, the Escrow Deposit along with accrued interest shall be returned to the Buyer. In the event that this Agreement is terminated by Seller due to a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder by Buyer, the Escrow Deposit and any accrued interest thereon will be disbursed to Seller as its exclusive remedy. If this Agreement is terminated for any other reason, the Escrow Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Escrow Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement.

**1.5 Allocation.** Buyer and Seller shall negotiate the allocation of the Purchase Price among the Station’s Assets for tax purposes within ninety (90) days after the Closing Date. If Buyer and Seller do not reach an agreement concerning the allocation of the Purchase Price within such time (or, if earlier, prior to any applicable filing deadline), then Buyer and Seller each may file their respective tax returns reflecting the allocation determined by it in accordance with requirements of Section 1060 of the Internal Revenue Code of 1986, as amended.

## **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 to the assignment by Seller to Buyer of the Station’s Licenses by initial order, except that if there have been any third party filings at the FCC in response to or in opposition to the Assignment Application or issuance of FCC Consent, at Buyer’s option the Closing shall take place on the date that is five (5) business days subsequent to FCC Consent becoming a “Final Order” (as defined in Section 6.2 below), but in either case subject to satisfaction or waiver of the conditions to Closing set forth in Sections 7 and 8 below.

**2.2 Closing Time and Location.** The Closing shall take place commencing at 10:00 a.m. local time at the business offices of Buyer, 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 State of Delaware. 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. 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 has been duly and validly authorized by all necessary corporate 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) will not violate any provision of Seller's formation and operating documents; (c) 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; (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; (e) will not result in the creation of any lien, charge or encumbrance on any of the Station's Assets; and (f) 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 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 (including, without limitation, any proceeding which seeks the revocation or forfeiture of or opposes or challenges the renewal of any of the Station's Licenses), 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.

**3.4 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").

**3.5 Station's Licenses.** The Station's Licenses are all of the FCC authorizations required for the lawful conduct of the business and operation of the Station. Seller is the authorized legal holder of all of the Station's Licenses. None of the Station's Licenses is subject to any restriction or condition which could limit the operation of the Station with the facilities set

forth in the Station's Licenses (other than as may be set forth on the face 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 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. Subject to the Communications Act of 1934 (the "Communications Act"), and the rules and regulations promulgated thereunder (the "FCC Rules and Regulations"), the Station's Licenses are assignable from Seller to Buyer.

**3.6 Title to Tangible Personal Property.** Seller owns and has good title to each item of Tangible Personal Property to be transferred to Buyer, and none of the Tangible Personal Property is subject to any liens or encumbrances, except Permitted Liens.

**3.7 Compliance With Laws.** With respect to the Station and the Station's Licenses, Seller has not received any notice asserting any non-compliance in any material respect by it with any applicable statute, rule or regulation, federal, state or local, or any agency thereof, having jurisdiction over it that has not been resolved. Seller is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority with respect to the Station. To the best of Seller's knowledge, Seller is in compliance in all material respects with all laws, regulations and governmental orders applicable to the conduct of the business and operations of the Station, and its use of the Station's Assets does not violate in any material respect any of such laws, regulations or orders or the terms and conditions of the Station's Licenses. The Station's tower site as specified in the Station's Licenses, and the Seller's actions in applying for the Station's Licenses to use such tower site, are in compliance in all material respects with the Commission's rules set forth in 47 C.F.R. § 1.1307 and § 1.1311.

**3.8 Reports.** All material returns, reports and statements which are currently required to be filed by Seller with the FCC or with any other governmental agency with respect to the Station or the Station's Assets have been filed. All material reporting requirements of the FCC and other governmental authorities having jurisdiction over the Station or the Station's Assets have been complied with by Seller.

**3.9 Tax Matters.** There are no deficiencies or notices of claims or assessments of federal, state, county or local income, excise, import or export taxes, interest or penalties by any federal, state, county, local or other taxing authority against Seller with respect to the Station or the Station's Assets, and Seller is not a party to any action for the collection of taxes with respect to the Station or the Station's Assets, nor is Seller aware of any threatened or contemplated action for the collection of taxes from Seller which might impede the parties' ability to consummate the transactions contemplated in this Agreement.

**3.10 Bulk Sales.** The purchase and sale of the Station's Assets and the other transactions contemplated in this Agreement will be free and clear of any and all claims by creditors of Seller under any bulk sales or similar laws or statutes.

