

## **ASSET SALE & PURCHASE AGREEMENT**

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THIS ASSET SALE & PURCHASE AGREEMENT ("the Agreement") is made and entered into this 22nd day December, 2020 by and between **First State Bank of the Southeast**, formerly First State Financial, Inc., a Kentucky banking entity, located at 1048 West Highway 92, Williamsburg, Kentucky 40769, as attorney in fact for **Choice Radio Corporation**, a Kentucky corporation ("Choice Radio") having its principal place of business at 201-A East Main Street, Stanford, Kentucky 40484 ("Seller") and **Roy Jaynes Broadcasting, LLC**, a Kentucky limited liability company, of 840 First Street, Barbourville, Kentucky 40906 ("Purchaser").

WHEREAS, First State Bank of the Southeast ("the Bank") obtained an Amended Judgment and Order from the Whitley Circuit Court, Special Judge Kent Hendrickson on November 20, 2019, a true copy of which is annexed to this agreement as Exhibit 1 which authorized the Bank to transfer, sell, and convey certain assets of Choice Radio Corporation ("the Assets"), transfer one thousand (1000) shares of Choice Radio's stock, and to act as attorney in fact for Choice Radio with respect to such sale and,

WHEREAS, the Purchaser desires to purchase the Assets of Choice Radio as described within the subject Amended Judgment entered November 20, 2019 and as more particularly described herein,

NOW THEREFORE, in consideration of the mutual conveyances contained in this agreement and intending to be legally bound, Seller and Purchaser hereby agree as follows:

### **I. PURCHASE AND SALE OF CHOICE RADIO STOCK AND ASSETS.**

Subject to prior Federal Communications Commission ("FCC") consent, Seller hereby agrees to sell, transfer, convey, and assign to Purchaser and Purchaser hereby agrees to purchase from the Seller only the following described Assets of Choice Radio:

All of Choice Radio Corporation's equipment, furniture, fixtures, accounts, inventory, general intangibles, contract rights, all present and future authorizations, permits, licenses, franchises, government authorizations, permits, including Choice Radio's rights, if any, under present and future authorizations, permits, and licenses issued or granted to Choice Radio by the Federal Communications Commission (each an "FCC license") for the ownership and operation of radio stations WKKQ-FM (FCC Facility ID No. 3954), WYWY(AM) (FCC Facility ID No. 3953), and FM translator W227CD (FCC Facility ID No. 158017), each licensed to Barbourville, Kentucky, and radio stations WTBK(FM) (FCC Facility ID No. 39774), WWXL(AM) (FCC Facility ID No. ), and FM translator W283AI (FCC Facility ID No. 155775), each licensed to Manchester, Kentucky, and all rights incident and apparent to such authorizations, permits, and licenses (to the extent permitted by federal law and FCC rules and policies together with 1,000 shares of Choice Radio Corporation stock (hereinafter "the Assets").

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## **II. EXCLUDED ASSETS.**

Other than the Assets and the stock described in the preceding paragraph, there are no other Assets whether tangible, intangible, real, personal, or otherwise to be sold, transferred, assigned, or conveyed by the Seller to the Purchaser.

## **III. ASSETS TRANSFERRED AS IS, WHERE IS.**

The parties hereto do hereby stipulate and agree that the Assets which are the subject of this Agreement are being transferred as is, where is, by the Seller to the Purchaser and the Seller makes absolutely no warranties whatsoever as to the Assets' condition, location, usability, marketability, profitability, or otherwise. Purchaser acknowledges that it has conducted its own due diligence and its own investigation into the Assets, their location, usability, feasibility, profitability, and as otherwise determined for itself the extent to which the Purchaser may make use of said Assets prior to the execution of this Agreement.