**3.11 Insolvency.** No insolvency proceedings of any nature, including without limitation, bankruptcy, receivership, reorganization, composition, arrangement with creditors, voluntary or involuntary, affecting Seller are pending, and Seller has made no assignment for the benefit of creditors, nor, to its knowledge, has any person taken any action with a view to the institution of any insolvency proceedings.

**3.12 Brokers.** Other than Patrick Communications, LLC whose commission shall be the responsibility of the Seller, 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 corporation 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 Articles of Incorporation or Bylaws; (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, financially 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 Financial Capabilities.** Buyer is financially capable of carrying out its financial obligations under this Agreement, including, without limitation, the payment of the Purchase Price. No insolvency proceedings of any nature, including without limitation, bankruptcy, receivership, reorganization, composition, arrangement with creditors, voluntary or involuntary, affecting Buyer are pending, and Buyer has made no assignment for the benefit of creditors, nor, to its knowledge, has any person taken any action with a view to the institution of any insolvency proceedings.

**4.6 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;
  - (ii) Maintain Station's Licenses in all material respects with the Communications Act, the FCC Rules and Regulations, and any other applicable federal, state or local rules and regulations. Upon receipt of notice of violation of any such laws, rules and regulations, Seller will promptly notify Buyer of such notice and use its best efforts to contest in good faith or to cure such violation prior to the Closing Date;
  - (iii) 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;

- (iv) For the purpose of operations subsequent to Closing, complete and file at the FCC at Buyer's expense an FCC Form 301 Application for Construction Permit to modify Station's Licenses to a transmitter site location of Buyer's choice (the "Modified Construction Permit Application");
  - (v) Apply to the FCC for a call sign of the Buyer's choice at Buyer's expense; and
  - (vi) For the purpose of operations subsequent to Closing, complete and file at the FCC at Buyer's expense an application for an STL license with a path from the Buyer's studios to the Station's transmitter site.
- (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, except Permitted Liens;
  - (ii) Sell, assign, lease or otherwise transfer or dispose of any of the Station's Assets outside the ordinary course of business;
  - (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;
  - (v) Agree to or participate in any counterproposal, rulemaking, downgrade, minor modification or other filing with the FCC with respect to the Station;
  - (vi) 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 or the sale of all or a substantial portion of its air-time pursuant to a time brokerage agreement, or will enter into any such transaction; or
  - (vii) Cause or permit, by any act or failure to act, any of the Station's Licenses to expire or be surrendered or adversely modified, or take any action which could cause the FCC or any other governmental

authority to institute proceedings for the suspension, revocation or adverse modification of any of the Station's Licenses.

**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.

## **Section 6** **FCC Consent**

**6.1 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 by Seller and Buyer (the "Assignment Application"). The Assignment Application shall be filed by Seller and Buyer within five (5) business days of the date of this Agreement and thereafter 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 Commission filing fee for the Assignment Application shall be paid one-half by Seller and one-half by Buyer. 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.

**6.2 Final Order.** As used in this Agreement, the term "Final Order" means a written action or order issued by the FCC granting the FCC Consent and (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration or appeal and the periods provided by statute or FCC regulations for filing any such requests and for the FCC to set aside the action on its own motion have expired, or (ii) in the event of review, reconsideration or appeal, the FCC upholds the action and the period provided by statute or FCC regulations for further review, reconsideration or appeal has expired.

**6.3 Rescission.** If the Closing occurs prior to the FCC Consent becoming a Final Order, and prior to becoming a Final Order the FCC Consent is reversed or otherwise set aside, and there is a Final Order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the Station's Licenses to Seller, then the purchase and sale of the Station's Assets shall be rescinded. In such event, Buyer shall reconvey to Seller the Station's Assets, and Seller shall repay to Buyer the Purchase Price and reimburse Buyer for any costs of construction of the facilities specified by the Station's Licenses as may be amended or modified. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final Order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station's Assets to Seller), and make such payments as are necessary to make each party whole with respect to such rescission.

**Section 7**  
**Conditions Precedent to Buyer's Obligations**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Application has been granted) Buyer may waive in writing:

**7.1 Representations, Warranties and Covenants.** All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Buyer in its sole discretion) which arise after the date hereof in the ordinary course of the business of the Station. All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects. In addition, Seller shall have delivered to Buyer a certificate dated the Closing Date and signed by a representative of Seller, to the effect that, except as disclosed in the certificate, the conditions set forth in this Section 7.1 have been satisfied.

**7.2 FCC Consent.** The FCC Consent shall have been granted and at Buyer's option pursuant to Section 2.1 shall have become a Final Order.