## **IV. PRE-CLOSING LIABILITIES OF CHOICE RADIO CORPORATION.**

The parties acknowledge that the Seller makes no warranty, affirmation, promise, or assurance whatsoever of or concerning or relating to any pre-closing liabilities that might exist with respect to Choice Radio and its Assets. The Purchaser has conducted its own due diligence investigation concerning any potential liabilities of Choice Radio prior to the execution of this Agreement and Seller makes no warranty, promise, assurance, or representation as to the existence of any pre-closing liabilities affecting Choice Radio or its Assets.

## **V. NO WARRANTY CONCERNING LIENS OR ENCUMBRANCES.**

The parties acknowledge that the Seller makes no warranty, promise, assurance, or representation concerning the existence of any other liens or encumbrances that might be affecting the Assets. The Purchaser has conducted its own due diligence investigation prior to the execution of this Agreement concerning the existence, if there be, of any liens or encumbrances that be affecting the Assets and Purchaser acknowledges that it accepts the Assets subject to any existing liens or encumbrances, if any there be.

## **VI. ASSUMED CONTRACTS.**

Seller is transferring and Purchaser shall assume all existing unexpired contracts to which Choice Radio is a party at the time of closing.

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## **VII. RETENTION OF ANY EMPLOYEES.**

Seller makes no warranty, promise, assurance, or representation concerning the Purchaser's ability to retain any employees of Choice Radio (if any). Seller has no knowledge concerning salaries or rates of pay of any existing Choice Radio employees and Purchaser acknowledges that it must negotiate the rates of pay and salaries of any Choice Radio employees which it may wish to retain, if any, subsequent to the execution of this Agreement and the related closing.

## **VIII. PURCHASE PRICE.**

The purchase price for the Assets shall be One Hundred Thousand Dollars (\$100,000.00) cash in hand payable in the form of cashier's check or certified funds or wire transfer to be determined at the discretion of the Seller at closing. The purchase price shall be paid in full at closing.

## **IX. CLOSING – BEST EFFORTS.**

The closing contemplated by this Agreement shall occur on the fifth (5th) business day after FCC consent to the transaction, or at such other date after FCC consent as the parties may agree in writing. Seller and Purchaser covenant and agree that each of them shall use their best efforts to consummate the transaction as contemplated by this Agreement on the closing date. At the closing, concurrently with the discharge of the parties other closing obligations, Seller shall deliver to Purchaser a bill of sale and a stock transfer instrument to effect the sale, conveyance, and transfer of good and marketable title to the Assets and the stock described herein. Parties mutually agree to file an application for FCC consent to this transaction within five (5) business days after execution of this Agreement.

## **X. CLOSING CONTINGENT UPON FCC APPROVAL.**

The parties acknowledge that the closing of this matter is expressly conditioned upon approval of the transfer of the related radio station licenses and authorizations and permits and related rights by the FCC. In the event that the FCC declines to approve the transfer of any of the radio stations described in this Agreement, then this Agreement shall become null and void and the parties shall be relieved of their obligations here under and all parties shall be released from any obligations arising under this Agreement. If the FCC doesn't grant its consent to the transaction within twelve (12) months after the FCC application for consent has been accepted for filing, then either party may terminate this Agreement by giving written notice to the other party.

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#### **XI. CONTROL PRIOR TO CLOSING AND TIME BROKERAGE AGREEMENT.**

The parties acknowledge and agree that prior to closing, control of the FCC Licenses and the radio stations, including control over personnel, programming and finances, shall remain with Choice Radio. The parties shall enter into a Time Brokerage Agreement ("TBA") simultaneously with the execution of this Agreement, pursuant to which Purchaser shall commence operating the radio stations, subject to the supervision and control of Seller. In the event of any breach, default, or termination of the TBA, Seller may terminate this Agreement by written notice to Purchaser.

#### **XII NO GUARANTY OF FUTURE PERFORMANCE.**

The parties acknowledge and stipulate that the Bank acting as attorney in fact for Choice Radio Corporation is unfamiliar with Choice Radio's profitability or its potential for profitability and the Bank accordingly makes no promises, guarantees, assurances, or representations whatsoever concerning the past, present, or future performance of any of the radio stations at issue nor as to their potential for profitability. Purchaser has conducted its own due diligence investigation concerning the performance of the Assets and their potential for profitability and the Purchaser accepts the Assets as is where is, with all faults.

#### **XIII. EXAMINATION OF THE ASSETS AND RECORDS AND RELATED DUE DILIGENCE.**

The Purchaser has examined and is familiar with the Choice Radio Assets which are the subject of this Agreement and their current condition or has had the opportunity to examine the Assets and has declined to do so. The Purchaser has had full opportunity to perform and so performed all necessary due diligence and has received or has the opportunity to examine to its satisfaction all documents referenced within this Agreement or related hereto including but not limited to such financial records as may be available (if any) and has examined the same to its full satisfaction prior to entering into this Agreement. Purchaser fully understands that no promises, representations, warranties, or affirmations of fact relative to the profitability of Choice Radio shall survive the closing and further, the parties understand and stipulate that past performance is no guarantee of future profitability and Purchaser understands that it will be solely responsible for the profitability of the Assets subsequent to closing.

#### **XIV. OPPORTUNITY FOR INDEPENDENT COUNSEL.**

The Purchaser acknowledges that it has had the opportunity to review the provisions of this Agreement and has had the opportunity for its own independent counsel to review the same prior to the execution of this Agreement.

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**XV. TAX MATTERS.**

The parties represent and stipulate that First State Bank of the Southeast, as attorney in fact for Choice Radio solely with respect to the transfer of the Assets described in this Agreement, is wholly unfamiliar with any tax matters relating to the Assets of Choice Radio and Seller makes no warranty, promise, representation, or assurance as to any taxes which may be due or owing with respect to Choice Radio or the Assets and Purchaser takes the Assets as is where is subject to any and all existing taxes which may be due or owing with respect to the Assets.

**XVI. ENTIRE AGREEMENT, AMENDMENT AND WAIVER.**

This Agreement constitutes and contains the entire Agreement between the parties with respect to the transactions contemplated hereby and supersedes any prior writings or oral representations of the parties. The parties may, only by mutual agreement in writing, amend this Agreement in any respect and may agree to (1) extend the time for performance of any obligations of any part; (2) waive any inaccuracies or representations and warranties by any parties; (3) waive performance of any obligation by any other party; and (4) waive the fulfillment of any condition that is president to the performance by such party of any of its obligations here under. No such waiver shall be deemed to constitute the waiver of any other breach of the same or any other term or condition of this Agreement or any other related instrument. Any such amendment or waiver must be signed by an officer of the parties to such amendment or waiver.

**XVII. SEVERABILITY.**

The invalidity or unenforceability of any such provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

**XVIII. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts any one of which need not contain the signatures of more than one party but all of which taken together shall constitute one and the same agreement.

**XIX. ATTORNEY FEES AND EXPENSES.**

Each party to this Agreement shall pay their own attorney fees and expenses including all legal fees that such party may incur in connection with the negotiation, execution, or closing of this Agreement and the other transactions contemplated herein.

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**XX. TIME OF THE ESSENCE.**

Time is of the essence to the performance of the obligations set forth in this Agreement.

IN WITNESS WHEREOF, First State Bank of the Southeast as attorney in fact for Choice Radio Corporation and Roy Jaynes Broadcasting, LLC have caused this Asset Purchase & Sale Agreement to be executed as of the day and year first written above.

CHOICE RADIO CORPORATION

BY: 

HON. KAREN DAVENPORT  
MASTER COMMISSIONER  
HARLAN CIRCUIT COURT

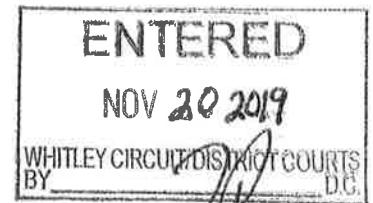
(per Court Order entered October 12, 2020)

ROY JAYNES BROADCASTING, LLC

BY: 

ROY JAYNES, SOLE MEMBER

COMMONWEALTH OF KENTUCKY  
34<sup>TH</sup> JUDICIAL CIRCUIT  
WHITLEY CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 18-CI-00552



**ELECTRONICALLY FILED**

FIRST STATE BANK OF THE SOUTHEAST,

PLAINTIFF,

VS.