**7.3 Governmental Authorizations.** Seller shall be the holder of the Station's Licenses, and there shall not have been any modification of any of the Station's Licenses (without Buyer's consent) which could have a material adverse effect on the Station. No proceeding shall be pending (other than proceedings of general applicability), the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any of the Station's Licenses or the transfer thereof to Buyer. Additionally, all statutory and other governmental requirements for the valid consummation by Buyer of the transactions contemplated by this Agreement shall have been fulfilled, and all authorizations, consents and approvals of all federal, state, local and foreign governmental agencies and authorities required to be obtained in order to permit the consummation by Buyer of the transactions contemplated by this Agreement shall have been obtained.

**7.4 Intentionally Omitted.**

**7.5 Adverse Proceedings.** No suit, action or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effectuate the transactions contemplated by this Agreement in accordance with its terms.

**7.6 Instruments of Conveyance and Transfer.** Seller shall have delivered 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, including without limitation the following:

- (a) An assignment 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; and
- (b) Further instruments and documents may be reasonably necessary to effect the transactions contemplated under this Agreement.

**7.7 Intentionally Omitted.**

**Section 8**  
**Conditions Precedent to Seller's Obligations**

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Application has been granted) Seller may waive in writing:

**8.1 Payment of Purchase Price.** On the Closing Date, Buyer shall pay the Purchase Price in accordance with Section 1.3 of this Agreement.

**8.2 FCC Consent.** The FCC Consent shall have been granted.

**8.3 Representations, Warranties and Covenants.** All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of that date except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Seller in its sole discretion). All terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects. In addition, Buyer shall have delivered to Seller a certificate dated the Closing Date and signed by a representative of Buyer, to the effect that, except as disclosed in the certificate, the conditions set forth in this Section 8.4 have been satisfied.

**8.4 Adverse Proceedings.** No suit, action or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**Section 9**  
**Transfer Taxes, Fees and Expenses**

**9.1 Transfer Taxes.** Any transfer taxes and recording fees assessed or levied in connection with the sale of the Station's Assets to Buyer shall be paid by Buyer.

**9.2 Station Expenses.** Except as otherwise provided in this Agreement, income and operating expenses, if any, pertaining to the conduct and operation of Station shall be prorated as 12:01 a.m. on the Closing Date in accordance with generally accepted accounting principles, so that, as between Seller and Buyer, Seller shall receive all revenues and be responsible for all expenses, costs and liabilities allocable to the period prior to the Closing Date, and Buyer shall receive all revenues and be responsible for all expenses, costs and liabilities allocable to the period thereafter. Such prorations shall include without limitation all FCC regulatory fees which are payable in arrears at the end of the Federal fiscal year.

**9.3 Parties' Expenses.** Except as provided in Section 6.1 with regard to the filing fee for the Assignment Application, each party shall pay all of its own legal, accounting and other expenses which it incurs in connection with the transactions contemplated herein.

### **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** **Employees**

Seller has no employees associated with the operation of the Station. .

### **Section 12** **Termination Rights**

**12.1 Termination Rights.** Without limiting the right of either party to terminate this Agreement as otherwise provided herein, this Agreement may be terminated prior to the Closing, upon written notice to the other, upon the occurrence of any of the following:

- (a) By either Buyer or Seller, as the case may be, for a material default by the other in the observance or performance of any term or covenant hereunder or a material breach by the other 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.
- (b) 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.
- (c) By either Buyer or Seller if the Closing has not occurred on or prior to the date fifteen (15) months after the date 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 13** **Pre-Closing Remedies**

**13.1 Seller's Breach.** In the event of a material default by Seller in the observance or performance of any term or covenant hereunder or a material breach by Seller 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 from Buyer, Buyer may elect to either: (i) terminate this Agreement and sue for damages, or (ii) bring an action to enforce the terms of this Agreement by decree of specific performance (subject to obtaining any necessary FCC consent), it being agreed that the Station's Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Seller agrees to waive the defense in any such action for decree of specific performance that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

**13.2 Buyer's Breach.** In the event of a material default by Buyer in the observance or performance of any term or covenant hereunder or a material breach by Buyer 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 from Seller, Seller may terminate this Agreement and receive the Escrow Deposit and any accrued interest thereon as its sole remedy.