CHOICE RADIO CORPORATION,  
JONATHAN L. SMITH,  
KAREN MOSES-BOWLING,

DEFENDANTS.

**AMENDED JUDGMENT and ORDER AUTHORIZING TRANSFER OF COLLATERAL**

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This matter is before the Court upon the Motion of plaintiff, First State Bank of the Southeast, ("the Bank") seeking to amend this Court's Default Judgment entered in favor of the Bank on May 29, 2019 to provide that the Bank is authorized to transfer additional intangible property and contract rights as set forth within the Bank's recorded UCC filing which were not listed within the original Judgment and Order authorizing transfer of collateral and with the Court having reviewed the Bank's recorded UCC lien filing and being otherwise sufficiently advised IT IS HEREBY ORDERED that the Motion is SUSTAINED and this Court's previous Judgment and Order authorizing transfer of collateral are hereby AMENDED as follows:

The Bank is deemed to be the first lienholder upon the following described items of personal property, tangible and intangible (to the extent permitted by federal law), by virtue of the terms of the note and related security agreements executed by the defendants herein and the UCC Financing Statement filed of record in the office of the Kentucky Secretary of State on April 18, 2016 such that upon entry of this amended Judgment, the Bank may transfer, sell, and convey all of Choice Radio Corporation's equipment, furniture, fixtures, accounts, inventory, general

intangible, contract rights, all present and future authorizations, permits, licenses, franchises, government authorizations, permits, including debtor's rights under present and future authorizations, permits, and licenses issued or granted to debtor by the Federal Communications Commission (each, an "FCC license") for the ownership and operation of radio stations WKKQ-FM (FCC facility ID number 3954), WYWY(AM) (FCC facility ID number 3953) and FM translator W227CD (FCC facility ID number 158017), each licensed to Barbourville, Kentucky, and radio station WTKB(FM), Manchester, Kentucky (FCC facility ID number 39774), and all rights incident and apparent to such authorizations, permits, and licenses (to the extent permitted by federal law and FCC rules and policies), together with the rights to receive all proceeds derived from or in connection with the sale, assignment, or transfer of any FCC license used for ownership or operation of the stations.

The Bank is further authorized transfer the one thousand (1,000) shares of Choice Radio Corporation stock based on the aforesaid note and security agreement, the bank presently holding possession of such stock certificates. The Bank is further authorized to sign any documents or applications on behalf of Choice Radio Corporation as its attorney in fact, including but not limited to any applications that may be required to be filed with the FCC to consent to the assignment of the FCC licenses for such stations or to the transfer of control of Choice Radio Corporation, to effect the foregoing.

SO ORDERED THIS THE 14 DAY OF November 2019.

  
HON. KENT HENDRICKSON, SPECIAL JUDGE  
WHITLEY CIRCUIT COURT, DIVISION I

DISTRIBUTION TO:

Hon. R. Aaron Hostettler  
Hamm, Milby & Ridings, PLLC  
120 North Main Street  
London, KY 40741

Choice Radio Corporation  
c/o Jonathan L. Smith, Registered Agent  
201-A East Main Street  
Stanford, KY 40484

Choice Radio Corporation  
c/o Jonathan L. Smith, Registered Agent  
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Stanford, KY 40484

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Stanford, KY 40484

Jonathan L. Smith  
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Stanford, KY 40484

Hon. Larry Conley  
714 S. Main Street  
Corbin, KY 40701

GWB/jp 11/20/19  
Clerk's Initials & Date