### **Section 14 – Post-Closing Remedies**

**14.1 Seller's Indemnities.** Seller shall indemnify, defend and hold Buyer harmless from and against any and all losses, costs, liabilities, claims, actions, damages and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description, arising out of or in connection with (a) the breach of any representation, warranty, covenant or agreement of Seller set forth in this Agreement (including the schedules hereto) or in any other document delivered to Buyer pursuant hereto; (b) any claims arising as the result of the failure of Seller to comply with the provisions of any bulk sales or similar laws applicable to the transfer of the Station's Assets to Buyer; (c) any liability of Seller; (d) a claim relating to the conduct of the business and operations of the Station and the Station's Assets prior to the Closing Date, including, without limitation, any taxes, assessments or similar charges relating to the operation of the Station accrued or attributable to periods prior to the Closing Date; or (e) any claims by any of Seller's employees arising out of their employment with Seller.

**14.2 Buyer's Indemnities.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, costs, liabilities, claims, actions, damages and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description arising out of, or in connection with (a) the breach of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement or in any other document delivered

to Seller pursuant hereto; or (b) a claim relating to the conduct of the business and the operation of the Station by Buyer on or after the Closing Date.

**14.3 Notice of Claim.** If any action, suit or proceeding shall be commenced by a third party against Buyer or Seller, as the case may be, in respect of which Buyer or Seller proposes to seek indemnification from the other under this Section 14 (a “Third-Party Claim”), then such party shall promptly notify the party from whom indemnification is sought (hereinafter the “Indemnifying Party”) to that effect. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such Third-Party Claim, and the other party shall cooperate with all reasonable requests of the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of a Third-Party Claim, then the other party shall have the right to participate in the defense of such claim at its own expense. If a Third-Party Claim requires immediate action, then the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third-Party Claim, then it shall be bound by the results obtained by the other party with respect to such Third-Party Claim, but no settlement of a Third-Party Claim may be made by the Indemnifying Party without the written consent of the party being indemnified.

## **Section 15** **Miscellaneous**

**15.1 Survival of Representations and Warranties.** Other than as specifically provided in this Agreement, the representations and warranties in this Agreement shall survive Closing for a period of one year from the Closing Date. If within such one year period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

**15.2 Assignment.** Seller may not assign its rights and obligations hereunder without the prior written consent of Buyer, (except to an affiliate of Seller if required by the FCC, which shall not require consent), which consent will not be unreasonably withheld. Buyer may assign all or a portion of its rights and obligations hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that: any such assignment does not delay processing of the Assignment Application, grant of the FCC Consent or Closing; such assignee delivers to Seller a written assumption of this Agreement; and Buyer shall remain liable for all of its 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.

**15.3 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 Butler County, Kentucky.

**15.4 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.

**15.5 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 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:

Independence Media Holdings, LLC  
8226 Douglas Avenue, Suite 627  
Dallas, TX 75225-5928  
Attn: David Jacobs  
with copy (which shall not constitute notice) to:

Anthony T. Lepore, Esq.,  
Anthony T. Lepore, Esq., P.A.  
P.O. Box 823662  
South Florida, FL 33082-3662

If to Buyer:

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

with copy (which shall not constitute notice) to:

John F. Garziglia, Esq.  
Michael H. Shacter, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, NW  
Suite 700  
Washington, DC 20005

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

**15.6 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, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

**15.7 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.

**15.8 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.

**15.9 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.

**15.10 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.

**15.11 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.

**15.12 Confidentiality.** Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement. Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

**15.13 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.

**15.14 No Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

**15.15 Announcements.** Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

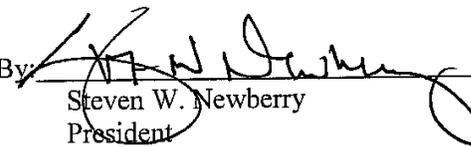
[SIGNATURE PAGE FOLLOWS]

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

**INDEPENDENCE MEDIA HOLDINGS, LLC**

By: \_\_\_\_\_  
David Jacobs  
President & CEO

**NEWBERRY BROADCASTING, INC.**

By:   
Steven W. Newberry  
President

**SCHEDULE 1.1(a)**

**Station's Licenses**

Station WWKN(FM)  
Morgantown, Kentucky  
Facility ID# 170956  
FCC File No. BNPH-20070430AAH  
Expiration Date: July 3, 2010

**SCHEDULE 1.1(a)**

**Tangible Personal Property**

None

## **SCHEDULE 1.1(c)**

### **Excluded Assets**

Cash, cash equivalents, accounts receivable and Seller's business records.

Any assets of Seller not used or held for use in the operation of the Station.

Seller's corporate and trade names, charter documents, and books and records relating to the organization, existence or ownership of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station.

All contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith.

All rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station and the Station's Assets, to the extent arising during or attributable to any period prior to Closing.

All deposits and prepaid expenses (subject to proration under this Agreement).

All claims of Seller with respect to any tax refunds.